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COMPONENT: LAW OF PERSONS

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PART I: PERSONS

INTRODUCTORY PART

I. PRELIMINARY CONCEPTS

A. General Concepts

1. Definition of Law

It is a set of legal rules governing the life of human beings in a society. This is called the objective law.

- The positive law is the law in force in a given country at a given time.
- The natural law is the ideal law to which everyone aspires.
- The subjective rights: these are prerogatives that are available to people individually; people are named subjects of rights.

2. Basis of the law

The law is based on two needs: it is based primarily on the need for security, because the presence of the law brings harmony in the society: it clarifies what we can do and what we should tolerate from others. Secondary, the law is based on the need for justice, if a human being tolerates that his/her desires are limited by the law, this law must be fair and based on equity.

B. The Law of Persons

The Law of Persons is part of private law (as opposed to public law) and is national law (as opposed to international law). It is part of private law because it is a branch of law governing relations between individuals among themselves. Private law includes other specialized branches such as commercial law, labor law, insurance law, etc.

The law of persons is a national law because, in principle, it applies only to nationals.

The law of persons treats the essential legal aspects of the person from his birth until his death. It first precises the notion of legal personality, examines how persons can be individualized, identified or distinguished from others and then studies the status and capacity of a person from a legal perspective.

C. Relationship between written law and customary law

Prior to the enactment of the law of October 27, 1988, establishing the Preliminary Title and Book I of the Civil Code which governed persons and family from 1988 up to the beginning of September 2016, Rwandan law of the persons was based on two sources of law:
- The customary law which consisted primarily of unwritten rules from customs;
- The written law which consisted of rules contained in the Civil Code of the Belgian Congo (see the decree of May 4, 1895).

Article 174 (3), of the Constitution confirms the supremacy of the law over customary law: the custom will continue to apply insofar as it does not contradict with the Constitution, laws, orders, regulations, neither violates human rights nor prejudices public order and good morals. However, it is not clear that the principles adopted by the Rwandan legislator in the 1988 law governing persons and family necessarily represented the law experienced by the population, which could lead to passive resistance of customary rules to written law. The reason was that the rules of that law were not an adaptation of custom to the changing needs of Rwandan society, but an effort to adapt the Belgian and French laws to local needs. The 1988 Law was repealed by the Law no. 32/2016 governing persons and family. The latter was also repealed by the current law no. 71/2024 of 26/06/2024 governing persons and family.

II. GENERAL PRINCIPLES APPLICABLE TO PERSONS AND THE FAMILY PROVIDED IN THE LAW N^{O} 71/2024

A. Protection of human rights, public order and Rwandan good morals

Agreements of private parties and other legal acts affecting persons and the family cannot derogate from laws protecting human rights or those relating to public order and Rwandan good morals (Art. 3 Law no. 71/2024).

B. Effect of foreign laws, judgments, legal acts and agreements made abroad

Foreign laws, judgments, legal acts or private agreements have no effect in Rwanda when they are contrary to the rules of public order, social interest or Rwandan good morals (Art. 4, Law no 71/2024 governing persons and family).

C. Law applicable to status and capacity of persons

In principle, the status and capacity of a person is governed by the national law. The status and capacity of Rwandans, both living in and outside Rwanda are governed by Rwandan laws. However, a Rwandan national with dual nationality domiciled abroad may be governed by the law of his/her choice, either that of Rwanda or that of another country of which he/she is a citizen (Art. 5 (1), Law n^{o} 71/2024).

For foreigners residing in Rwanda, their status and capacity as well as their family relationships are governed by the law of their country if such law is not contrary to public order and Rwandan good morals (Art. 5 (2), Law n^{o} 71/2024). However, the Rwandan law provides that any foreign national having his/her domicile or residence in Rwanda may have his/her civil status record drawn up by a Rwandan civil registrar in respect of Rwandan law (Art. 85, Law n^{o} 71/2024). Additionally, when the nationality of a person is not known, his/her status and capacity are governed by Rwandan laws (Art. 5 (2) , Law n^{o} 71/2024).

D. Law applicable to deeds between living persons

Deeds between living persons are governed:

- For the form, by the law of the country where they are made. However, private deeds may be made in compliance with the standards legally acceptable under laws of the country of origin of parties (Article 7 (a), Law nº 71/2024).
- For the substance, effects and evidence, deeds between living persons are governed by the law of the place where the deeds are made unless otherwise agreed by the parties (Art. 7 (b), Law nº 71/2024).

E. Mediation in case of civil dispute

When there is a civil dispute between family members, they may, by mutual agreement, use mediation if, in their opinion, such a process may help them reach a settlement (art. 8, Law no 71/2024).

III. SOURCES AND LEGISLATIVE EVOLUTION OF LAW OF PERSONS

A. Sources of law of persons

1. International law

International law is a set of rules contained in treaties and conventions applicable to relations between the contracting States and international organizations. These rules become effective laws when they have been introduced by the legislature in domestic laws.

2. Law

The law broadly refers to all general rules enacted by a competent authority, encompassing both texts enacted by the legislature and the regulatory authority (e.g. Order).

In the Law of Persons we will refer primarily to the following legal texts:

- The Rwandan Constitution of 2023.
- The Law no. 71/2024 of 26/06/2024 governing persons and family (Official Gazette no. Special of 30/07/2024)
- Law n° 14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card as amended by law nº 44/2018 of 13/08/2018**.**
- Organic Law nº 002/2021 of 16/07/2021 governing Rwandan Nationality
- Law n° 029/2023 of 14/06/2023 governing population registration in the national single digital identity system.
- Presidential Order no 092/01 of 21/09/2020 determining responsibilities of the executive secretary of cell.
- Ministerial order nº 007/01 of 23/03/2022 relating to Rwandan nationality.
- Ministerial Order Nº 002/07.01 of 27/07/2020 determining the number, type, format and use of civil status registers
- Ministerial order nº 001/17.01 of 17/01/2017 establishing modalities and procedures for change of name.
- Ministerial Order n° 001/07.01 of 27/07/2020 determining the officer of the health facility with powers of civil registrar.
- Ministerial Order nº 002/07.01 of 27/07/2020 determining the number, type, format and use of civil status registers.

3. Custom

The custom is constituted by rules that emerge slowly and spontaneously from practices usually followed in a given society, and which become mandatory regardless of any intervention or explicit approval or tacit of the legislature. The definition therefore includes a material element: a very long use and psychological factor: the belief that the use is mandatory. However, the custom remains applicable only when it has not been replaced by a written law and is not contrary to the Constitution, laws, orders, regulations, neither violates human rights nor causes prejudice to public order or good morals (Art. 174 (3), Constitution.).

4. Case Law

Case Law consists of all decisions taken by the Courts of the State. In making the case law, two elements are involved namely: repetition of the courts to rule in a certain way on a given issue, but one decision should set a precedent when it comes from the Supreme Court.

5. Doctrine

It consists of all works and studies of eminent legal scholars on various legal issues.

6. Equity

Sometimes a case not covered by the existing law comes before a judge who has to decide. In such circumstances, the judge decides the case according to his/her own sense of justice.

B. The legislative history of the law of persons

The law of Persons was based on customary law for a longtime; only few written laws regulated some matters related to Persons. The first is the **decree of May 17, 1952** which was related to the registration. It had provided the opportunity for some natives to be registered in the registry of civil status and be subject to the Civil Code. The direct purpose of this decree was to restrict the registration to the only elite natives who had actually accessed the western civilization. Despite the benefit of statutory registration, only three nationals were registered. Thus, almost all of Rwandan population remained subject to customary law.

The second written legal text was the **ordinance of July 25, 1961.** The latter came to fill a gap without organizing the civil status service. The legislator at the time allowed registration of births and deaths. Marriages and divorces remained subject to customary law. The third written legal instrument that regulated matters related to persons in details is the **Law nº 42/1988 of 27 October 1988 instituting the Preliminary Title and Civil Code Book I**. This Law governed matters related to persons since its adoption until 12 September 2016, when it was repealed by Law nº

32/2016 of 28/08/2016. The latter was also repealed by the current law, Law nº 71/2024 of 26/06/2024 governing persons and family (Official Gazette nº Special of 30/07/2024). This law is supplemented by other laws and ministerial orders which are listed above.

CHAPTER I: THE JURISTIC PERSONS AND NATURAL PERSONS

According to the Rwandan law, the word "person" means a natural person with rights, capacity and duties. A person can also be defined as a subject of law, capable of enjoying rights. The subject of law can be active, can enjoy and exercise rights and fulfill a number of duties. A person can also be passive, he/she may enjoy all the rights without the ability to exercise them or to assume certain duties (e.g. a minor).

Rwandan law recognizes two types of persons: natural persons and juristic persons. While the individual has rights and can exercise them, the juristic person is limited by its statute and acts only through its organs.

Section I: Juristic persons

Juristic persons are legal persons that are not natural persons; they are groups of persons or organizations endowed with independent legal personality and which are recognized by law as fictitious persons. These groups are subjects of rights distinct from their members. Juristic persons have the capacity to own and hold patrimonial rights.

§ 1. Classification of juristic persons

A. Juristic persons of public law

They are created by the public authority. This determines the objectives to be followed in accordance with the purposes for which they were created. Juristic persons of public law are responsible for the satisfaction of general interests. They are divided into State and its decentralized entities (e.g: districts) and public institutions with financial and administrative

autonomy such as University of Rwanda (UR), Rwanda Utility Regulatory Agency (RURA), Rwanda Agriculture Board (RAB), Rwanda Environment Management Authority (REMA), etc.

B. Juristic persons of private law

They are created by individual initiatives for special interests that may be general or specific. Juristic persons of private law are classified according to their aims. Thus, there are non-profit associations and those targeting profits like commercial companies or corporations. The law only intervenes in determining the conditions of creation, the rest being reserved to the will of individuals. Although they come from the initiative of individuals, their legal personality is granted by public authority.

§ 2. The functioning of juristic persons

Juristic persons have their own assets, separate from those of their members. They never have a total capacity of enjoyment. They are strictly limited by the rule of specificity as contained in their statutes. The specificity only allows them to enjoy certain rights and perform juristic acts corresponding directly to their objectives. All juristic persons have the opportunity to defend their interests in court. They may also be held liable in civil or criminal matters.
To exercise their rights, juristic persons act through their representative bodies (directors, administrators, etc.).

§ 3. End of the legal personality of juristic persons

Legal personality of juristic persons can be terminated in four ways:
- *By Legislative measures*: The juristic person created by a statutory provision shall be terminated by a new law that replaces the former. Example: The National University of Rwanda established and Organized by the Law of 12/05/1964 and the Law n° 22/2008 of 21/07/2008 determining its structure, organisation and functioning ended with the law n°71/2013 of 10/09/2013 establishing the University of Rwanda (UR) and determining its mission, powers, organisation and functioning. This law was later reviewed by law nº 053/2024 of 07/06/2024 governing the University of Rwanda.

- *By a decision of members of the association*: the majority of members may ask to end their association, according to what is provided in the statute.

- *By a statutory measure:* often the statute provides the duration of specific juristic person and it stops at the end of this period.

-Legal personality of juristic persons can further be terminated *by a judicial measure*. This means by a decision of the court.

Section II: Natural persons

§ 1. General Concepts

With the rise of individualism associated with liberal economy, subjective rights have been introduced in the legal system, to protect an individual: the rights of personality. Their purpose is to protect the person as a physical, psychological and social individual (e.g. right to honor, respect for privacy, etc.). They offer to the individual protection and development. The victim of an infringement to privacy may seek compensation. In this sense, the Constitution recognizes the human rights and obligations of the physical person. First and foremost, Article 13 provides that the human person is sacred and inviolable and that the State has the obligation to respect, protect and defend a human person. Thus, nobody may infringe individual liberty in the cases provided by law.

The inviolability of the person is not only physical, but it also relates to the protection of moral elements, including honor and consideration, the protection of identity, including name, image, and respect of privacy. In this regard, Article 23 of the Constitution declares that the privacy of individuals cannot be interfered with, particularly following their correspondence and telephone calls.

The protection of privacy, according to doctrine, corresponds to a domain of individual conscience and protected against the action and knowledge of others. This is the area where an individual can

exclude others. The case law provides examples that fall under privacy: the identity, address, nudity, health and love life.

The privacy interests also respect for the home. Only the competent authorities in cases provided by law may order home visits.

§ 2. The duration of legal personality

The legal personality which is defined as the human being's capacity to have rights and duties appears and disappears with human life. In principle, every human being has the legal personality and only human beings possess it. Article 10 (1) of the Law nº 71/2024 governing persons and family gives a condition for the acquisition of legal personality: to be born alive. A stillborn is deemed to never have had it. These rights are attached to the personality because they are rights that protect the individuality of a human being (right to life, honor, etc.).

A. Starting point of the legal personality

The legal personality begins at the birth of human being (art. 9 Law nº 71/2024) if born alive (art. 10 Law nº 71/2024). This rule has an exception contained in the adage that the legislature has devoted *infans conceptus pro nato habetur quoties commodis ejus agitur*, which simply means that the potential interests of unborn child may be protected from the conception (art. 10 (2) Law nº 71/2024) whenever there is the situation which can be to the advantage of a child. The later shall be deemed to have been born from the time of the conception. The provisions of this article enable the child born alive to claim his rights from the time of conception, and that will be the case in matters relating to succession rights. The problem is to know the time of conception. The law establishes presumptions. The date of conception is set between the 300th day and 180th day before birth (arts. 283 Law no. 71/2024).

B. Effects of legal personality

The main effect is freedom to enjoy and exercise civil rights. Everyone is free to exercise civil rights: nationals and foreigners. A foreigner enjoys the same civil rights as those granted to Rwandans unless otherwise provided by law (art. 11 Law no. 71/2024). To exercise civil rights, everyone must have capacity, if not, the rules of representation and assistance will apply. The exercise must be done under the name assigned to the person by a birth record and abuse or excessive exercise of civil rights with the intention to harm others is not protected (art. 12 Law nº 71/2024). Every person must exercise his/her civil rights recognized by law and perform his/her obligations in good faith which is always presumed except if the person failed to exercise diligence required of him/her (art. 13 Law nº 71/2024).

C. End of legal personality

The legal personality lasts as long as human life and disappears at death of the individual. For natural persons, legal personality is terminated by death or in the event of absence or disappearance, it is terminated by a declaratory judgment of death (arts. 14, 17 and 22 Law nº 71/2024).

With regard to death, when it is certain, it is registered in the civil status record of deaths by the competent authority who issues a death record. This death record constitutes the proof of death of a person (art. 15 Law nº 71/2024). However, the disappearance of legal personality is not absolute; the law accepts a certain extension of the personality after death, by respecting the last wills.
When several persons die at the same time and it becomes impossible to determine the order in which their death occurred while some of whom were entitled to inherit others, they are deemed to have died simultaneously and their legal personality was terminated at the same time (art. 16, Law nº 71/2024).

In general, the rights of a deceased person are transmitted to his/her heirs from the moment of death. Even if the person disappears with death, the corps must be respected and buried with respect.

Section III: Uncertainty of legal personality: absence and disappearance

Sometimes the existence of a person is uncertain. The proof of his/her death was not reported. He can therefore be regarded as still alive, but his existence is questionable, either because no news were heard from him/her for a very long time (this is the case of absence) or because he/she has disappeared under circumstances which put his life in danger (this is the case of the disappearance).

§ 1. Notions of absence

A. Definition*;*

The absence is a situation where a person is not found at his or her domicile or residence to such an extent that there is no other information which may confirm his or her whereabouts (art. 2 (d) Law nº 71/2024). In case of absence, there is uncertainty about the existence of someone. The absence must be distinguished from the non-presence. The non-present is the one who is not where we thought to find him (at home, at work, etc) the distance prevented him or her from manifesting his will, but there is no doubt about his existence.

The absence raises a number of questions:

Who will take care of relatives of the alleged absentee? What will happen to the property and who will manage the rights of the absentee during his/her absence? Who will pay his/her creditors? The law establishes a three-step solution based on presumptions.

B. Presumptions

1. Life presumption

When a person has ceased to appear at his domicile or residence without any news about his whereabouts to the extent of doubting of his life the period of life presumption is two (2) years if he/ she has not appointed an authorized representative or four (4) years if he/she has appointed a legal representative (Art. 23 Law nº 71/2024). This period began from the date of the last news of

his/her existence was received. He/she is deemed to be alive. Accordingly, the marriage remains, the succession is not open, s/he remains the owner of his/her property.

During the period of life presumption, the property is administered by an administrator. The latter is the other spouse if the absentee is married regardless of their matrimonial regime unless if the court decides otherwise. If the absentee is not married, the administrator is appointed by the Family Council or the Court if the Family Council is unable to appoint one or in case of any other dispute. The administrator is chosen from presumptive heirs (art. 25 Law nº 71/2024).

The administrator either the spouse of the absentee or any other person appointed as an administrator of the property of the absentee presumed to be alive, submits to the Family Council an inventory of the patrimony of the absent person who is presumed to be alive. Such inventory is countersigned by the representative of the Family Council. The established inventory is submitted to the civil registrar of the location of the property with a copy to the civil registrar of the place of domicile of the absentee presumed to be alive. If there is a dispute related to the inventory of the property of the absentee presumed to be alive, an interested person refers the matter to the competent court (Art. 24 Law nº 71/2024).

The administrator represents him/her in the exercise of his/her rights or in any other property-related transactions in which he/she would be interested and also administers his/her property in accordance with the rules applicable to property administration (art. 26 Law nº 71/2024). The administrator must represent the absentee in administrative and conservatory acts. The acts of disposition must be approved. The presumption of absence ends with the return of the absentee or proof of his death.

The presumption of life of an absentee presumed to be alive ceases when s/he reappears or when the proff of death is produced. In the last case, the absentee is certified as dead in a death record or a declaratory judgment of death (art. 27, Law nº 71/2024)

2. The declaration of absence: Termination of life presumption

When the period of presumption of life has elapsed, the interested party may contact the Primary court of the last domicile of the absentee to request the declaration of absence (Art. 28 Law nº 71/2024).

The procedure of declaration of absence is established in article 29 of the Law nº 71/2024 governing persons and family which provides that when ruling on the grounds given by the person applying for declaration of absence, the court assesses the probable causes which made it impossible to receive information about the person presumed to be alive. It may also order an investigation.

For effects of the judgment declaring death of the absentee, the absentee's spouse continues to administer the property of the absentee regardless of the chosen matrimonial property regime, unless otherwise ordered by the court.

In case the absentee is single or widowed and there is nobody to whom he/she entrusted his/her property, the court, after consultation with the Family Council, determines the administrator of such property (art. 30, Law nº 71/2024).
The declaration of absence does not have any effect on marriage and succession (art. 31, Law nº 71/2024).

3. The death declaration: the presumption of death

According to art. 32 of the Law nº 71/2024, five (5) years following the absence declaration without positive news about the absentee's existence, he or she is presumed dead. When five (5) years have elapsed since the delivery of the declaratory judgment of absence and it is uncertain whether the absentee is alive, any interested person who presumes that the absentee is dead applies to the court of the last domicile or residence of the absentee for declaration of the absentee's death. Such a judgment may be delivered before that period if the absentee's death is ascertained although it was impossible to establish a death record. The date fixed as the date of death is the date from

which the absentee is presumed to be dead. The place fixed as the place of death is where the person was last seen if there is no any other proof.

In summary:

First step: life presumption for two years if the absentee has left no authorized representative or 4 years if the absentee has left a proxy.

Second step: At the end of 2 or 4 years of presumption of absence, there may be a declaration of absence if there is no information about the person presumed to be alive.

Third step: 5 years after the declaration of absence by the competent court, there may be a declaration of death at the request of interested parties.

7 years from the date of the last news about an absentee (2 years + 5 years) if the person has not left an authorized representative or 9 years (4 years + 5 years) if the absentee has left an authorized representative. After that period and at the request of any interested party, the competent court, may declare the death (Article 32 (1), Law nº 71/2024).

4. Effects of declaration of death

The other spouse can remarry (article 33, (1), Law nº 71/2024) unless if, before marriage celebration, the person declared dead reappears (Art. 33 (2), Law nº 71/2024), in which case the right to remarry is nullified. But if the second marriage was contracted after the judicial declaration of death, it remains valid (art 35 (4), Law no 71/2024). It is not the same, when the marriage was contracted during the period of declaration of absence.

The declaration of death gives rise to the opening of succession of the absentee's patrimony and the right to succession which was entitled to the absentee declared dead passes on to the heirs in accordance with the rules governing succession by representation (art. 34 Law nº 71/2024).

In case the absentee reappears after the declaration of death, the reappearing person or any interested person may request the court which rendered the judgment to cancel the it. The judgment which cancels the death declaration orders revocation of a death record that has been established

on the basis of such judgment. The heirs and legatees have to ensure restitution of the property inherited which is still in their possession (art. 35 (1, 2 & 3), Law nº 71/2024).

§ 2. Disappearance

A. Definition

The absence should not be confused with disappearance. Disappearance is a situation in relation to a person who cannot be found and who, given the circumstances of his or her disappearance, is believed to be dead but without his or her body being found (Art. 2 (n) Law nº 71/2024). In such circumstances the death of the person is certain though his or her corps has not been found or identified. The problem of proof solely arises.

The circumstances of the disappearance are set out in Article 18, para 2 Law nº 71/2024: shipwreck, air disaster, flooding, earthquake, landslides or where there are grounds to believe that several persons were killed or the death was caused by war, genocide or any other incident which may cause death of several persons to the extent that their clear identification is impossible.
In case of disappearance, the prevailing view is that the person is dead but his/her body could not be found or identified. This is contrary to the case of absence where the prevailing view is that the absentee should never be considered dead. He/she should return at any time.
Following such events, any interested person may, by unilateral petition, apply to the court for a declaratory judgment of his/her death (art. 18, para. 1 Law nº 71/2024). The competent court is that of the last place of the disappeared's domicile or residence (art. Art. 19 Law nº 71 /2024).

Before deciding on the petition, the judge orders any person who may have information on that disappeared person to provide him/her with such information. The order is published in accordance with legal provisions relating to service by publication that applies to the civil procedure (Art. 18, para. 3 Law nº 71/2024).
In case of war, genocide or any other incident which has caused the death of several persons, their deaths may be declared in a collective decision (art. 18, para. 2 Law nº 71/2024).

B. Legal status of the disappeared person

There is no life presumption. The circumstances of the disappearance make the death immediately likely. Article 18, para. 1 Law nº 71/2024 allows any interested person to file a claim to the court applying for the declaration of the death. The date of death is specified basing on circumstances surrounding death (art. 20 Law nº 71/2024). The declaratory judgment of death of a disappeared person orders the competent civil registrar to establish a death record; which record is registered in the register of birth (art 21, Law nº 71/2024).

This decision of the court declaring a disappeared's death has legal effects: a person is considered dead, her or his marriage is dissolved, the other spouse can remarry, and the succession is open. Also the succession right passes to the heirs of the disappeared (Arts. 33 & 34 Law nº 71/2024).

In case of return of the missing, which is rare, the judgment is annulled by the court having delivered it at his/her petition or at the petition of any other interested person. The judgment annulling the earlier declaratory judgment of death orders the civil registrar of the domicile of the person whose death has been declared to cancel the death record (Art. 35, paras. 1 and 2 Law nº 71/2024). If the disappeared person or absentee reappears before his/her spouse's new marriage is celebrated, the right to enter into a new marriage is annulled (Art. 33, para 2 Law nº 71/2024). Those having inherited from him/her return the inherited property that still remains in their possession (art. 35, para. 3 Law nº 71/2024).

CHAP. II - IDENTIFICATION OF INDIVIDUALS

Different elements are used to identify an individual: name, sex, filiation, residence and domicile.

Section I. The name

Every child is entitled to have a name freely chosen by a parent or any other person who has parental authority over the child (Art. 38 Law nº 71/2024).

§ 1. Components of the name

The law nº 71/2024 governing persons and family determines, in its art. 36, the components of a name. The name is composed of a surname and one or many post-names.

A. The surname

In the European view, the surname is that name given to all persons descendent from a common ancestor and transmitted in the paternal line. Such a name is regarded as a social or family patrimony. In Rwanda, we can assimilate this name to the proper name given by the parent or the person exercising parental authority over the child. The surname is one or more names by which a person is referred to. It may be a family name shared by descendants of the same family, or any specific name, or both (Art. 2 (p), Law nº 71/2024). In general, the surname is not a social or family patrimony, but a way to individualize a person.

B. The post-name

The post-name is another element of identification of an individual. It is one or more names added to the surname (art. 2 (r), Law nº 71/2024).

NB: The order of name (surname and post-name) must be strictly followed in the drafting of administrative documents, if not, the document is invalid with exception of the existing documents made in Rwanda or abroad in accordance with the provisions of laws and procedure of the place where such documents were made. The latter remain valid (Art. 36 Law nº 71/2024). A person's name is the one mentioned on his/her birth record (Art. 37 Law nº 71/2024).

There are names which are prohibited: a child cannot bear all his/her father's, mother's or siblings' names and a name that is offensive to good morals or to people's moral integrity is not acceptable (art. 39, Law nº 71/2024).

C. Other names

1. Names of spouses

With the consent of both spouses, a spouse has the right to bear the other spouse's surname added to his/her usual name provided that such an addition of name is done before the civil registrar of the domicile of the spouse who wants to bear the other spouses' name (art. 40, para. 1 Law nº 71/2024). If the person who bears the name of his/her spouse wants to change it, he/she does so according to the usual procedure for change of name (Art. 41, para 4 Law nº 71/2024).

In case of marriage dissolution due to death, the surviving spouse may request the civil registrar to cancel his/her former spouse's name. Also, in case of marriage dissolution due to divorce, one spouse may request during or after divorce proceedings the cancellation of his/her former spouse's name but he/she abides by the procedure for change of name provided for by law (art 41, paras. 1 & 2 Law nº 71/2024).
A person who does not want his/her spouse to bear his/her name anymore during marriage or after divorce, makes the application to the civil registrar of their domicile. In case the spouses disagree, he/she refers the matter to the competent court (art. 41, para 3 Law nº 71/2024).

2. Religious vows

The use of a name of religious vows is also acceptable if it is done before the civil registrar of the domicile of the person who wishes to use such a name. However, such name of religious vows is added to his/her usual name and confirmed by a certificate provided for by an Order of the Minister in charge of civil status (Art. 40, para 3 Law nº 71/2024).

In case of annulment of religious vows, a person having used a name of religious vows may request the civil registrar to cancel the name upon presentation of the certificate provided for under Article 40 of this Law (art. 41, para. 5 Law nº 71/2024).

3. The trademarks or brand

Manufacturers can provide their products to a particular name that cannot be imitated unless authorized by the owner (eg. Sakirwa, Akandi, Claire).

4. Nickname

The nickname is an optional means of identification. It is chosen by the holder or by another person. The doctrine recognizes that the nickname has no legal value and is not registered in the civil status office.

§ 2. Characteristics of the name

A. The name is an obligation

The name is considered an obligation in the sense that the person is obliged to bear it in all public acts and must respond and react to legal acts directed against him. Ex: summons.

B. The name is a right

The name is also regarded as a right because the holder has the right to use it in all legal and social life. Being a right, the name must be protected because it is closely linked to the individual. It is the fundamental sign of the identity of the person. The name is an attribute of personality. It is a prerogative which belongs to any individual from his or her birth. This allows the individual to act in defense of his/her name in case of usurpation (the fact of using in acts of civil life a name without any right. The usurper tries to benefit from the prestige attached to the name he usurps) or improper use.

C. Other characteristics

The name is not transferable; it cannot be sold to others or be abandoned, except in respect of trademarks which may be sold under conditions determined by law.

The name is imprescriptible: it cannot be lost or acquired by long usage. The name is in principle immutable except for important reasons, and following a special procedure.
The name is unavailable: the name cannot in principle be sold or given, or disposed of by last will, it is an extra- patrimonial right (a right related to personality). This right goes with the person. An exception is the trademarks which is part of the business and can be sold with it.

§ 3. Change of the name

According to article 42, para. 3, law no 71/2024 governing persons and family, the name can be changed basing on the following grounds:

1° if the name infringes upon the honour of the person bearing it;

2° if the name is offensive to Rwandan good morals or persons' moral integrity;

3° when the name is used by another person such that it may infringe upon his/her honour or cause injury to his/her property;

4° such other reason as may be deemed valid by the Minister in charge of civil status.

The request is made by the person bearing the name having attained the age of majority and in case of a minor, the application for change of name is made at the request of his/her parents or other persons who exercise parental authority over him/her. The request to change the name is addressed to the Minister in charge of Civil Status. The Procedure is established by the Ministerial order nº 001/17.01 of 17/01/2017 establishing modalities and procedures for change of name.

Effects of change of name

The change of name becomes effective from the time the new name is recorded in the register of birth records. All documents made under the former name are deemed to be made under the new name. The person bearing the new name or any other interested person demands that such documents be rectified to indicate the new name (Art. 43 Law nº 71/2024).

§ 4. The name of juristic persons

The name has hitherto been regarded as an element of individualization of individuals but it fulfills

the same role for juristic persons. Their name is the outward sign of their legal personality. It is granted by their founders in the statutes and can defend it in court (e.g. Haguruka, Configi).

Section II: Sex

Sex is human physiological status of being male or female. The sex of a person is the one recorded in his/her birth record (Arts. 44 & 45 Law no 71/2024 of 26/06/2024 governing persons and family).

Section III: Filiation

Filiation is the relationship between a child and his/her father or mother. Such relationship is proved by birth record. In the absence of birth record, uninterrupted possession of status is sufficient to prove filiation (Art. 46, para 1 & 2 Law nº 71/2024). In the absence of birth record and of uninterrupted possession of status, evidence of filiation is proved by all means recognized by law (art. 46, para 4 Law nº 71/2024).
A person may claim for filiation that is different from the one registered in his/her birth record and matching uninterrupted possession of status if he/she may prove it in respect of the law.

Possession of status is established by an adequate combination of facts indicating the relationship of filiation between a person and those he/she considers as his/her parents.

The main facts establishing possession of status are:

1° where the presumed father or mother of the child has always treated the child as his/hers, and has in that quality catered for his/her education, maintenance and giving him/her personal assets;

2° where the child has been treated as such by the family;

3° where the child has permanently been treated as such by the community (art. 47 Law nº 71/2024).

For a child born out of wedlock, his/her paternal or maternal filiation is proved by an oral or written acknowledgement of the child done before the civil registrar. It can also be proved by an agreement between presumed parents to take a DNA test and a court-ordered DNA test. Additionally, filiation of a child born out of wedlock can be proved by a judgment declaring paternal or maternal filiation or copy of civil register in which the judgment was recorded (art. 48 Law nº 71/2024).

In case of adoption, filiation is proved by an adoption record issued by the civil registrar and approved by the court. In the absence of such a record, it is proved by a judgment in lieu of civil status records (art. 49 Law nº 71/2024).

Section IV: Domicile and residence

§ 1. Domicile

A. Notions

According to Article 2 (b) Law nº 71/2024, the domicile is a place where a person is registered in civil registers. The domicile allows geographical individualization of the person. Unlike the residence that is a matter of fact, the domicile is a legal concept because it is determined by a legal provision.

B. Practical importance of domicile

The domicile serves to individualize a person. Certain acts regarding family matters must or can be accomplished at the domicile like adoption, emancipation, guardianship, etc. (All acts modifying the status of the person).

In matters of judicial procedure, Article 14 of the law n°30/2018 of 02/06/2018 determining the jurisdiction of courts states that the court for the defendant's place of domicile, residence or elected domicile has jurisdiction over the case, unless the law otherwise provides. In case of several defendants, the plaintiff chooses the court for the place of domicile of one (1) of the defendants.

When the defendant's domicile is unknown, the case is heard by the court of the place of the plaintiff's domicile or residence. The residence is the place of notification of procedural acts like summons (art. 39 of the law nº 22/2018 of 29/04/2018 relating to the civil, commercial, labour and administrative procedure).

C. Different kinds of domiciles

The Law distinguishes three kinds of domiciles: the domicile of choice, domicile by the operation of the law and domicile by election.

1. The domicile by choice

The domicile by choice is that unique place chosen by the person and where he/she is registered in civil registers and everyone, in accordance with the law, enjoys freedom to choose his/her domicile (arts. 2 & 50 Law nº 71/2024 governing persons and family). It can coincide with the residence.

Everyone must have only one domicile (art. 51 Law nº 71/2024 governing persons and family). A person retains his/her domicile if he/she has not yet changed it. The change of the domicile is done in accordance with the law governing population registration (art. 52 Law nº 71/2024 governing persons and family). Any person who wishes to change from his/her registration Sector to another notifies the leaders of the former Sector at least seven (7) days before being registered to a new sector. The new registration is done within fifteen (15) days (art. 3 of the Law nº44/2018 of 13/08/2018 amending law n°14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card).

2. The domicile by operation of the law

In some cases, the law determines the domicile to certain persons who are presumed to live there. This includes minors and adult persons with mental disabilities who have been declared to be given guardians.

The domicile of a minor is the same as the domicile of those exercising parental authority over him/her unless otherwise authorized by them for the minor's interest. However, if a minor is emancipated, his/her domicile may be different from that of persons who exercise parental authority over him/her (art. 55 Law nº 71/2024 governing persons and family).

For persons with mental disabilities who have been provided with guardians, their domicile is the same as the domicile of their guardian (art. 56 Law nº 71/2024 governing persons and family).

3. Elected domicile

Domicile by election is chosen by an individual to confer jurisdiction to a court. Under Article 53 of the Law nº 71/2024 governing persons and family, a person may elect a place as his/her domicile for the purpose of execution of some rights or obligations which bind him/her with other persons. This has to be notified to the civil registrar of his/her usual residence and the civil registrar of the place of elected domicile. This domicile enables the person and the third person to centralize the proceedings or any other acts for which this new domicile has been elected.

The desire to elect the domicile must be specifically written about the place and the acts for which this new domicile has been elected. The interested person must maintain his or her own domicile for other acts.

D. The characteristics of domicile

The domicile as part of individualization must have certain safeguards: it is mandatory, unique, fixed and binding and inviolable.

1. The domicile is mandatory

Everyone must have a domicile. When the domicile of a person is unknown, it is assumed that it consists of his/her residence (art. 50 Law nº 71/2024 governing persons and family). Everyone

retains his/her domicile as long as he/she has not changed it (art. 52 Law nº 71/2024 governing persons and family).

2. The fixity of domicile

A person retains his domicile at the place where she/he has been registered, as long as he or she has not yet re-registered him/herself in the population register of the new place (art. 52 Law nº 71/2024 governing persons and family). The fixity of the domicile distinguishes the domicile from the residence. While a person can move as he/she wishes, his or her domicile remains in principle unchanged.

3. Uniqueness of the domicile

Everyone should have only one domicile (art. 51 Law nº 71/2024 governing persons and family). None can be registered in two places in Rwanda.

E. Domicile for juristic persons

Juristic persons are domiciled at the registered office mentioned in the statute, often where they have their administrative headquarters. For foreign companies, their domicile is the one elected. For public institutions and administrative bodies, the domicile is the headquarters of the administration.

§ 2. Residence

Under Article 2 (a) of the Law nº 71/2024 governing persons and family, the residence is the place where a person lives for occupational or any other purposes. Unless the person has another residence, it is presumed to be the place where he/she usually resides. While it is forbidden to have multiple domiciles, the law allows having multiple residences (Art. 57 Law nº 71/2024 governing persons and family).

Spouses have the same residence unless otherwise dictated by the family's interests (art. 58 Law nº 71/2024 governing persons and family). The residence of a minor is the same as that of the persons who exercise parental authority over the minor unless they authorise him/her to reside in another place in his/her best interests. For an emancipated minor, his/her residence may be different from that of the persons exercising parental authority over him/her (art. 59 Law nº 71/2024 governing persons and family).

Section V: Nationality

§ 1. Notions

Everyone has the right to nationality (Article 25 Constitution). Nationality is the right to belong to a particular nation. Rwandan nationality means a relationship between an individual and Rwanda which results from being of Rwandan nationality by origin or by acquisition.

Nationals are opposed to foreigners. This distinction is crucial: national and foreigners are not subject to the same legal regime. Some human rights in terms of especially political rights are only recognized to nationals.

Nationality is governed by the Organic Law nº 002/2021.OL of 16/07/2021 governing Rwandan Nationality.

§ 2. Categories of Rwandan nationality

Rwandan law provides for two categories of Rwandan nationality: nationality by origin and nationality by acquisition.

1. Rwandan nationality by origin

The Rwandan nationality by origin is Rwandan nationality resulting from being born to at least one parent who is a Rwandan national by origin (Art. 2 (7)). The main criterion for establishing Rwandan nationality by origin is *jus sanguinis*.

Eligibility to apply for Rwandan nationality by origin

Any person of Rwandan origin is eligible to apply for Rwandan nationality by origin (Article 5, Organic Law no 002/2021.OL of 16/07/2021). A person is of Rwandan origin if he/she has a relationship linking him/her to Rwanda as a result of having one parent of Rwandan origin (Article 2 (2), Organic Law no 002/2021.OL of 16/07/2021).

To apply for Rwandan nationality by origin, the person must:

- Be born to at least one Rwandan parent who is a Rwandan by virtue of Rwandan ancestry; and
- Provide at least one of the following: testimony by the applicant or by at least one person and corroborated by evidence, a relative who has Rwandan nationality by origin, any other proof demonstrating his or her Rwandan origin (Article 6, Organic Law nº 002/2021 of 16/07/2021).

2. Rwandan nationality by acquisition

Rwandan nationality by acquisition results from being a Rwandan through acquisition as provided for by the Organic Law governing Rwandan nationality.

Grounds to apply for Rwandan nationality by acquisition

The law provides for 11 grounds that can be based on to apply for Rwandan nationality by acquisition: birth on the territory of Rwanda, foundling, marriage, adoption, national interest, special skills or talent, substantial sustainable investments or activities, residence in Rwanda, honour, being an immigrant, and statelessness (article 8, Organic Law nº 002/2021.OL of 16/07/2021). The law provides for different conditions that an applicant has to fulfil in respect of each ground (articles 9-20, Organic Law no 002/2021.OL of 16/07/2021).

Granting Rwandan Nationality

The Rwandan nationality by origin is granted by the organ in charge of Rwandan nationality. Once it has been issued, the beneficiary receives a certificate of Rwandan nationality. The head of the organ in charge of Rwandan nationality notifies in writing, the civil registrar of the place of residence of the nationality grantee, of the information related to the granting of Rwandan

nationality by origin and the grantee has to present the certificate of Rwandan nationality in order to be registered in civil status registers (article 21-23, Organic Law nº 002/2021.OL of 16/07/2021).

The Rwandan nationality by acquisition is granted by the Cabinet or the President of the Republic if it is going to be issued on the ground of honour. The grantee of Rwandan nationality by acquisition is published in the Official Gazette of the Republic of Rwanda but if it is granted on the ground of honor, the terms terms for publication are determined by President of the Republic. Before being issued with a certificate of Rwandan nationality by acquisition, a person granted Rwandan nationality by acquisition takes the oath. The certificate of Rwandan nationality by acquisition is issued by the organ in charge of Rwandan nationality within a period not exceeding sixty (60) days from the day of the publication of granting Rwandan nationality by acquisition in the Official Gazette of the Republic of Rwanda.

A person granted Rwandan nationality by acquisition registers, within the period prescribed by the law, with the office of the civil registrar nearby his or her residence or at the diplomatic mission of Rwanda nearest to his or her residence upon presentation of the certificate of Rwandan nationality by acquisition (Articles 24-28, Organic Law nº 002/2021.OL of 16/07/2021).

Rights and obligations of a holder of Rwandan nationality by acquisition

A holder of Rwandan nationality by acquisition has the same rights and obligations as a Rwandan national by origin, unless otherwise provided for by Law. However, the rights and obligations of a holder of Rwandan nationality by acquisition on grounds of honour are determined by the President of the Republic.

§ 3. The loss of Rwandan nationality

There are two causes of losing Rwandan nationality: revocation and renunciation.

A. Revocation

Rwandan nationality by acquisition may be revoked on any of the following grounds:

1° if it has been acquired through the use of fraud, false statements, falsified or erroneous documents, or any other fraudulent act;

2° if it has been acquired with the intention of committing treason against the Republic of Rwanda;

3° if the holder's behaviour threatens national security or other national interests;

4° If it has been acquired on the ground of marriage in case the organ in charge of Rwandan nationality establishes that the marriage was concluded in order to acquire or to facilitate the person to acquire Rwandan nationality.

However, the revocation of Rwandan nationality by acquisition is not allowed if it may result into statelessness.

Procedure for revoking Rwandan nationality by acquisition are determined by an Order of the Minister having nationality in his/her attributions. However, the modalities for revocation of the Rwandan nationality by acquisition on grounds of honour are determined by the President of the Republic (article 30, Organic Law nº 002/2021.OL of 16/07/2021).

The Authority to revoke Rwandan nationality is the Cabinet and the decision to revoke Rwandan nationality is published in the Official Gazette of the Republic of Rwanda. However, the authority to revoke Rwandan nationality by acquisition is the President of the Republic of Rwanda if it was granted on the ground of honor (article 32, Organic Law nº 002/2021 of 16/07/2021).

Effects of revocation of Rwandan nationality by acquisition

A person whose Rwandan nationality by acquisition has been revoked cannot recover it except if it was granted on the ground of honor. The effect of revocation of Rwandan nationality by acquisition is extended to dependents except in case it has been granted on the ground of honor where the President of the Republic determines the effect of revocation (article 31, Organic Law nº 002/2021.OL of 16/07/2021).

The organ in charge of Rwandan nationality provides the civil registrar of the residence of a person whose Rwandan nationality by acquisition has been revoked with information regarding revocation of Rwandan nationality by acquisition, within thirty (30) days from the date of publication in the Official Gazette of the Republic of Rwanda of the person whose Rwandan nationality by acquisition was revoked.

B. Renunciation

The renunciation is the voluntary rejection of Rwandan nationality. The renunciation of Rwandan nationality is applied in writing to the organ in charge of Rwandan nationality or to the President of the Republic of Rwanda if the person applies for renunciation of Rwandan nationality which was acquired on ground of honour.

The applicant for renunciation of Rwandan nationality must have majority age.
The renunciation has to be approved by Cabinet, upon proposal by the organ in charge of Rwandan nationality, or by the President of the Republic for renunciation of Rwandan nationality by acquisition on grounds of honour.

However, renunciation of Rwandan nationality is not approved if it may render the applicant a refugee or a stateless person (articles 34 & 35, Organic Law nº 002/2021.OL of 16/07/2021).

Effects of renunciation of Rwandan nationality

Renunciation of Rwandan nationality by origin has effect only on the person who has renounced it while renunciation of Rwandan nationality by acquisition has effect on a child under majority age if both parents have renounced Rwandan nationality by acquisition (article 36, Organic Law governing Rwandan nationality).

§ 4. Recovery of Rwandan nationality

Rwandan nationality by origin can be recovered if it has been renounced (article 37, Organic Law governing Rwandan nationality).

Rwandan nationality by acquisition, except Rwandan nationality by acquisition on grounds of honour, cannot be recovered (article 38, Organic Law governing Rwandan nationality).

The power to approve recovery of Rwandan nationality by origin is vested in the Cabinet while the power to approve recovery of Rwandan nationality by acquisition on grounds of honour is vested in the President of the Republic of Rwanda (article 39, Organic Law nº 002/2021.OL of 16/07/2021).

§ 5. Dual nationality

Dual nationality means a status in which a person concurrently holds Rwandan nationality and the nationality of one or multiple States (article 45, Organic Law governing Rwandan nationality).
Any Rwandan with dual nationality is required to declare it within a period not exceeding three months from the period when he or she acquired another nationality (article 46, Organic Law nº 002/2021.OL of 16/07/2021).

Precedence of nationality

In case a Rwandan national holds dual nationality, only Rwandan nationality is considered in cases involving compliance with the laws of Rwanda. However, if a person has acquired Rwandan nationality by acquisition on grounds of honour, the precedence of nationality in cases involving compliance with laws of Rwanda will depend on the rights and obligations granted to him/her at the time of acquisition (article 48, Organic Law nº 002/2021.OL of 16/07/2021).

§ 6. The proof of nationality

The Rwandan nationality is proved by the following documents:

1° identity card;

2° Rwandan passport;

3° Copy of birth deed;

4° Any other relevant official document.

CHAPTER III: STATUS OF NATURAL PERSONS AND RECORDS OF CIVIL STATUS

Section I: The civil status of persons

§ 1. General Concepts

The civil status is defined as a person's situation from a legal point of view that distinguishes him/her from other people within the family or the country, especially his/her nationality, name, sex, place and date of birth, domicile and residence, parents' name, relationship between him/her and his/her parents or siblings, marriage or divorce (art. 2 (l) Law nº 71/2024 governing persons and family). It is the position which an individual occupies in the country, in the family as an individual, with regards to fundamental rights. It also means a set of qualities which attribute to him or her a place in a given community and differentiate him or her from others as regards to enjoyment and exercise of civil rights.

The status of a person may be considered under these aspects: status in the country, the status in the family, and individual status. In the country, a person may have the nationality and be considered as a citizen. Nationals and foreigners do not enjoy the same rights, especially in terms of political rights. In the family, the individual has a given stand in relation to all the family members: he or she is married, divorced, single, legitimate child, widower, adoptee or adopter, etc. As an individual, the legal status of a person is usually affected by his or her place in the family group. He or she has rights and is subject to obligations that are linked to his or her status as a spouse, father, legitimate or natural children, minor, etc.

As the legal status of everyone in society, the family determines his or her ability to enjoy and exercise rights.
Personal status is governed by the law. Only the law should provide rules related to the individuals' status and the capacity.

§ 2. Characteristics of the status

A. Binding nature of the rules concerning personal status

The rules concerning personal status assign to him or her a place in the society. They not only have consequences in terms of the enjoyment of private rights, but also often affect political or public rights. Their importance is fundamental and this is the reason why rules governing the civil status of a person are binding.

The ways of acquisition and extinction of civil status are strictly provided for by law. To mean, it is imperative that the law fixes the conditions under which an individual acquires or loses the status of being a Rwandan, husband, legitimate child, etc.

In general, the modes of acquisition of personal status are factual situation such as birth. However, they may be juristic acts (marriage, recognition of illegitimate child), but for the latter, the law has submitted these juristic acts to many substantive conditions as well as conditions related to the format.

The acquisition of personal status may derive from the public authorities' decisions, mainly the judicial authority such as the judgments of divorce.

The consequences attached to personal status are also compulsorily regulated by the law. It is the law that establishes the rights and duties attached to individual's status.

B. The status is absolutely attached to the person

Being attached to the person, the status is unavailable. It is imposed by the law and cannot be changed either by agreement or by settlement or by voluntary rejection. The status is then imprescriptible: the status escapes extinctive and acquisitive prescription.

C. The status is likely to be possessed

In fact, possession of status means enjoying the benefits actually attached to it and bear the charges relating to it. It is not yet a title but a factual situation, from which we can draw legal consequences. In the eyes of everybody, an individual is regarded as having such a status until otherwise proven. The law provides for main facts whose adequate combination establishes the possession of status. These are:1° where the presumed father or mother of the child has always treated the child as his or hers, and has in that capacity catered for his or her education, maintenance and providing him or her with personal assets, 2^0 where the child has been treated as such by the family, 3^0 where the child has permanently been treated as such by the community (art. 47 Law nº 71/2024 governing persons and family).

§ 3. The claims of status

The claims of status tend "to establish, modify or destroy a personal status". The competent courts are primary Courts.

A. Different kinds of claims relating to status

1. Refusal of status

The claim of refusal of status is the one that allows fighting a status conferred to the person by his/her birth certificate or the possession of status. It aims to reestablish the conformity between the personal status and biological link to his or her authors. This action allows fighting the status of a legitimate child by directing the action against the maternal descent or contesting the father or the mother.

2. The claim of status

This claim is provided for under Articles 304 to 308 of the Law nº 71/2024 governing persons and

family, in the provisions relating to paternity or maternity claim. This claim may be brought by any child and is personal to the child.

B. Characteristics of the claims of status

The claims of status are personal to the person who exercises them (arts. 250, 299, 305, etc Law nº 71/2024 governing persons and family).
The status is unavailable, then, the claim of status is in principle imprescriptible. However, the principle has many exceptions. Thus, in some cases, the exercise of claims of status may be enclosed in a short period of time, either to avoid the alteration of evidence, or for fear of scandal and bribery. For example, the claims of nullity of marriage may be prescribed in a certain time limit (Art. 223, para. 2, 226, and 301 Law nº 71/2024 governing persons and family).

No provisional enforcement of judgments of status is permitted.

C. Proof of civil status

Evidences relating to civil status are also subject to special rules. The law limits the admissible evidence and requires more difficult evidence than usual. In principle, civil status of persons is only established and proved by civil status records issued in conformity with provisions of the law. It is also established exceptionally by judgments replacing or correcting these records or by judgments in relation to civil status (art. 100 Law nº 71/2024 governing persons and family).

D. The judgments of status

There are three kinds of judgments in the claims of status: those which aim to declare a status, to destroy a status and those aiming to establish the status.

The declaratory judgment confirms a status which existed already. It includes the declaration of paternity or maternity. The judge does not create a new status, but gives evidence of a status which existed before the trial.

Destructive judgment of a status modifies or negates a legally recognized status. The claim for annulment of a marriage tends to establish, by the judge, that this status really has not existed because the legally required conditions were not met at the celebration of marriage. The status of a husband or a wife is therefore deemed not to have been existed.

The judgment establishing a status can modify a status or form a new one. This is for example the judgment of divorce and incapacitation of an adult person. These decisions create a new status in favor of the concerned person. Thus, the judgment establishing the status enjoys absolute authority of *res judicata* for the future and establishes a new status, while the declaratory judgment is retroactive, as it notes a situation which existed before the trial itself.

Section II: Records of civil status

The civil status of a person is a person's situation from a legal point of view that distinguishes him/her from other people within the family or the country. The civil status should be declared before an administrative entity responsible for registrations and keeping of records regarding the person's civil status. Declarations of civil status are made following procedures established by the law (Art. 102 Law nº 71/2024 governing persons and family).

§ 1. Organization of civil status office

A. The civil registrar

Civil registrars are: a civil registrar at the level of a decentralized administrative entity (Executive Secretary of the Sector), a head of a diplomatic mission of Rwanda abroad (art. 1 of the law nº44/2018 of 13/08/2018 amending law n°14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card), the Executive Secretary of the Cell as regards registration of births and deaths occurred in place other than health facility and provision of other civil status services that are not offered at Sector level (Article 2 (4-8) of the Presidential Order no. 092/01 of 21/09/2020 determining responsibilities of the Executive Secretary of the Cell), and an Officer of the health facility as regards the recording of births and deaths that occur

in the health facility (art. 60, Law no 71/2024 of 26/06/2024 governing persons and family). The Civil Registrar in a health facility is the Director of the Unit of nurses and midwives, in a referral hospital, the Director of the Unit of nurses and midwives, in a provincial hospital, the Director of the Unit of nurses and midwives, in a District hospital, the Head of a health centre, the Head of a private health facility or the officer with delegation (Article 2, paragraph 1, Ministerial Order n° 001/07.01 of 27/07/2020 determining the officer of the health facility with powers of civil registrar).[1]

The Civil registrar plays an active or passive role depending on the circumstances. He/she plays an active role when she or he is involved in an act where his or her intervention is to make investigations such as in case of marriage celebration. In this case, he or she must ensure that the prospective spouses meet all required conditions as provided by the law (art. 61 (g), 200 and 201 Law nº 71/2024 governing persons and family). Then, the civil registrar is responsible for respect of required formalities, which in case of non-respect render the marriage void.

The civil registrar plays a passive role when he or she records the facts that he/she has a mission to register. He/she cannot refuse to record the statements, or record what has not been declared to him or her. It is forbidden to him or her to take initiative; otherwise, he /she would be held liable. The passive intervention is reflected in the registration of births, recognition of children born out of wedlock, deaths and statements of persons intervening in certain acts (art. 63 Law nº 71/2024 governing persons and family).

The responsibilities of the civil registrar in decentralized administrative entities or in a diplomatic mission of Rwanda abroad are enumerated in article 61 of the Law nº 71/2024 governing persons and family[2] and article 2 of the Presidential order no 092/01of 21/09/2020 determining

[1] According to article 4, MO nº 001/07/01 of 27/07/2020 determining the Officer of the health facility with powers of civil registrar, in case a head of a private health facility does not have the Rwandan nationality, he or she nominates an officer of Rwandan nationality to be vested with the powers of the civil registrar upon approval by the District authorities where that facility is located. He/she must firstly take oath for those responsibilities before the superior of the civil registrar of the jurisdiction where that facility is located.

[2] A civil registrar is responsible for: (1) drawing up civil status records with regard to statements that he or she records, correct errors and submit copies thereof, (2) keeping and preserving civil status registers, (3) recording all judgments related to civil status, (4) approving the application for emancipation of a child, (5) heading the guardianship council and approving the guardian, (6) producing statistics with regard to civil status, (7) officiating at marriage after ensuring

responsibilities of the Executive Secretary of Cell. As provided in article 61, para. 2, law nº 71/2024 governing persons and family and article 3, MO nº 001/07.01 of 27/07/2020 determining the officer of the health facility with powers of civil registrar, the responsibilities of a civil registrar in a health facility are limited compared to the responsibilities of a civil registrar in a decentralised administrative entity or in a Rwandan diplomatic mission abroad. They are limited to receiving declarations of births and deaths occurred in the health facility, drawing up civil status records in relation to births and deaths, correcting them and issuing their copies, and to keeping and preserving civil status registers.

B. Supervision of the Civil Registrar and Appeal to the immediate supervisor

In exercise of her/his functions, the civil registrar is supervised by her/his immediate supervisor who supervises the civil registration activities in her/his jurisdiction. The Civil Registrar at the Sector level supervises all civil registration activities carried out in his/her jurisdiction. In his/her supervision, the immediate supervisor of the civil registrar checks the condition and the keeping of registers, makes a report thereon and may take action against the civil registrar for his/her misconduct, if any (Art. 65, paras. 1-3, Law no. 71/2024 of 26/06/2024 governing Persons and Family). It is important to note that the Minister in charge of civil registration has the responsibility to conduct supervision of civil registration offices whenever it is considered necessary (Art. 65, para. 4, Law no 71/2024 of 26/06/2024 governing Persons and Family). The civil registrar at a health facility is supervised by the civil registrar at the level of the Sector where the health facility is located (article 8, MO nº 001/07/01 of 27/07/2020 determining the Officer of the health facility with powers of civil registrar). In case the Civil registrar fails to fulfil his/her responsibilities, any interested person can have recourse to his/her immediate supervisor like in case he/she refuses to record statements made to him/her and falling within the scope of his/her responsibilities, refuses to issue a copy of or extract from civil status registers, without reasonable grounds, refuses to disclose to any beneficiary information relevant to the drawing up of a civil status record and refuses to rectify a civil status record in case of clerical or material error or material omission. If

that the intending spouses fulfil the conditions required by law, (8) performing any other civil status-related function provided for by other laws.

no feedback is provided or the interested person is not satisfied, the matter is referred to the competent court (art. 66 and 79 Law nº 71/2024 governing persons and family).

§ 2. Registers of civil status

A. Types of registers

Civil status registers are in seven types which are the following:

1° register of birth records;

2° register of death records;

3° register of marriage records;

4° register of guardianship records;

5° register of records of recognition of children born out of wedlock;

6° register of adoption records; and

7° register of divorce records (Art. 76, Law nº 71/2024 of 26/06/2024).

These registers are necessary for conservation of records of civil status and any legal deeds modifying them. Civil status registers are kept electronically (Art. 70, para. 1, Law no 71/2024 governing persons and family). Though the content of the physical civil status registers remains valid, it has to be kept electronically (art. 402, paras. 1 & 2, Law nº 71/2024 of 26/06/2024 governing persons and family).

Civil status registers are initialed electronically by the Minister in charge of civil status prior to any use (Art. 69, Law nº 71/2024 governing persons and family).

Registration in civil status registers is done at the expense of the Government. However, the issuance of any copy or extract gives rise to payment of a fee provided by the Presidential Order (art. 75 Law nº 71/2024 governing persons and family).

The registration in electronic civil status registers is permanent.

B. The contents of registers

The civil status registers contain civil status records established by the civil registrar and other legal deeds modifying them. The particulars given on a record are recorded in full in the appropriate register (art. 68 Law nº 71/2024).

For records established by the Civil registrar, the latter establish records on the parties' initiative, in the presence of witnesses (e.g. marriage), or on the initiative of declaring parties (e.g. births and deaths). Depending on the nature of the records, certain mentions must appear in the record, failing that it is deemed void. The Ministerial Order nº 002/07.01 of 27/07/2020 determining the number, type, format and use of civil status registers provides for the format of each type of register which has to be filled in by the Civil Registrar (See Annexes I-VII of that Ministerial Order).

For other legal deeds, the civil registrar copies in the register of civil status records established outside his/her jurisdiction or abroad. Copying such records enables to have more complete information that registers of civil status can provide, the originals being kept elsewhere.

§ 3. Conservation of civil status registers

The civil status registers must always be kept in electronic form. In case of removal or relocation of a civil registration office, civil status registers are transferred electronically to the new civil status territorial jurisdiction (Art. 70 of the Law no. 71/2024 of 26/06/2024 governing persons and family). If there are physical civil status registers, they are also transferred to the new jurisdiction (Art. 70, para. 2, Law no 71/2024 of 26/06/2024).

Civil status registers are made available to the concerned person for consultation if he/she requests it (art. 70, para. 3 of the Law nº 71/2024 of 26/06/2024 governing persons and family).

The keeping of registers of civil status is monitored by the immediate supervisor of the Civil registrar (Art. 65, para. 3 of the Law nº 71/2024). The Primary Court hears, by way of summary proceedings, appeals against decisions of the Civil Registrar if his/her immediate supervisor did

not provide feedback or the person who makes an appeal was not satisfied (Art. 66, para. 2, Law nº 71/2024 governing persons and family).

§ 4. The absence, loss or destruction of civil status records and their restoration

The absence of registers can be supplemented by a court decision. In case of absence, loss or destruction, even partially, the civil registrar makes a report explaining the issue and submits it to the immediate superior with a copy to the Investigation Bureau in his/her jurisdiction. The immediate supervisor instructs, in writing, the concerned civil registrar to record the missing data contained in the missing civil status registers, and requests the competent organs to conduct an investigation and take any appropriate action to inform the public. The investigation results are posted at the civil registration office, for a period of three (3) months, where they may be accessed by any interested person (Art. 81, Law no. 71/2024 of 26/06/2024 governing Persons and Family) Basing on investigation results and other elements considered necessary, the court orders restoration of data drawn up found to have existed. Where possible, one judgment includes a decision ordering restoration of all records of an entire year for every civil registration office within the territorial jurisdiction of the court (Art. 77, paras. 3 & 4, Law nº 71/2024).

The restoration of civil status records is done in the civil status register Art. 77, para. 5, Law no 71/2024). This procedure of restoration of lost data does not affect the right of any interested person to apply to the court for restoration of any record which was part of the destroyed or disappeared register (Art. 77, para. 1 Law nº 71/2024 governing persons and family).

§ 5. The drafting of civil status records

A. Persons involved in the drafting of civil status records

1. The civil registrar

Before drafting a record, the civil registrar must first check whether he or she is competent to draw up the records. Thus, he/she must respect his/her material and territorial jurisdiction.

Regarding his/her material jurisdiction, the law assigns to the civil registrar the domains of his or her intervention. If he or she can officiate the marriage, he/she cannot pronounce divorce.

The civil registrar cannot intervene in drawing up a record as a civil registrar and get involved in it in any other capacity. Also, the civil registrar cannot officiate his/her marriage, that of his/her spouse, ascendants, descendants, collaterals and in-laws up to the 2nd degree inclusively. In that case, (art. 64 Law nº 71/2024 governing persons and family). This is to ensure the respect of the principle that: *"no one can get a title from himself*". This is to avoid cases of potential fraud. Thus, the Executive Secretary of a sector cannot celebrate the marriage of his/her child or an ascendant (up to the second degree).

The territorial jurisdiction of the civil registrar is determined by the law. The Executive Secretary of a Sector cannot intervene in the civil status records drafted outside his/her sector and for non-residents and persons who are not domiciled in his or her Sector, unless the domicile has been elected in his or her jurisdiction. Outside the Sector, the Executive secretary of the sector is incompetent, and any civil status records drafted are void.

2. Parties

Are persons whose record creates or modifies their civil status. Their presence can be mandatory such as in marriage (art. 207, para. 1 Law nº 71/2024 governing persons and family). Apart from the marriage where the spouses are required to appear in person, the parties may be represented. Before drawing up a record of civil status, the declaring person or interested person or his/her representative and witnesses are reminded of penalties for false statements (Art. 62, Law no 71/2024 governing persons and family) and the civil registrar must read out the record to the parties before signing (Art. 102, para. 3, Law nº 71/2024 governing persons and family).

3. Declaring Parties

Are persons who just declare to the civil registrar the reality of the event creating or modifying the status.

4. Witnesses

Witnesses must be 18 years old (art. 102, para. 2, Law nº 71/2024 governing persons and family). They confirm the statements made by affixing their fingerprint or signature to the record together with the civil registrar that the drawn-up record is recorded in these terms (Art. 102, para. 3 Law nº 71/2024 governing persons and family). In case of a person with disability preventing him/her from fingerprinting or signing a record, a sign based on his/her biometric data or biometric exceptions is affixed to the record. If this cannot be possible, a person of his/her choice fingerprints or signs the record (Art. 102, para. 5, Law nº 71/2024). The presence of witnesses is intended to prevent misrepresentations.

B. The content of Civil Status records

The civil registrar establishes records of birth, marriage, death, recognition of a child born out of wedlock, adoption, guardianship of a child or an adult, divorce, Rwandan nationality and any other event as may be provided for by the law (Art. 101, Law nº 71/2024 governing persons and family).

Each record has a content that varies according to the statements of witnesses or appearing parties (see Annexes I-VII of the Ministerial Order nº 002/07.01 of 27/07/2020 determining the number, type, format and use of civil status registers).

The civil registrar transcribes statements for certain records without verifying their accuracy, the later will be assessed by the court if they are challenged.

The civil registrar must establish the record in one of official languages chosen by the declaring person (article 72, para. 1, Law nº 71/2024 governing persons and family). In case some of involved people do not understand any of the official languages and the civil registrar does not understand the language in which they give their statements, such statements are translated by an interpreter after taking an oath. In this case, the concerned party bears the cost of the interpreter. In case involved persons uses one of the official languages and the civil registrar does not understand it, the State will bear the cost of interpretation. If the person concerned, his/her representative or witness has a hearing impairment, speech impairment, blindness or multiple disabilities, the civil registrar determines how he/she can be appropriately assisted. The use of oral

translation should be mentioned in the record (art. 73, Law nº 71/2024 governing persons and family).

The signature of the civil registrar, appearing parties and witnesses is necessary (Article 102, paras. 3-5, Law nº 71/2024 governing persons and family). In case there is a reason preventing the civil registrar from signing on a record, it is signed by his/her immediate supervisor or by any other civil registrar designated for that purpose. In this case, the immediate supervisor may order the searching for information from the parties to ensure that the information contained in the record to be signed is accurate or if it needs some corrections (art. 74, Law nº 71/2024).

§ 6. The probative force of civil status records

The probative force of a record is its degree of credibility. The registers, the copy of a record and the extract of the record all have the same probative force. When someone wants to prove a fact mentioned in the register of civil status, he or she produces a copy or an extract of the record and not the register itself and the extract or copy is an authentic deed as the record itself.

The registers, the copies of the records of civil status and their extracts are authentic deeds because they are set up by the civil registrar. The content of the register, copy of a civil status record and an extract of those records are taken as true until proven otherwise. The accuracy of the document should be challenged before the court through the criminal procedure with the aim of destroying the document by showing that either the document is drawn up on the basis of false information, or the document is altered, modified, etc.

§ 7. Rectification of civil status records

A clerical, material error and material omission are rectified by the civil registrar upon written request by any interested person. If the rectification is not made within 15 days or the civil registrar does unsatisfactory rectification, an appeal is made to the immediate supervisor of the civil registrar.

If the immediate supervisor of the civil registrar fails to act within 5 days or if his/her response is unsatisfactory, the person who requested for rectification may refer the matter to the competent court within the period and in the manner provided for by the law (Art. 79, Law nº 71/2024 governing persons and family).

A judgment rendered is transmitted to the civil registrar of the place where the rectified record was established. The civil registrar therefore issues a rectified record (Art. 80, Law nº 71/2024 governing persons and family).

§ 8. Replacement of civil status records

Except for the birth record, any civil status record drawn up in Rwanda or in a foreign country that may not be found or that was not drawn up for any reason is substituted by a court's judgment. It is rendered upon application by any interested person or civil registration office who submits to the court all possible evidence proving the existence or non-existence of that record. The competent court is that of the place where the requesting person resides or is domiciled and the latter may order investigations if considered necessary (art. 77, paras 1-3, Law no. 71/2024 of 26/06/2024 governing persons and family).

The operative part of the judgment replacing the civil status record is submitted to the civil registrar of the domicile of the interested person to be recorded in the civil status register upon request of the person concerned or any interested persons (Art. 78 Law nº 71/2024 governing persons and family).

For the birth record, if a person wishes to get it and that person's birth has not been registered within the period prescribed by this law, the person's birth shall first be registered in the register of birth certificates in accordance with the provisions of this law (art. 93, para. 3, Law no 71/2024).

§ 9. The affidavits

When a person is unable to obtain a civil status record, it may be exceptionally substituted by an

affidavit issued by the civil registrar of his/her place of birth or his/her domicile (Art. 82 Law nº 71/2024 governing persons and family).

An affidavit contains the reasons having prevented a person from getting the required civil status and the declarations on the identity of the applicant by at least 2 witnesses who are at least 18 years old. An affidavit has the same probative force as the civil status record but can be used only for purpose for which it is issued (Art. 82, Law nº 71/2024 governing persons and family).

An affidavit can be nullified or rectified upon request by any interested person or competent organ (Art. 83, Law nº 71/2024 governing persons and family).

§ 9. The particular rules for certain civil status records

A. The birth records

The declaration of birth is mandatory and its omission is punished by the law. The persons who are responsible for declaring births are the child's father or mother or, in case of their unavailability, by a person to whom they have granted authorization or any person exercising parental authority over the child or a close relative. In the absence of these persons, the declaration is made by any other person having been present at the child's birth.

The declaration of birth is made immediately after birth in a healthcare facility where the child was born upon presentation of a medical birth certificate issued by a medical professional from that healthcare facility. In case the child was not born in a health facility, the declaration is made within 30 days after the birth date upon presentation of a birth certificate issued by the competent authority of the child's place of birth indicating the names of the child's parents and date of birth, and in the presence of two (2) witnesses aged at least eighteen (18) years (Art. 89, Law nº 71/2024 governing Persons and Family).

The director of a correctional facility assists the parent to register the birth of the child born in the facility which s/he heads with the civil registrar of the place of location of the correctional facility, (Art. 89, para. 5 of the Law nº 71/2024 governing Persons and Family).

Article 12 of the law nº14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card as amended by the law nº44/2018 of 13/08/2018 provides for sanctions against any person required to declare birth of a person that fails to do so within the time limit provided by law and any person who fails to declare birth of a person.

Specific provisions are provided children who die immediately after birth and children who die before being registered due to any reason. For the child who dies immediately after his/her birth, the birth is declared to the civil registrar and recorded in the register of births and his/her death is also recorded in the register of deaths.
This is the same for a child who has not been declared before the civil registrar due to any ground and who later on dies. His/her birth is registered in the register of births, and his death is registered in the register of deaths (Art. 92, Law nº 71/2024 governing persons and family).

The article 90 of the Law nº 71/2024 governing persons and family addresses the problem of the discovered newly born child. Any person who finds a newly born child whose parents are unknown must register the birth of such new-born child with the civil registrar of the place where the new-born was found within 30 days. The civil registrar issues a provisional birth record immediately after birth registration.

The declaration or record indicates the new-born child's name, gender and the presumed place and date of birth. The declaring person must explain or attach to the declaration, a note on the facts and circumstances in which the child was found. If they are unknown, the civil registrar determines the place and date of birth basing on a medical report or according to the child's condition. If the child's birth record is found or if the child's birth is certified by the court, the provisional birth record which was issued is annulled upon request by any interested person (art. 90, Law nº 71/2024).

Declaration of a child born out of wedlock

When parents were not legally married, the child is registered under the mother's name. For the child to be registered under the names of the father, the latter has to first recognise the child before

the civil registrar in charge of child recognition (Art. 91 of the Law nº 71/2020 governing Persons and Family).

Who can obtain a copy of a birth record?

It's everyone's right to get a copy or extract of his/her birth record. None can get a copy of someone else's birth record without the concerned person's permission or the permission from the court if the concerned person has died. Exceptions: ascendants, descendants of a person on the direct lineage, the spouse, guardian or his/her legal representative. These people can get the copy or extract of a birth record (Art. 93, para. 1, Law nº 71/2024 governing persons and family).

If the civil registrar refuses to issue such a copy, the matter may be referred to the immediate supervisor. In case of unsatisfactory response, the problem is submitted to the competent court which decides the case under summary procedure (Article 93, para. 2, Law nº 71/2024 of governing Persons and Family).

Any person wishing to receive a birth record and the birth has not been declared and registered within the period provided for by the law, his/her birth must be first recorded in the register of birth records in accordance with applicable legal provisions (Art. 93, para. 3, Law nº 71/2024 governing persons and family).

B. Death records

A declaration of death has a double interest: public interest as it allows to terminate the pension in respect of State's pensioners; a private interest, especially for the date of opening of succession and the opening of the guardianship for minors.

The declaration of death is mandatory and failing to do it, the law nº14/2008 of 04/6/2008 governing registration of the population and issuance of the national identity card as amended by the law nº44/2018 of 13/08/2018 provides for criminal penalties (art. 12). It is done in the healthcare facility where the death occurred upon presentation of a death certificate issued by a medical professional from that healthcare facility. In case the death occurred in a place other than a healthcare facility, the declaration is done within 30 days after the date of death upon presentation

of a death certificate issued by the competent authority in the presence of 2 witnesses aged at least 18 years (Art. 94, paras. 1-2, Law nº 71/2024 governing persons and family).

In case a local authority has issued a burial permit, the death is immediately recorded in the register of death records. However, after a period of 30 days has passed without having informed or notified in writing the local authority of the occurrence of the death or without having declared the death, the declarant must send a written note to the competent authority in administrative decentralized entities explaining the reasons for the delay and requesting registration of the death (art. 94, para. 3, Law no 71/2024 governing persons and family).

The competent persons to register a person's death are parents or spouse of the deceased or any other person who has sufficient information on the civil status of the deceased. In case of unknown civil status, the death record is established according to the declaration made by the competent authority of the place of death or by the healthcare facility administration if the person died in a healthcare facility (art. 95, para. 4, Law nº 71/2024 governing persons and family and art. 3 (7^0) of the Presidential Order nº 092/01 of 21/09/2020 determining responsibilities of the executive secretary of cell)

If the identity of the deceased is not known and the person died outside a healthcare facility, the authority who seeks registration of death declares to the civil registrar the probable place, date and hour of death, and any other information known to him/her like name, age, profession, place of birth and domicile basing on the report of the judicial police officer or the medical report. If the place of death is unknown, the presumed place of death is that of where the body is found (Art. 96, Law nº 71/2024 governing persons and family).

The death occurring in a healthcare facility is immediately recorded in the register of death record (Art. 97, Law nº 71/2024).

If the death occurs in a correctional facility, the director of such facility registers the death with the civil registrar of the place of location of the facility, within seventy-two (72) hours, upon presentation of a death certificate issued by a recognised medical doctor (Art. 98, Law nº 71/2024 governing persons and family).

Once death has been recorded, the civil registrar issues a copy of death record or its extract upon request by the spouse, child, parent, siblings of the deceased or any other interested person . Failure to get the copy or extract from the civil registrar gives rise to an appeal to the immediate supervisor of the civil registrar. In case no satisfactory answer is given, the applicant files a claim to court (Art. 99, Law nº 71/2024 governing persons and family).

C. Other civil status records

The Law nº 71/2024 of 26/06/2024 governing persons and family and the Ministerial Order nº 002/07.01 of 27/07/2020 determining the number, type, format and use of civil status registers also provide for the marriage records, the adoption records, the guardianship records, the records of acknowledgment of children born out of wedlock and other records. The formalities for such records shall be specified in the part relating to these institutions.

E. Civil status records of foreigners

A foreigner having domicile or residence in Rwanda may have his/her civil status record drawn up by a Rwandan civil registrar in accordance with the law (art. 85, Law nº 71/2024 governing persons and family).

In case of marriage celebrated in Rwanda and one or both spouses are foreign nationals, the civil registrar must, in thirty (30) days following marriage celebration, transmit the copy of marriage record to the Minister in charge of foreign affairs who in turn transmits it to the country of origin of the spouse of foreign nationality (Art. 86, Law nº 71/2024 governing persons and family).

F. Validity of a civil status record drawn up abroad

Any civil status record of a Rwandan or a foreign national drawn up in a foreign country is valid if it is certified as authentic by a diplomatic mission or consular post in Rwanda of the country where the record was established, if it is certified by the services of the Ministry of Foreign Affairs, and if its purpose is not contrary to public order, Rwandan good morals and foundational principles of Rwandan laws (art. 87, Law nº 71/2024).

A civil status record concerning a Rwandan which was established abroad is registered in the population register upon request by the concerned person. Also, a foreigner who wishes to register his/her civil status record may do it in the civil registrar's office of the place of residence (art. 88, Law nº 71/2024).

CHAPTER IV: CAPACITY OF PERSONS

The Capacity of a person means the power granted by law to a natural person to perform legal acts while assuming personal responsibility for those acts (Art. 2 (v) Law nº 71/2024 governing persons and family). To have capacity, a person must have majority age: 18 years. A person having attained this age, is fully qualified for all acts involving civil life except otherwise provided for by the law (Art. 104, Law nº 71/2024 governing persons and family). Before the majority age, the person is considered as a minor who is incapable of performing acts of civil life. In this case, the rules governing minority apply. However, before 18 years, the minor may be emancipated and get the right to perform certain acts of civil life. Also, some adult people may be considered incapable and the rules of protection of incapable apply.

Section 1. Minors

§ 1. The minority

The minority is a period between birth and the age of majority i.e. 18 years (art. 104, Law nº 71/2024 governing persons and family). It is a civil minority. In criminal law, the minority is a period indiscriminately from birth to less than 14 years. The age of criminal responsibility is 18 years. Between 14 and 18, the minor is criminally responsible, but he or she benefits from the excuse of minority that is to say that the penalties are reduced (art. 54 of the Law nº68/2018 of 30/08/2018 determining offences and penalties in general).

During the minority, parental authority is necessary. The minor has the capacity to total enjoyment except that he or she must have permission from the person exercising parental authority. The incapacity to exercise rights does not entail incapacity of having certain rights, but only prevents the exercise itself.

Among the methods of protection of minors, there is the representation and authorization. The *representation* implies that acts of civil life are made by the person exercising parental authority or children's rights organizations. Acts of civil life are performed on behalf of the minor.

For the *authorization,* a minor having attained 16 years, may, with the authorization form the president of the competent court, personally file a case related to his/her status, exercise of aprental authority or any other act of particular interest to him/her (art. 107, law nº 71/2024 governing persons and family).

If a minor performs an act while he/she is not legally empowered to act alone, such act is absolutely void (Art. 108, Law nº 71/2024 governing persons and family).

§ 2. Emancipation of the minor

Emancipation is a decision by which, in case of justifiable grounds, a minor having attained the age of sixteen (16) years acquires full capacity to exercise rights and is thus considered as an adult person. An emancipated minor is able to perform all acts of civil life unless if the law provides otherwise (art. 105, Law nº 71/2024 governing persons and family). The minor is emancipated upon application by both his/her parents or the surviving parent, his/her adoptive parent, his/her guardian if approved by the Guardianship Council, children's rights organisations or by a minor him/herself if he/she has reached 16 years and does neither have parents nor guardian (Art. 105, paras. 1-3, Law nº 71/2024 governing persons and family). The application is submitted to the civil registrar of the place of domicile or residence of the child who approves it after consultation with the child and considering the validity of grounds put forward. Once emancipation is approved, it must be entered in the birth record or the guardianship (Art. 106, Law nº 71/2024 governing persons and family).

Emancipation has the effect of assimilating the minor to adult; it gives the emancipated minor the full civil capacity unless otherwise provided by the law.

Section 2: Guardianship

§ 1. Notions

Guardianship is a procedure used to help a minor or an adult with mental disability to enjoy rights generally recognized for every person and ensure administration of his/her property, if any. It is

exercised in the interest of the concerned person under guardianship, and a guardianship record must be established by the civil registrar and entered in the guardianship register (Art. 109 Law nº 71/2024 governing persons and family).

§ 2. Guardianship of a minor

Guardianship of a minor is a family institution organized by the law in case of death, disappearance, absence, unknown parents, paternity and maternity denial, deprivation of parental authority or in case of disability of the surviving spouse preventing him/her from fulfilling parental responsibilities. It aims to protect the minor and his or her property. It is an institution of private law established in the interest of the child.

A. Opening of the guardianship and its organs

a. Opening of the guardianship

The guardianship opens against a minor when the father and mother have both died, are absent, disappeared or are unknown, in case paternity and maternity are denied, when both parents are still alive but deprived of parental authority, and when the surviving parent has a disability preventing him/her from fulfilling his/her parental responsibility (art. 111 Law nº 71/2024 governing persons and family).

b. Organs of the guardianship

The organs of guardianship are: the Guardian and the Guardianship council.

1. The Guardianship Council

Composition

It is composed of the civil registrar of the place of the child's domicile or residence, six representatives, 3 from the paternal family and 3 from the maternal family. In case, this canot be

possible, the civil registrar appoints a guardianship council composed of at least five members (Art. 113, Law nº 71/2024 governing persons and family). Members of the Guardianship Council are chosen by the Family Council from close relatives of the child those having attained the age of majority, who will apparently be useful to him/her and whose morality ensures the minor's good education. If the minor has siblings of majority age, they are automatically members of the guardianship Council regardless of their number. When the number of the minor's relatives by blood or marriage on his/her mother's or father's side is insufficient, the civil registrar invites citizens known to have had usual relationships of friendship with the minor's father or mother. If there are no such persons, the civil registrar invites the person who usually takes care of the minor or persons of integrity of the place of the minor's domicile or residence (Art. 114, Law nº 71/2024 governing persons and family).

Responsibilities

The guardianship Council is responsible to monitor and oversee the exercise and administration of guardianship, establish an inventory of the child's assets, consider and authorize the sale of or creation of a mortgage on the child's property in order to cater for his/her needs, terminate the responsibilities of a guardian and replace him/her in case of failure to fulfil his/her duties and present to the minor a final statement on the property when he/she attains the age of majority or is emancipated. The sale of or mortgage of the child's property is authorised by the court of the place where the property is located through a unilateral petition. The Guardianship Council is responsible to, at least once a year, particularly request the guardian to provide a comprehensive management status of the child's property and assess its accuracy based on necessary supporting documents (Art. 115, Law nº 71/2024 governing persons and family).

Article 116 to 118 of the Law nº 71/2024 governing persons and family determine the procedures of the meeting and the conditions for convening meetings and decision making.

2. Guardian

To be appointed as a guardian, the persons must be a Rwandan national, be at least 21 years old except for the person having reached majority age and has been authorised to marry before being 21 years old, be useful to the minor and have moral integrity guaranteeing the minor's good education, have not been sentenced to imprisonment for the crimes of genocide, genocide ideology and related crimes, human trafficking, child defilement and offences of domestic violence, and have not been deprived of parental authority (Art. 120, Law nº 71/2024 governing persons and family).

Appointment

The law provides for three methods of appointment of a guardian (art. 121, para. 1, Law nº 71/2024):

1) Appointment by the surviving spouse in a will
2) Appointment by a surviving spouse with disability; and
3) Appointment by the Guardianship Council

The guardian is a public office; it is imposed for the protection of the child and the interests of the country. However, no one can be forced to accept a guardianship (Art. 121, para. 2 Law nº 71/2024 governing persons and family).

NB: If a child is placed in a foster family, the foster carer on a permanent basis is given priority if he/she requests to be appointed as a guardian. This has to be decided by the Guardianship Council (Art. 122, Law nº 71/2024 governing persons and family).

Some people are prohibited from those who can be appointed as guardians. The prohibitions are based on the conditions of age, necessity to avoid conflict between guardian and the child, good morality of the guardian, the capacity to accomplish acts of civil life and capacity to exercise parental authority. These people prohibited are persons below 21 years of age except if the person has been authorised to marry before that age, the incapacitated, people who, personally or whose

parents, are involved in court proceedings with that minor, people deprived of their civic rights as a result of a conviction, persons deprived of parental authority, persons sentenced to imprisonment for crimes against children, genocide, genocide ideology and related crimes and any other person excluded by the guardianship council for different reasons in the interest of the minor (art. 123 Law nº 71/2024 governing persons and family).

Powers and duties of a guardian

The guardian has the power to represent the minor in acts involving civil life unless otherwise provided by law and to administer the minor's property. The guardian is allowed to help the minor administer his/her occupational earnings and the property acquired through such earnings. The guardian is held liable for any damage caused to the property as a result of poor administration (Art. 124, Law nº 71/2024 governing persons and family).

With regard to duties, as guardian of the child, the guardian is responsible for the child's custody. A child cannot live anywhere else unless he/she is authorized to do so by the guardian. Additionally, the guardian provides for the maintenance and education for the minor in accordance with his/her abilities. If the minor h property, the guardian administers and maintains such property in the child's best interests (Art. 125, Law nº 71/2024 governing persons and family).

The guardianship council makes an inventory of the child's property and presents it to the guardian at the commencement of the guardian's duties. A document describing the condition and the inventory of the property is signed by the guardian and members of the Guardianship Council. A copy of such a document must be submitted to the civil registrar of the place where the property is located within a period of thirty (30) days from the date of its signature in order to be certified and entered in the register of guardianship records. When there is a change in the minor's property during the guardianship, an inventory is made and submitted to the guardianship Council for approval. Once approved, the copy of the signed inventory is submitted to the civil registrar to be added in the register of guardianship records (Arts. 126 & 127, Law nº 71/2024 governing persons and family).

During guardianship, the guardian undertakes alone, all acts of protection and administration of the property in the minor's best interests and use it in generation of income. For acts of transfer, sale, mortgage or any other acts likely to adversely affect the minor's property, the guardian must be authorised by the Guardianship Council (Arts. 128, Law nº 71/2024 governing persons and family). The Guardianship Council authorization can be given for these acts when they are of absolute necessity; if they lead to the obvious benefits of the minor.

Income from the child's property is first allocated to the minor's maintenance and education. If there is a surplus, the guardian notifies it to the guardianship Council for it to decide on how to allocate it (Art. 129, Law nº 71/2024 governing persons and family).

During guardianship, the guardian is supervised by the Guardianship Council. If the minor's interests are affected, the Guardianship Council notifies the guardian in writing points of correction. If the guardian fails to act on such corrections, the guardianship Council terminates his/her duties and replaces him/her (Art. 131, Law nº 71/2024 governing persons and family).

In case of conflict of interests between the child and the guardian, it is subject to review by the Guardianship Council which may, if necessary, appoint an *ad hoc* guardian to represent the minor or the guardianship council elects from its members the person who represents the child in that act. If the conflict of interest arises between one of the guardianship Council members and the child, the case is referred to the Guardianship Council for decision in absence of the concerned member (Art. 130, Law nº 71/2024 governing persons and family).

The guardian can be dismissed basing on grounds provided in article 132. He/she is dismissed by the guardianship council which also appoints a new one or by the surviving spouse if he/she was appointed by the surviving spouse. The latter will appoint a new guardian using the same procedure as the one used for appointment of the dismissed guardian. The appointment of a new guardian is subject to a new guardianship record. If the guardian is not satisfied, he/she can refer the matter to the competent court.

B. End of guardianship

Guardianship comes to an end basing on one of the grounds provided in art. 133 Law nº 71/2024 governing persons and family. The guardian gives to the minor, within 2 months after the end of guardianship, his/her property and a document providing a full account of how it was managed, in the presence of the guardianship council. After presenting the property to the owner, the guardianship is dissolved.

The minor who attains majority age or is emancipated can initiate, before a competent court, legal actions related to guardianship against the guardian. Such actions are subject to prescription of 5 years for movable property and 30 years for immovable property. These years are counted from the date the child reached majority age (Art. 134, Law nº 71/2024 governing persons and family).

If the guardianship ends due to the minor's death, the guardian is responsible vis-à-vis the heirs who have the same legal actions as the minor (Art. 135, Law nº 71/2024 governing persons and family).

If the guardian dies before the end of guardianship, duties of the guardian are assumed by the guardianship council pending appointment of a new guardian. When the guardian dies after the guardianship is ended but before indicating how he/she managed the child's property, the guardianship council indicates how the guardian managed the child's property based on the last periodical accounts provided by the guardian (Art. 136, Law nº 71/2024 governing persons and family).

§ 3. Guardianship of an adult with mental disability

1. Concept

Adults with mental disability are people aged over 18 years but presenting mental defectiveness. An adult with mental disability can be declared to be provided with a guardian (Art. 137, Law nº 71/2024 governing persons and family). An adult who has mental disability shall be declared to

be provided with a guardian by the court upon application by one of the parents if filed with respect to an unmarried adult, one of the spouses if filed with respect to the other spouse, an adult child if filed with respect to his/her parent or any interested person (Art. 139, Law nº 71/2024 governing persons and family). A judgment declaring a person with mental disability be provided with a guardian is entered in the register of birth records of the adult person under guardianship . Such judgment produce effects against third parties from the date it became final (Art. 140, Law nº 71/2024 governing persons and family).

However, upon request by an interested person, acts performed before an adult person with mental disability be provided with a guardian may be nullified if the grounds for being provided with a guardian were present and known at the time of performance of such acts (Art. 141, Law nº 71/2024 governing persons and family).

2. Appointment of a guardian of an adult with mental disability

The court seized of the application to declare that an adult with mental disability be provided with a guardian appoints his/her guardian after having heard and conducted observation of the person in respect of whom the guardianship is applied for as well as having heard witnesses, family council and examined medical records indicating his/her mental health (Art. 138, Law nº 71/2024 governing persons and family).

The guardianship of an adult with mental disability is exercised by the other spouse (if married) or by his/her parent if he/she still lives with them unless otherwise decided by the court. In this case, the guardianship Council is not be necessary.

However, if the adult person with mental disability is neither married or nor have any parent, his/her guardianship is exercised by a guardian appointed by the court upon application by the guardianship Council (Art. 142, Law nº 71/2024 governing persons and family).

The guardian of an adult with mental disability primarily manages the property for the benefit of the person under his/her guardianship.

3. End of guardianship of an adult with mental disability

Guardianship for an adult ends with the cessation of the causes which gave rise thereto or with his/her death. One of the persons who are eligible to apply for declaration that an adult person with mental disability be provided with a guardian applies for the withdrawal of guardianship for an adult with mental disability through a unilateral petition (art. 144, Law nº 71/2024).

§ 4. Advisorship for a prodigal adult person

1. Notions

Prodigality refers to the misuse of property that is visible to the extent that the person can neither meet his/her needs nor pay debts (Art. 145, para. 1, Law nº 71/2024 governing persons and family). If a person misuses his/her property in a visible manner, the court appoints an advisor for that person upon application by one of the eligible persons and through a unilateral request. The competent court is that of the place of the prodigal person's residence upon request by any interested person after hearing his/her spouse, witnesses and the Family Council. The advisor may be chosen from among the parents of the person in respect of whom the advisership is instituted, his/her children, his siblings or any other interested person. If the prodigal adult who needs an advisor is one of the spouses, the other spouse serves as the advisor (art. 148, Law nº 71/2024).

An advisor for a prodigal adult intervenes in acts such acts as pleading before the court, transaction acts, loan application, acquisition of property, disposition of property or security on a property. However, he/she has no responsibility to administer the property of the person he/she advises (art 147, Law nº 71/2024).

2. Effects

When the court appoints an advisor, the prodigal adult person cannot perform acts falling within the duties of the advisor without the advisor's assistance. However, any act performed by a

prodigal adult alone while the advisor's assistance is required, is not annulled if it does not adversely affect the prodigal adult.

The advisor of a prodigal adult can be removed by the competent court upon request by interested person (art. 149, Law no. 71/2024 governing persons and family).