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## Legal analysis of access to old-age public pension benefits in Rwanda: challenges and trends

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# Legal Analysis of Access to Old-Age Public Pension Benefits in Rwanda : Challenges and Trends



**Odette Nyiramuzima**



**Legal Analysis of Access to Old-Age Public Pension Benefits in Rwanda:  
Challenges and Trends**

Proefschrift

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**Legal Analysis of Access to Old-Age Public Pension Benefits in Rwanda:**  
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## PREFACE

Some years ago, I read ILO publication on pensions and learned how pension benefits are essential to ensure rights, dignity and income security for older persons.<sup>1</sup> Pension provision prevents poverty and limits the growing dependence on social assistance from the State, and at the same time increases the effectiveness of the social assistance programmes.

However, the reality in developing countries is that older persons face poverty, given that the right to social security in the event of old age is still unfulfilled for many, while throughout their working life older persons contributed to national development and progress. It is unfair to leave some of them behind social security protection once they get older and are no longer productive.

Thus, when I got a chance to conduct a PhD Law research, I decided to critically review legal, administrative and behavioural barriers to universal pension provision in Rwanda, guided by international social security standards. The topic of this dissertation is motivated by my passion to promote social security rights, which is a strategy to sustainable social justice and development.

This PhD offers me an opportunity to develop my academic skills, so I can contribute to the design of comprehensive pension systems, given that *“Everyone, as a member of society, has the right to social security...”*<sup>2</sup>

The realization of the present PhD doctoral thesis has been made possible by the contribution of a number of institutions and individuals who accompanied me through this journey, offering comfort and confidence.

First of all, I would like to thank the Ministry of Public Service and Labour in Rwanda and my employer, the Rwanda Social Security Board (RSSB), for a study leave granted to me to accomplish this PhD research abroad. It broadened my horizon and offered me potential research and career development and has offered me to deepen my knowledge of pensions systems in other countries.

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<sup>1</sup> ILO, *Social protection for older persons: Key policy trends and statistics (2014)* Social Protection Policy Papers, Paper No.11, International Labour Office – Social Protection Department, p.ix.

<sup>2</sup> Article 22 of Universal Declaration of Human Rights, 1948 adopted and proclaimed by UN General Assembly Resolution 217 A (III) of 10 December 1948.

My gratitude also goes to the Department of Labour and Social Security Law, Institute of Public law of Leiden Law School, The Netherlands, which provided me a warm and stimulating working environment for doing research.

Thanks are also due to Justice Prof. dr. Ngagi M. Alphonse, who provided comments, advice and encouragement. My appreciation goes to Dr. Theopiste Butare, former ILO official, to Margaret Osure from Kenya and to Rajen Ramanah Narayen from Mauritius, who provided comments on the thesis. I owe a profound debt of gratitude to these experts in social security.

I express my sincere thanks to my comrades of the PhD class for their team spirit and encouragement. I also thank informants, specifically pensioners, members of the *Association Rwandaise des Retraités* (Rwandan Association of the Retired /A.R.R) who kindly responded to focus group discussion and shared their experiences and perceptions on the research topic.

Special thanks go to my parents, my family and friends for their love, support and prayers as well as to the Bloembergen family and to the Bormans family in Leiden for their warm hospitality and to Claire C.E. Ohlenschlager. My faith has been an important source of inspiration to complete this study.



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## LIST OF ABBREVIATIONS

Art.	Article
A.R.R	<i>Association Rwandaise des Retraités</i> (Rwandan Association of the Retired)
AU	African Union
C102	Social Security (Minimum Standards) Convention, 1952 (No.102)
C128	Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No.128)
CEE	Central and Eastern Europe
CSR	<i>Caisse Sociale du Rwanda</i> /Social Security Fund of Rwanda
EAC	East African Community
ECASSA	East and Central Africa Social Security Association
Edn	Edition
ESS	Extension of Social Security
EU	European Union
FGD	Focus Group Discussion
ICESCER	International Covenant of Economic, Social and Cultural Rights, 1966
ILC	International Labour Conference
ILO	International Labour Organization
ISSA	International Social Security Association
LTSS	Long-Term Savings Scheme
MINALOC	Ministry of Local Government
MINECOFIN	Ministry of Finance and Economic Planning
NETSPAR	Network for Studies on Pensions, Aging and Retirement
OECD	Organization for Economic Cooperation and Development
OG	Official Gazette

R131	Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131)
R202	Social Protection Floors Recommendation, 2012 (No.202)
RSSB	Rwanda Social Security Board
RWF	Rwandan Francs
UDHR	Universal Declaration of Human Rights, 1948
Vol.	Volume
WIEGO	Women in informal employment: Globalization and Organizing

# CHAPTER 1: INTRODUCTION

## 1.1. Background

The international legal instruments recognize the right to social security for everyone, including the right to basic income security in old-age, which is essential to prevent or alleviate poverty, vulnerability and exclusion.<sup>3</sup> The principle of universality of old-age pension coverage established by the international social security standards is applicable to Rwandan context, given that the Rwanda's Constitution of 2003 revised in 2015 recognizes the protection of the elderly and other vulnerable groups.<sup>4</sup>

However, the right to pension is still unfulfilled for many. Therefore, this study summarizes the progress made in Rwanda's pension legislation, identifies areas that need to be improved towards achieving universal coverage and more adequate benefits, guided by the international social security standards. The study investigates the compatibility of old-age public pension systems in Rwanda with international social security standards with regard to coverage and benefits adequacy. The study suggests pension reforms to extend old-age pension coverage through a combination of contributory and non-contributory pension schemes.

Despite the progress made in recent years in extending the scope of legal coverage for social protection, in Rwanda like in most developing countries, it is evidenced that the great majority of the elderly still lacks access to old-age pension benefits.<sup>5</sup> As of 2020, only 17.4 per cent of the African population was effectively covered by at least one social protection benefit.<sup>6</sup> Only 9.6 per cent of the African working-age population contributes to pension schemes and for sub-Saharan Africa, pension coverage is very low (6.3 per cent).<sup>7</sup>

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<sup>3</sup> Article 22 and 25 of Universal Declaration of Human Rights, 1948; Article 19 of International Covenant on Economic, Social and Cultural Rights, 1966; The ILO Social Security (Minimum Standards) Convention, 1952 (No.102); ILO Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128) and its accompanying Recommendation, 1967 (No. 131); ILO Social Protection Floors Recommendation, 2012 (No.202).

<sup>4</sup> Art.51 of The Constitution of the Republic of Rwanda of 2003 revised in 2015', *OG* No. Special of 24/12/2015.

<sup>5</sup> Republic of Rwanda, *National Social Protection Policy* (Ministry of Local Government, June 2020), p. 31 <[https://www.minaloc.gov.rw/fileadmin/user\\_upload/Minaloc/Publications/Policies/Social\\_Protection\\_Policy\\_Adopted\\_1\\_pdf](https://www.minaloc.gov.rw/fileadmin/user_upload/Minaloc/Publications/Policies/Social_Protection_Policy_Adopted_1_pdf)> accessed 2 February 2021.

<sup>6</sup> ILO, *World Social Protection Report 2020-22: Social protection at the crossroad in pursuit of a better future* (2021) p.19 <[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_817572.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_817572.pdf)> accessed 5 November 2021.

<sup>7</sup> ISSA, 'Priorities for social security-Africa 2021: Trends, challenges and solutions' (Virtual Social Security Forum for Africa, 5-7 October 2021), p.25 <https://www1.issa.int/sites/default/files/documents/2021-09/2->

## **1.2. Aim and objectives of the study**

The overall aim of this study is to critically analyse from a legal perspective the provision of old-age public pension benefits in Rwanda.

The overall objective of this study is the attainment of universal pension coverage for the elderly and the provision of more adequate pension benefits. Specifically, this study focuses on the following objectives:

- Introduce the Rwandan pension legislation to a wide audience to contribute to the academic debate about how to extend coverage of old-age pension to all older people, guided by the international social security standards.
- Suggest strategies to improve legal framework and policies of old-age pension provision in Rwanda, based on lessons from international experience.

## **1.3. Significance of the study**

Over the past few decades, the extension of old-age pension coverage to the excluded population and the provision of adequate benefits and services in a sustainable manner has been a topic of importance in academic research and a major concern for policy-makers around the world. The increasing share of the elderly in the population of all countries and the large informal economy workforces in Africa make the legal reform of pension systems more urgent to provide basic income protection for the elderly. Therefore, this study has a legal focus in a way that legislation is the basis of social security rights and entitlement.

Based on human-rights-based approach to social security, the study connects and investigates the compatibility of the national legislation with international social security standards, which define and concretize the right to social security for everyone, on theoretical and practical grounds. This connection helps to determine the way the extension of pension coverage should be designed and implemented to achieve universal coverage. The study also connects the assessment made with concrete needs in the field of social protection for the elderly in line with continental and national strategies, a topic that has received little attention in the past.<sup>8</sup>

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[Four%20Priorities%20Africa%20WEB.pdf](#) accessed 6 November 2021.

<sup>8</sup> The UN Agenda 2030 for Sustainable Development (SDGs) goal 1.3; the African Union Agenda 2063; the National Strategy for Transformation (NST1 2017-2024); The Social Protection Strategic Plan 2018/19-2023/24; The National Social Protection Policy (2020) ;The National Social Security Policy (2009).



This study is in line with the 2030 global goals for Sustainable Development (SDGs) with its principle of “Leaving No one Behind” in which Rwanda commits to implement nationally suitable social protection systems and measures for all, including protection floors and to achieve substantial coverage of the poor and the vulnerable by 2030. The study also links its objective of achieving universal pension coverage and providing more adequate benefits with regional social protection strategies, such as the AU Agenda 2063, including the first 10-year plan that sets the targets developing national social protection systems by 2023.<sup>9</sup> The study also fits with the national social protection policy frameworks such as Vision 2050 aiming at delivering high income and high standards of living for all. This is also the aim of the National Strategy for Transformation (NST1).<sup>10</sup> In addition, the study is in line with the National Social Protection Policy 2020 and its Strategic Plan 2019-2024 and with the National Social Security Policy 2009 with its focus on social security coverage for all.<sup>11</sup>

Thus, a comparative legal analysis of the application of the national legislation and its compatibility with ILO social security standards with regard to old-age pension provision presents an international, regional, national and academic interest. As pointed out by Pennings, such comparative studies are very rare and there is little publication on this issue and there appears to be very few academic studies on the meaning of ILO Conventions.<sup>12</sup> This argument also applies to Rwanda, considering that the legal analysis of Rwanda’s pensions systems in the light of the international social security standards has received little attention in the past. Therefore, by providing knowledge on the legal basis of the right to old-age pension benefits and on the State obligation to give effect to that right in the national legislation and in practice, guided by the international social security standards, this study forms a useful basis for discussion and further research.

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<sup>9</sup> African Union, “The First-Ten Year Implementation Plan”, Agenda 2063 <<https://au.int/agenda2063/ftyip>> accessed 2 October 2020.

<sup>10</sup> Republic of Rwanda, Ministry of Finance and Economic Planning, ‘7 years Government Programmes: National Strategy for Transformation (NST1) 2017-2024’ <[http://www.minecofin.gov.rw/fileadmin/National\\_Strategy\\_For\\_Transformation\\_-\\_NST1.pdf](http://www.minecofin.gov.rw/fileadmin/National_Strategy_For_Transformation_-_NST1.pdf)> accessed 2 October 2020.

<sup>11</sup> Republic of Rwanda, *National Social Security Policy* (MINECOFIN February 2009) <[https://www.rssb.rw/fileadmin/user\\_upload/national\\_social\\_security\\_policy\\_0.pdf](https://www.rssb.rw/fileadmin/user_upload/national_social_security_policy_0.pdf)> accessed 2 October 2020.

<sup>12</sup> Frans Pennings, *Between Soft and Hard Law: The Impact of International Social Security Standards on National Social Security Law* (2006) KLUWER INTERNATIONAL p.1 <<https://books.google.nl/books?hl=en&lr=&id=Wc26kJ2FFskC&oi=fnd&pg=PR1>> accessed 11 October 2019.

#### **1.4. Scope and limitation of the study**

Out of the nine branches of social security established by the ILO Social Security (Minimum Standards) Convention, 1952 (No.102), this study has chosen to analyze the branch of old-age benefit covering the contingency of old-age which is a permanent risk often linked to poverty.<sup>13</sup> The study reviews the national legal framework on public pension established under the type of a social insurance program ( the most widespread form of social protection in the world and a key element in achieving SDG target 1.3).

As opposed to private pensions managed by banks and private insurance companies, this study focuses on Old-age public pension and Long-Term Savings Scheme ‘*EjoHeza*’ managed by a public institution, namely the Rwanda Social Security Board (RSSB), which has an express mandate to manage social security systems at the national level under the guarantee of state. The scope of this research also includes some comparative elements between the pension systems of Rwanda, Kenya and Mauritius in relation with the ILO two-dimensional strategy for the extension of the social security coverage and refers to some examples from other countries across the world for a large audience as well.

#### **1.5.Exploring the research problem**

Despite the fact that a law introducing a compulsory social security scheme for all employed workers in Rwanda had existed since 1962 and the recent progress made in pension coverage extension to allow more people to take part in pension schemes, access to old-age pension benefits is mostly restricted to persons working in the formal sector with contributory capacity, while informal economy workers who represent considerable portions of labour force have no legal obligation to contribute to the pension schemes.

The lack of pension protection for the majority of the population constitutes a legal challenge to the realization of human right to social security and urges many older people to continue to work beyond their productive age, mainly in the informal economy. These people will spend their working life in the informal economy with low and irregular income, which does not allow them to participate in contributory pension schemes. Those aged persons are hence exposed to vulnerability and to the exclusion from existing social security schemes.

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<sup>13</sup> Colin Gillion et al. (eds), *Social Security Pensions: Development and Reform* (International Labour Office 2000), p.v.

Furthermore, such people will not be able to benefit from poverty-targeted social protection programmes that are provided based on *Ubudehe*<sup>14</sup> categorization because they are not deemed to be ‘poor enough’. As a consequence, more than 90 per cent of the population is not covered and the majority of older persons have no right to basic income security.<sup>15</sup>

Not only is pension coverage low, but also for those who receive a pension, the adequacy of benefits is questioned, despite being generous in formula. Gaps in old-age pension coverage and benefits have been observed and a need to review pension schemes was addressed in the National Social Protection Policy.<sup>16</sup> In this regards, this study reviews Rwanda’s legislation governing pension schemes to assess its compatibility with international social security standards with regard to old-age pension coverage and benefits adequacy. The study formulates research questions and outlines the structure of the study in the following section.

## **1.6. Research questions and study structure**

The challenge of low access to old-age public pension benefits in Rwanda leads to the critical analysis of the Rwandan legislation regarding pension schemes in the light of international social security standards, through the formulation of the following three research questions:

### **1.6.1. First research question**

*To what extent do the international public law instruments entail a right to old-age pension?*

In answering the first research question, the study reviews the international public law instruments, particularly ILO social security standards to assess how they guarantee the right to old-age pension benefits to everyone and their influence on regional social security legislation.

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<sup>14</sup> *Ubudehe* is a long-standing and cultural value of mutual assistance which was adopted by the government of Rwanda in 2000 as part of the strategies to address poverty reduction. In the present context, *Ubudehe* categorization is a socio-economic stratification system in which poor Rwandans are supported with social protection programs. Based on their social and economic conditions, Rwandan citizens are classified in five *Ubudehe* categories (A, B, C, D, E) in which the wealthiest members of society are classified in category A, the poorest in categories E (which is special category expected to benefit full State social protection support). See Julius Bizimungu, ‘New ubudehe categories: What you need to know’ *The New Times*, Rwanda’s Leading Daily, (Kigali June 25, 2020) <<https://www.newtimes.co.rw/news/new-ubudehe-categories-what-you-need-know>> accessed 20 January 2021.

<sup>15</sup> Republic of Rwanda, *National Social Security Policy* (MINECOFIN 2009), p.10.

<sup>16</sup> Republic of Rwanda, *National Social Protection Policy* (MINALOC June, 2020 ), p.31.

### **1.6.2. Second research question**

*Are the old-age public pension systems in Rwanda compatible with International Labour Organization social security standards?*

The study reviews national legislation on pensions and investigates its compatibility with International Labour Organization social security standards with regard to the personal scope of coverage and the levels of benefits in the branch of old-age benefit.

### **1.6.3. Third research question**

*How can the existing legal framework and policies of pensions in Rwanda be improved to comply with the international social security standards?*

In order to answer the third research question, the study identifies strategies to improve the national pension legislation and policies to give effect to the minima defined in ILO C102 and the principles developed by ILO R202. The study also includes some comparative elements based on lessons from international experience.

### **1.6.4. Study structure**

This study is composed of seven chapters, along with this introduction (Chapter 1) and a conclusion (Chapter 6) as well as recommendations (Chapter 7). Chapter 2 discusses the old-age public pension benefits provision: An essential guarantee established by international public law instruments. Chapter 3 focuses on the Review of Rwanda's legislation on old-age pension and an analysis of its compatibility with the ILO's social security standards. Chapter 4 discusses old-age public pension in Rwanda, Kenya and Mauritius in the light of the ILO two-dimensional approach for the extension of social security: A comparative analysis. Chapter 5 suggests strategies to improve the legal framework and policies of old-age pension provision in Rwanda. Chapter 6 deals with Conclusion and chapter 7 formulates Recommendations.

## **1.7. Research methodology**

This research used a qualitative methodology based on doctrinal legal approach and comparative law research. Doctrinal legal approach is used in all chapters while comparative law research is used in chapter three and chapter four. The main technique used to collect data was desk research. In addition to data collected from official sources, this study used informal sources and focus group discussion.

The results from focus group discussion with a group of ten retired members of the Rwandan Association of the Retired (A.R.R) who were a rich source of information are presented in appendices. Focus group participants were selected to provide their personal perceptions of the coverage and the level of their old-age pension benefits. This helped to analyse the application of the ILO principle related to the *adjustment of pensions* for their adequacy in conformity with ILO Convention 102.<sup>17</sup>

### **1.7.1. Doctrinal legal research**

The doctrinal legal research used in this study includes literature analysis and the legal texts analysis on pension rights. Doctrinal legal research helped to address the first and the second research questions on the legal framework for old-age pension benefits provision and the assessment of the level of compatibility of the national legislation with the international social security standards. This provided a theoretical framework for the study and also evidence of the global challenge of the low enforcement of pension legislation, particularly in developing countries of Africa. The legal texts analysis method used in chapter three and chapter four aimed to examine in detail the compatibility of the national legislations with the international social security standards, as well as the influence of the ILO in shaping the social security law in national legislation.

Documents used for this study included domestic and international legal instruments such as ILO Conventions and Recommendations, textbooks, journals, reports, working policy papers, as well as electronic sources available at Website of Leiden University and in the library of RSSB. The study also used data from National Institute of Statistics of Rwanda, from the Ministry of Finance and Economic Planning, and from the Ministry of Local Government, which is responsible for the elaboration of the national social protection policy.

My participation in the Official launch of the Regional Strategy for Accelerating Social Protection in Africa, which took place online from 16-17 November 2021, organized by the ITC/ILO, was an opportunity to be granted unlimited access to a dedicated knowledge-sharing platform on the extension of social protection in Africa.<sup>18</sup>

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<sup>17</sup> C102, art. 66 (8).

<sup>18</sup> ITC/ILO, 'Social Protection: Africa's hope for achieving the Sustainable Development Goals', Launch of the Regional Strategy for Accelerating Social Protection in Africa, 16-17 November 2021 <<https://www.itcilo.org/events/social-protection-africas-hope-achieving-sustainable-development-goals>> accessed 16 November 2021.

My previous participation in the World Social Security Forum held in Brussels, Belgium, from 14-18 October 2019, with the theme ‘Protecting people in a changing world’ was also a great opportunity for me to benefit from expertise, network and access to the rich documentation of ILO and ISSA. The World Social Security Forum highlighted innovative solutions for social security, which are necessary to implement the global commitment to universal social protection by 2030 and to provide effective protection for people in a context of ageing societies, labour market transformations and rapid technological change. During the World Social Security Forum I discussed with high-level representatives of social security institutions, government departments and international organizations. It stimulated my ideas about innovative solutions, to engage in shaping the future of social security and learn about ISSA professional standards.

### **1.7.2. Comparative legal research**

The study uses a comparative approach to explore the level of compatibility of the national legislation with the ILO social security standards. The comparative approach also helped to understand the regional experience with the application of ILO social security minimum standards to the extension of pension coverage in Rwanda, Kenya and Mauritius. The study also referred to some examples from other countries across the world for a large audience as well.

### **1.8. Contribution of the study**

The study contributes to the academic and policy debates about how to guarantee pension rights in law and in practice to all older people in Rwanda. While previous studies focus on the extension of pension rights through contributory pension schemes only, to complement existing pension schemes, this study advocates for pension reform facilitating the effective access to old-age pension benefits through combination of contributory and non-contributory mechanisms. Therefore, the study suggests the adoption of legislation guaranteeing basic income security to all in need in old-age, through non-contributory tax-financed pension schemes to attain universal coverage, which is new to Rwanda’s pension system.

The results of this study are open to different actors in the social security community (legal scholars, legal practitioners and social security managers) to improve the decision-making and implementation of policies and legal instruments.

## **CHAPTER 2: OLD-AGE PUBLIC PENSION BENEFITS PROVISION: AN ESSENTIAL GUARANTEE ESTABLISHED BY INTERNATIONAL PUBLIC LAW INSTRUMENTS**

### **2.1. Introduction**

Pensions are of high importance as they ensure income security to the recipients by providing regular benefits, which enhance the status of the recipients in their families. It is clear that the cash income that pensioners receive contributes to the reduction of poverty in a household. “Poverty anywhere constitutes a danger to prosperity everywhere”.<sup>19</sup> From a legal perspective, a pension system is essentially a set of legal rules that govern the redistribution of income between generations. Indeed, the legal rules determine how much the active (insured) population must allocate to the non-active population.<sup>20</sup>

In the past, the legal implications of international social security standards with regard to pension provision in old-age received little attention. Scholars were more interested in exploring the challenges of low coverage of the social security and rarely commented on the legal perspective.<sup>21</sup> Therefore, there is a need for research that takes into account the legal basis of old-age pension provision and the responsibility of the state to give effect to the right to basic income security guarantee to everyone, which is embodied in international public law instruments. This chapter aims to contribute to the existing literature by identifying the views of different researchers on the pension models that may be suitable for developing countries in their effort to comply with international social security standards.

Thus, this chapter aims at exploring international public law instruments guaranteeing pension rights to everyone. These are mainly the international human rights instruments and the international social security standards (Conventions and Recommendations) developed by the International Labour Organization (ILO). Since its creation in 1919, ILO has developed international policies and programmes, more particularly the standards to improve working and living conditions worldwide as well as to provide guidance to countries for giving effect to the right to social security from minimum levels of protection to full

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<sup>19</sup> ILO, *Declaration of Philadelphia: Declaration concerning the aims and purposes of the International Labour Organization* (1944), I (c) < <https://www.ilo.org/legacy/english/inwork/cb-policy/guide/declarationofPhiladelphia1944.pdf> > accessed 20 January 2021.

<sup>20</sup> OECD, *Maintaining Prosperity In An Ageing Society: OECD study on the policy implications of ageing* ‘ (1998) Working Papers, AWP 3.1), p.10 < <http://www.oecd.org/pensions/public-pensions/2428459.pdf> > accessed 23 March 2020.

<sup>21</sup> Pennings (n 12) p.1.



realization.<sup>22</sup> ILO standards have had a substantial influence on the development of the social security legislation at the international, regional and national levels. They remain the international reference points in the development of social security systems.

This study also analyzes the structure of pension schemes as well as their performance in terms of legal and effective coverage to find out which model of pension is adequate for the realization of the right to pension for all. The study focuses on the legislation governing public pension, the most widespread form of old-age protection globally. It gives effect to the right to old-age benefit envisaged in the international human rights instruments and in the international social security standards developed by the ILO.<sup>23</sup> In the domain of pensions, public pension systems have become a foundation on which income security for older persons has been built. The reason is that the State has overall and primary responsibility to protect the population and to give effect in law and in practice to the right to income security envisaged in international standards.<sup>24</sup>

Generally, public pensions are mandatory and managed by public institutions, under the guarantee of the state, with the form of a defined-benefit pension system. Public pension provides income security in old-age through earnings-related contributory pensions and/or by flat-rate non-contributory pensions which can be either universal or means-tested or a combination of both schemes in a view to guarantee the minimum benefits levels, or the replacement rates.<sup>25</sup>

The chapter is composed of four Sections: Section 1 introduces the chapter; Section 2 explores old-age pension benefits in international public law instruments and the influence of ILO standards on regional social security legislation; Section 3 explains the structure of the social security pension schemes and the crucial role of public pensions in ensuring basic income security; Section 4 deals with conclusions and discussion.

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<sup>22</sup> ILO, *Setting Social Security Standards in a Global Society: An analysis of present state and practice and of future options for global social security standard setting in the International Labour Organization* (2008a) Social Security Policy Briefings, Paper 2, International Labour Office – Social Security Department, p.17.

<sup>23</sup> ILO, *Social Protection for Older Persons: Policy trends and statistics (2018)* Social Protection Policy Papers, Paper No.17), International Labour Office – Social Protection Department, p.xi.

<sup>24</sup> ILO C102, Art.71, para. 3, art. 72, para. 2.

<sup>25</sup> ILO C102, art. 6.

## **2.2. Old-age pension benefits in international public law instruments: The influence of ILO social security standards on regional social security legislation**

The right to old-age benefit was developed as an integral part of the right to social security laid down by the major international human rights instruments and the international social security standards developed by the ILO. This section explores the international social security standards that set the minimum standards of protection and their impact on regional social security instruments. The analysis of these standards is relevant to providing a better understanding of the responsibility of the State to provide protection through the establishment of a national legislation that guarantees at least a basic income security to all in old-age and progressively ensures higher levels of protection as economies develop.

ILO was the first international United Nations agency to recognize the right to social security in 1919 in the Preamble of ILO Constitution. The right to social security and the extension of social security was reaffirmed in 1944 through the Declaration on the aims and purposes of the ILO (Declaration of Philadelphia) appended to the ILO Constitution, which requires the extension of social security measures to provide a basic income to all in need of such protection and also comprehensive medical care...<sup>26</sup> Guidance for the realization of this obligation was provided in the Income Security Recommendation, 1944 (No.67). Later, the right to social security for everyone was recognized by the Universal Declaration of Human Rights, 1948 (article 22 and article 25) that mentions old-age among the contingencies to be covered by the social security).<sup>27</sup> The International Covenant of Economic, Social and Cultural Rights (ICESCR, 1966) (article 9)<sup>28</sup> and other legal instruments adopted by the United Nations also recognize the right to social security for everyone.<sup>29</sup>

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<sup>26</sup>ILO Constitution (Preamble and article 1), *Declaration of Philadelphia, 1944* article III (f); <[https://www.ilo.org/dyn/normlex/en/?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO)> Accessed 12 April 2020.

<sup>27</sup> *Universal Declaration of Human Rights* adopted by General Assembly Resolution No.217 A (III) on 10 December 1948.

<sup>28</sup> *International Covenant of Economic, Social and Cultural Rights*, adopted by General Assembly Resolution No.2200A (XXI) on 16 December 1966 (entry into force 3 January 1976).

<sup>29</sup> The Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (art.11 (1)) the Convention on the Rights of the Child, (1989) (art.26 (1) and 27 (1)) the Convention on the Elimination of all Forms of Racial Discrimination, (1965) (art.5(e)) the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, (1990) and the Convention on the Rights of Persons with Disabilities, (2006).

Although the Universal Declaration of Human Rights (1948) creates no binding obligations for the States, it has been an important foundation on which social security right has been built. Some of its provisions have become part of customary international law, due to the widespread acceptance of its authority and its strong moral force.<sup>30</sup> While international human rights instruments limited themselves to declaring the existence of a right to social security, ILO Conventions and Recommendations develop a content of social security. Particularly, ILO Social Security (Minimum Standards) Convention, 1952 (No.102) provides a universally agreed definition and sets out the minimum standards levels of protection and basic principles to comply with. Therefore, for the realization of the right to social security, each State has the responsibility to develop comprehensive social security schemes, which are all legal provisions that regulate transfers of income in cash or in kind to households.<sup>31</sup>

ILO Social Security (Minimum Standards) Convention, 1952 (No.102) is the flagship of the up-to-date social security Conventions since it provides an internationally accepted definition of the very principle of social security and concretizes the right to social security. ILO Convention, 1952 (No.102) defines social security as a ‘set of public measures that a society provides for its members to protect them and their families against economic and social distress that would be caused by the absence or substantial reduction of income from work as a result of various contingencies like sickness, maternity, employment injury, unemployment, invalidity, old- age, death of a family member, and health care’.<sup>32</sup>

### **2.2.1. ILO tripartite structure: The strength of adopted Conventions**

ILO standards are created and supervised through a tripartite structure (as standards are drawn up by the two-thirds of ILO constituents: governments, employers and workers from around the world) that makes standards international legal instruments which are universal and legally-binding upon ratification.<sup>33</sup> While, the adopted Convention may be ratified or not, ILO member states have a reporting duty. In accordance with the article 19 of

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<sup>30</sup> Ursula Kulke, ‘Filling the coverage gap of social security for migrants workers: ILO’s strategy’ (2007), p. 4.

<sup>31</sup> Michael Cichon, ‘The Social Protection Floors Recommendation, 2012 (No. 202): Can a six-page document change the course of social history?’ (2013) *International Social Security Review* 66 (3-4), p.22.

<sup>32</sup> Garcia A Bonilla and JV Gruat, *A life cycle continuum investment for social justice, poverty reduction and sustainable development* (ILO 2003) Version1.0, p.19

<<https://www.ilo.org/public/english/protection/download/lifecycl/lifecycle.pdf>> accessed 23 March 2020.

<sup>33</sup> ILO, *Rules of game, An Introduction to the Standards-related work of the International Labour Organization* (Centenary Edition, ILO 2019), p.25 <[http://www.ilo.org/global/standards/introduction to labour standards, lang.../index,htm](http://www.ilo.org/global/standards/introduction%20to%20labour%20standards/lang.../index.htm)> accessed 21 June 2019.

ILO Constitution, The Governing Body has the authority to request member States to report to the Director-General of the ILO, at regular intervals, on measures they have taken to give effect to the provisions of certain Conventions or Recommendations. In their reports member States may be requested also to indicate any obstacles which have prevent or delay the ratification of a particular Convention. The reporting duty reflects the strength of the adopted Conventions which have legal meaning in ratifying states but also have influence in non-ratifying states. For example, some countries decided not to ratify a Convention but to bring their legislation into line with it anyway.

Most developing countries in Africa are ILO member States but they are characterized by a low application of the international social security standards regarding social security coverage. Only a limited number of developing countries in Africa has ratified the ILO social security conventions, particularly the ILO Social Security (Minimum Standards) Convention, 1952 (No.102). Globally, to date, Convention, 1952 (No.102) has been ratified by 58 ILO Member States.<sup>34</sup> A large number of African countries have not yet ratified the Convention, except Mauritania, Niger, The Democratic Republic of the Congo, Senegal, Libya, Chad, and Togo, which ratified certain parts of the ILO Convention No.102. Several other countries have indicated their interest in ratifying Convention No.102 and requested ILO assistance to do so in the near future.<sup>35</sup> Ratification of ILO Conventions has a positive impact on the national legislation as it helps to establish and maintain the guarantee of protection that reflects the international common objectives and goals. Generally, the incorporation of international standards in the national legislation is subjected to ratification, so that these standards become an integral part of the national legislation. Therefore, national courts are able to use ratified international social security standards to decide cases on which national law is inadequate or silent.<sup>36</sup>

ILO encourages Member States to ratify its social security conventions to ensure legal conformity of the national legislation with these conventions. ILO Social Protection Floors Recommendation, 2012 (No.202) reaffirms the importance of ratification of ILO Convention No.102 and other advanced norms as follows: ‘Members should consider

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<sup>34</sup> ILO /NORMLEX ‘Ratifications of C102 Social Security Minimum Standards Convention, 1952 (No.102)’ <[https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:31224](https://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:31224)> accessed 31 October 2019.

<sup>35</sup> ILO (n 22), p.35.

<sup>36</sup> ILO (n 33), p.20.

ratifying, as early as national circumstances allow, the Social Security (Minimum Standards) Convention, 1952 (No.102). Furthermore, Members should consider ratifying or giving effect to, as applicable, other ILO social security Conventions and Recommendations setting out more advanced standards'.<sup>37</sup>

### **2.2.2. The unique nature of ILO Social Security (Minimum Standards) Convention, 1952 (No.102)**

Compared to other social security standards setting higher levels of protection, ILO C102 deserves particular attention. It makes the right to the social security embodied in international human rights instruments realizable and transformed the idea of everyone's right to social security into a legal obligation. The ILO Convention No.102 established social security as a separate branch of international law by imposing minimum requirements to the State in view of social security as a social institution regulated by its own legislation (separated from labour law).<sup>38</sup>

#### **A. *The universal and legal character of ILO Convention, 1952 (No.102)***

ILO Standards have a universal and legal character because the tripartite structure of the ILO ensures that standards are widely supported by all ILO constituents when they are adopted. ILO Convention No.102 is a legally-binding instrument that has impact on the national legislation. It defines the role and responsibility of the State, which must provide guaranteed minimum social security benefits and intervene in the social security management by regulation and control. ILO C102 sets basic principles which comprise the *General responsibility of the State* for the due provision of the benefits and the proper administration of the institutions and services concerned in securing the provision of the benefits<sup>39</sup>; *Participation of the persons protected in the management of social security schemes*<sup>40</sup>; *Collective financing of social security schemes*<sup>41</sup>; *Guarantee of defined-benefits by the States*<sup>42</sup>; *Adjustment of pensions in payment*.<sup>43</sup>; *Right of appeal*.<sup>44</sup> Worldwide, countries refer

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<sup>37</sup> ILO R202, para. 8.

<sup>38</sup> Gijssbert Vonk, 'The 2012 Recommendation concerning national floors of social protection (No.202): The human rights approach to social security' ( ILO wrapping Paper, 2013) *International Journal of Social security and Workers Compensation* 4 (1), p.55 <[https://www.rug.nl/research/portal/en/publications/the-2012-recommendation-concerning-national-floors-of-social-protection-no-202\(72260ca0-0bb9-4f93-8cbd-b0ac8501cedb\).html](https://www.rug.nl/research/portal/en/publications/the-2012-recommendation-concerning-national-floors-of-social-protection-no-202(72260ca0-0bb9-4f93-8cbd-b0ac8501cedb).html)> accessed 6 April 2020.

<sup>39</sup> ILO C102, art.71, para. 3, article 72, para. 2.

<sup>40</sup> ILO C102, art. 71, para. 1.

<sup>41</sup> ILO C. No.102, Art. 71, paras 1 and 2.

<sup>42</sup> ILO C. No.102, Art. 71, para.3.

to these principles when they establish or reform their pension systems even when they have not ratified ILO Convention No.102. They may request ILO technical assistance in accordance with article 10 of the ILO Constitution.

***B. Determining the material and personal scope of application through the use of flexibility clauses***

ILO C102 is unique as it determines the material and personal scope of its application by using flexibility clauses. ILO Convention No.102 was adopted in a flexible framework in order to be relevant for the greatest number of countries with differences in terms of culture and history, legal systems and level of economic development.<sup>45</sup> Based on the principle that there is no single model of social security, each country has the discretion to determine the best way to establish its social security system.<sup>46</sup> Therefore, social security programmes may be provided through universal schemes; social insurance programmes with earnings related or flat rate components or both; social assistance schemes.<sup>47</sup> The established social security systems should be capable to meet the minimum standards level of protection and to respect basic social security principles.<sup>48</sup>

ILO Convention No.102 is flexible as it offers options for ratification with regard to obligations undertaken and the type of schemes to be established. Article 3 also offers a temporary exception for developing countries whose economy and medical facilities are insufficiently developed. They can avail themselves of a temporary exception pertaining to different provisions, if they make a declaration to that effect upon ratification. The country may cover a smaller personal scope or offer a shorter duration of benefits that do not comply with the minimum standards determined in the Convention. This temporary exception is subjected to the criticism that it reflects a contradiction with the notion of the minimum standards, which should be achieved by all countries.

ILO social security standards contain flexibility clauses that allow ratifying member States to gradually attain universal coverage by first putting in place a set of basic and modest social security guarantees for all residents as soon as possible, and plan to move

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<sup>43</sup> ILO C102, art. 65, para. 10 and article 66, para. 8.

<sup>44</sup> ILO C102, art. 70.

<sup>45</sup> ILO, *Rules of The Game: A brief introduction to International Labour Standards* (Revised Edition, 2009), p. 18 <[http://www.ilo.int/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_108393.pdf](http://www.ilo.int/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_108393.pdf)> accessed 30 April 2020.

<sup>46</sup> ILO, *Social Security: A new consensus* (ILO 2001), p.2.

<sup>47</sup> ILO C102, art.6.

<sup>48</sup> ILO C102, art. 27.

towards higher levels of coverage as their economies develop. This flexibility is envisaged in both the Social Security (Minimum Standards) Convention No.102 and the more recent standards that prescribe higher levels of social security provision related to the various contingencies.<sup>49</sup>

Among ILO social security standards, ILO Convention No.102 is the only legally-binding instrument which is flexible regarding its application as it offers to the State the possibility to accept only certain parts of the Convention for ratification and to establish social security branches in accordance with their economic condition. For example, while ratification of the Convention always implies the acceptance of the common provisions, article 2 offers ratifying States the possibility of choosing at the time of ratification, the extent of obligations they wish to undertake. They can choose at least three of its nine parts that correspond with the nine branches of social security.<sup>50</sup> These three accepted parts should include at least one of the following five parts: unemployment, old-age, employment injury, invalidity and death of the breadwinner.

The Convention is also flexible with regard to the level of protection as it allows Member States not to cover all the population but it sets a minimum for coverage and for benefits, as it is explored in chapter three of this study.

### ***C. The use of statistical indicators to assess and monitor the minimum levels of protection in terms of the persons protected and of the benefits provided***

International social security standards which set the minimum standard of protection (ILO Convention No.102; ILO Convention, 1967 (No.128) and Recommendation, 1967 (No.131) have some particular aspects: They are the only ILO standards that require the use of statistical indicators to assess and monitor whether the minimum levels of protection in terms of persons protected and in terms of benefits provided are reached in conformity with their requirements.<sup>51</sup> For example, articles 65-67 of C102 provide three formulas to evaluate the extent to which the benefits guaranteed under national laws and regulations attain the standard rates required. Convention No.128 in article 15 (2) determines the retirement age which shall be not more than 65 and provides the possibility for the national competent authority to fix a higher retirement age with due regard to demographic, economic and social

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<sup>49</sup> ILO, *Extending social security to all: A guide through challenges and options* (2010), p.v.

<sup>50</sup> ILO C102, art. 2.

<sup>51</sup> Ursula Kulke and E.S-P Guilbault, 'The Social Protection Floors Recommendation, 2012 (No.202): Completing the standards to close the gap' (2013) *International Social Security Review* 66 (3-4), p. 92.

criteria which shall be demonstrated statistically. These statistical indicators facilitate the ILO supervision to assess the level of compliance.

The international social security standards require legislative conformity. The required minimum level of coverage and benefits in terms of quantifiable effective coverage, reflecting the number of the population protected and the level of benefit provided as well as their adequacy, must be attained. For example, with regard to the content of the law, the national legislation may be well-designed and modelled to the international social security standards but in terms of the personal scope of protection, the low percentage of the persons protected constitutes a gap in the application of the national legislation to enforce pension rights and reflects low compliance with ILO C102. In addition, with regard to the benefits provision, the assessment of adequacy of the pension benefits is not limited to the percentage of replacement ratio which is a proportion of income when in employment, but the assessment of the adequacy also considers the quality of the benefit, the way it is accessed, delivered and maintained. When the adequacy of the benefit is assessed, it is also important to consider the way benefits are regularly adjusted or indexed. They must reflect the real value of the contributions and of the salaries necessary to maintain the family of the beneficiary in health and decency in accordance with the international social security standards.<sup>52</sup>

Thus, achieving the levels of protection set in the international social security standards responds to the internationally accepted standards and constitutes a guarantee for a well-established and comprehensive social security system. Two elements (coverage and benefits) are essential to assess the level of compliance of the national legislation with the ILO Social Security Minimum Standards. Considering that the ILO Convention No.102 and Convention No.128<sup>53</sup> with its accompanying Recommendation No.131<sup>54</sup> are limited to a certain percentage of the population (not covering all the population), these standards are strengthened by ILO Social Protection Floors Recommendation, 2012 (No.202). This Recommendation focuses on the principle of universality of coverage and the adequacy of the benefit reflected in ILO two-dimensional strategy for the extension of social security.

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<sup>52</sup> ILO C102, art. 66, para. 8.

<sup>53</sup> ILO C128 (1967).

<sup>54</sup> ILO R131 (1967).



### **2.2.3. The influence of the ILO Social Security Minimum Standards on regional and national social security legislation**

International social security minimum standards are universal in a way that once a standard is adopted, it is internationally accepted as it reflects common values and principles which have to be applied in national law and in practice as it provide international reference. Legal instruments that are part of the corpus of international law can lead to a greater integration of the international community. They are a source of inspiration, they have influence and provide guidance not only for ratifying States but also for non-ratifying States. They can be used in national legal systems and administrations.

While Member States can choose whether or not to ratify Convention, the ILO considers that it is important to keep track of developments in all countries.<sup>55</sup> The ILO social security standards, particularly Convention No.102 and Recommendation No.202 have had substantial influence on the development of social security systems worldwide. These standards provide guidance for countries in defining social security systems and determining contingencies to be covered, the minimum levels of protection and benefit as well as establishing the national floors of protection. In developed countries, Convention No.102 has had a great impact and most of these countries have ratified the Convention and have achieved the maximum level of pension coverage. Only a limited number of developing countries have reached the required standard level of coverage and have ratified Convention No.102.<sup>56</sup>

The influence of international social security standards has been investigated by some scholars. Servais focused on the influence of international social security standards on the implementation of human rights in the numerous UN treaties. The author found that more than thirty African countries have set up pension schemes modelled on the ILO Social Security Minimum Standards Convention, 1952 (No.102).<sup>57</sup>

Dijkhoff has also explored the positive effects of the application of international standards on the national legislation. He indicated five functions of the international

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<sup>55</sup> ILO (n 33), p.117.

<sup>56</sup> ILO (n 35), p. VIII.

<sup>57</sup> Jean-Michel Servais, 'International Standards on Social Security: Lesson from the past for a better implementation' (2014) Working Paper, Manila, p.7<[https://islssl.org/wp-content/uploads/2014/12/Servais\\_2014\\_Asian\\_Conf.pdf](https://islssl.org/wp-content/uploads/2014/12/Servais_2014_Asian_Conf.pdf)> accessed 13 April 2020.

standards (benchmark function, preserving function, counterbalancing function, bridging function, harmonising function).<sup>58</sup>

The influence of ILO standards on the national legislation was reaffirmed in ILO studies that showed that international standards are the sources of the international law that is applied at the national level and even in numerous countries automatically upon ratification.<sup>59</sup>

Providing income security in old-age for all is one of the basic social security guarantees required by the ILO Recommendation No.202 on social protection floors. Cichon investigated whether this new instrument has the potential to change the social reality in the ILO Member States and argues that the guidance provided by ILO Recommendation No.202 is much wider and much more concrete than one would expect.<sup>60</sup> The author referred to the eighteen principles set up by ILO Recommendation No.202 that should govern national social protection systems.<sup>61</sup>

The ILO social security standards' influence on national legislation was reaffirmed during The International Labour Conference, 108<sup>th</sup> Session, 2019 in The General Survey concerning the Social Protection Floors Recommendation, 2012 (No. 202) and the application of that Recommendation. The Survey found that most countries have constitutional provisions that safeguard the right to social security or social protection. In some countries the Constitution establishes a link between this right and the right to dignity. The survey indicated also that the special legal provisions that are necessary to establish predictable and enforceable rights to benefits are often lacking, especially in the domain of non-contributory benefits.<sup>62</sup>

## **A. In Europe**

At the regional and national level, ILO standards, particularly ILO C102, constitute the main reference for the implementation and definition of the right to social security. As such, ILO Convention No.102 has had substantial influence in the development of social

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<sup>58</sup> A A Dijkhoff, 'International social security standards in the European Union: The cases of the Czech', (PhD thesis, Tulburg University, Antwerpen:Intersentia 2011), pp.302-308.

<sup>59</sup> ILO (n 33), p.25.

<sup>60</sup> Cichon (n 31), p. 21.

<sup>61</sup> ILO, *The Strategy of the International Labour Organization, Social Security for All: Building social protection floors and comprehensive social security systems* (ILO 2012), pp.33-34.

<sup>62</sup> ILO, *Universal social protection for human dignity, social justice and sustainable development: General Survey concerning the Social Protection Floors Recommendation, 2012 (No.202)*, First edition (2019), Report III (Part B), International Labour Conference, 108th Session, p.v.

security legislation at the national level in various regions of the world. For example, ILO C102 has provided the blueprint for the European Code of Social Security (1964) revised in 1990, The European Social Charter (1961) revised in 1996, which is one of the main human rights instruments of the Council of Europe, expressly uses ILO Convention No.102 as a reference for establishing the minimum level of the social security that European countries must provide.<sup>63</sup> It requires contracting Parties to maintain a level of protection 'at least to that required for ratification of International Labour Convention No.102 Concerning Minimum Standards of Social Security.'<sup>64</sup>

### **B. In the Americas**

In the Americas, the Caribbean Community (CARICOM) Agreement on Social Security (1996) refers to the content of ILO Convention No.102 with regard to contingencies covered.<sup>65</sup> Furthermore, The Additional Protocol to the American countries on Human rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador 1988) refers to ILO C102.<sup>66</sup>

### **C. In Africa**

The provisions of many social security regional instruments and national legislation have been inspired by the nine branches of the social security and the principles laid down by ILO Convention,1952 (No.102). Those are for example, Southern Africa Development Community (SADC) Code of Social Security (2008)<sup>67</sup> and the General Social Security Agreement between The Republic of Rwanda, The Republic of Burundi and The Democratic Republic of the Congo, concluded in 1978 in the context of the Economic Community of the Great Lakes Countries (ECGLC) known in French as *Communauté Economique des Pays des Grands Lacs (CEPGL)*.<sup>68</sup> The CEPGL was created in September 1976, and since 1980 its General Convention has been operating with the mission to improve the social well-being of

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<sup>63</sup> ILO (n 22), p.15.

<sup>64</sup> European Social Charter (Council of Europe, 1961), art.12.

<sup>65</sup> ILO, The CARICOM Agreement on Social Security <<https://www.ilo.org/dyn/migpractice/docs/93/Info.pdf>> accessible 3 April 2020.

<sup>66</sup> ILO, *Building Social Protection systems: International standards and human rights instruments* (2019) <[https://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--soc\\_sec/documents/publication/wcms\\_651219.pdf](https://www.ilo.org/wcmsp5/groups/public/--ed_protect/--soc_sec/documents/publication/wcms_651219.pdf)> accessed 15 May 2020.

<sup>67</sup> Code on Social Security in the SADC

<[https://www.sadc.int/files/2513/5843/3198/Code\\_on\\_Social\\_Security\\_in\\_SADC.pdf](https://www.sadc.int/files/2513/5843/3198/Code_on_Social_Security_in_SADC.pdf)> accessed 23 March 2020.

<sup>68</sup> ILO, NORMLEX, Equality of Treatment (Social Security) Convention, 1962 (No.118) –Rwanda (Ratification: 1989)<[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101\\_COMMENT\\_ID:3293480](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13101:0::NO::P13101_COMMENT_ID:3293480)> accessed 31 March 2020.

the populations of Member-States. The main aim of CEPGL Convention was, and still is, to ensure that the social security benefits of a worker residing in one country are maintained even when that worker migrates to another Member State. In the same spirit, The East African Community (EAC) and East and Central Africa Social Security Association (ECASSA)<sup>69</sup> were established to promote regional integration including the development of legal mechanisms that will facilitate the harmonization of social security schemes benefits (as defined by ILO Convention No.102) and qualifying criteria in order to facilitate cross border labour mobility. It is also important to mention the existence of the General Social Security Convention between The Republic of Rwanda and The Republic of the Congo (also called Congo-Brazzaville), signed on December 23<sup>rd</sup>, 2016.

Despite the influence of ILO Social Security (Minimum Standards) Convention,1952 (No. 102) in different regions, the analysis of the literature revealed common findings on low social security pension coverage and relatively low rate of the ratification of ILO C102, particularly in Africa. The identified challenges are a low level of economic development, the growing informal economy, especially in rural areas not protected by the social security and the inherent nature of African life style in relation to the main characteristics of the Convention. The contingencies defined under the Convention focus on the nuclear family (where coverage is limited to the insured worker and his/her eligible survivors, specifically his/her spouse and children) while in Africa a family includes the extended family members, where for example, elderly persons live with or close to their children or other relatives.

It must be pointed out that in Africa, the positive effects of pension benefits go beyond the direct beneficiaries, the older people, and spill over on other members of their households. The Convention considers future contingencies while African societies are concerned with immediate needs. Therefore, informal economy workers may give priority to more immediate contingencies such as health care. It must be pointed out that access to the old-age pension requires the satisfaction of a long qualifying period of contribution and thus implies a regular and predictable income.

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<sup>69</sup> ECASSA, 'Mission and Vision' <<https://www.ecassa.org/index.php/about-us/mission-and-vision>> accessed 31 March 2020.

### 2.3. The structure of social security pension schemes and the crucial role of public pensions in ensuring basic income security

In many countries, older persons receive income transfer from public pensions, which become important institutional solutions to guarantee income security in old-age. For example, in OECD countries, 57 per cent of household incomes of older persons aged 65 and above, come from public pension transfers.<sup>70</sup> In the majority of the European countries, public pensions are the source of more than 60 per cent of older persons' incomes.<sup>71</sup> It is clear that the greater the coverage by public pensions, the greater the share of public pension in older persons' incomes, the less poverty. The aim of this section is to investigate the structure of pension schemes to find out to what extent the design of pension schemes plays a role in meeting the required level of protection envisaged in international public law instruments. The study describes different types and components of pension schemes as well as financing mechanisms. The study also presents the relevance of the ILO pension model emphasized in the *Stockholm Initiative* launched in 1996 by the International Social Security Association (ISSA) to bring together the often contrasting views on pension design (defined-benefit and defined-contribution systems). Initially, this was opposed the ILO and the World Bank in the last decades, but later lead to a consensus.<sup>72</sup>

Despite the progress made in different countries in establishing social security systems, currently less than a third of the world's population has access to comprehensive social security, while the remainder have, at best, incomplete coverage.<sup>73</sup> Particularly, developing countries of Africa with a large informal economy, the pension coverage is below the minimum level of protection required by ILO social security minimum standards. Those who benefit the income transfer from public pension have mostly worked in the formal and regulated sector.

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<sup>70</sup>OECD, *Pension at a Glance 2021: OECD and G20 indicators* (2021), p.184<<https://www.oecd-ilibrary.org/docserver/ca401ebd-en.pdf?expires=1664718606&id=id&accname=guest&checksum=5B16C849365637FDC5C5EBEA190A7115>> accessed 10 September 2022.

<sup>71</sup> ILO, *Social protection for older persons: Key policy trends and statistics (2014)* Social Protection Policy Papers, Paper No.11), International Labour Office-Social Protection Department, p.2 <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc\\_sec/documents/publication/wcms\\_310519.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_310519.pdf)> accessed 19 January 2020.

<sup>72</sup> Karl Gustaf Scherman, 'A New Social Security Reform Consensus? The ISSA's Stockholm Initiative' (2000) *International Social Security Review* 53 (1), pp. 65-82.

<sup>73</sup> Katja Hujo et al., 'Introduction: Reflecting on the human right to social security' (2017) *International Social Security Review* 70 (4), p.7.

### **2.3.1. The types and components of pension schemes: The relevance of publicly financed pension schemes in closing the coverage gap in developing countries**

The design of pension schemes is essential to determine the level of coverage and benefits and to achieve the objectives of pension schemes. The existing literature shows that most developing countries have designed their pension schemes as contributory, suitable for peoples with earning capacity and work in the formal sector. In many African countries, coverage rate falls below 10 per cent and poverty rates are higher for households with older members, especially in rural areas.<sup>74</sup> Therefore, the need for a well-designed pension scheme capable of providing income security to the elderly ranks high on developing countries' policy agendas. These countries are facing the challenge of an increased number of the elderly due to the rapidly ageing population without adequate formal mechanisms of the social security pension.<sup>75</sup>

In addition, traditional family-based support networks are breaking down due to rapid urbanization that leads to the migration of young people from rural to urban areas in search for employment. These challenges have stimulated the ILO, the World Bank and the International Social Security Association (ISSA) as well as countries around the world to implement social security policy models that can facilitate the extension of the pension coverage to the excluded population. The objective of this subsection is to identify the types and components of pension schemes and to find out the relevance of publicly financed pension schemes in increasing the coverage in developing countries in order to meet international obligations.

Generally, pension systems comprise three following types: old-age benefit, invalidity benefit and survivors' benefit.<sup>76</sup> In this study, old-age public pension benefit deserves attention as it is under the State guarantee and plays a crucial role in covering permanent risk of old-age often linked to poverty. Townsend presents three components of long-established public social security pensions which are generally: *Universal social insurance programmes* that collect flat-rate or percentage contributions on income from the wages of all insured persons and their employers in a contractual exchange for benefits as of

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<sup>74</sup> Jessica KM Johnson and John B Williamson, 'Do universal non-contributory old-age pensions make sense for rural areas in low-income countries?' (2006) *International Social Security Review* 59 (04), p. 49.

<sup>75</sup> World Bank, 'Pensions Overview' < <http://www.worldbank.org/en/topic/pensions/overview>> accessed 16 November 2019.

<sup>76</sup> ILO Social Security Minimum Standards Convention, 1952 (No.102) Part V, Part IX, Part X.

right for those insured and for their dependants; *Universal tax-financed benefit schemes*, usually flat-rate, for all residents of a particular social category determined by age, disability or other qualifying condition such as benefits for children, all disabled people, or all the people of a particular age, for example above 70 or 75; *Social assistance schemes* only for those qualifying on test of means that provide minimum benefits or income, and now include tax-credit schemes directed at low-income households.<sup>77</sup>

Most countries have designed their pension schemes under these three components with the predominant form of contributory schemes generally publicly managed, covering the regulated formal sector and providing old-age pension benefit only to individuals who contributed. Bloom and McKinnon examined the outcome of contributory schemes and argued that in many developing countries, stable patterns of widespread formal sector employment have failed to materialize as was initially hoped in the middle decades of the twentieth century.<sup>78</sup> In developing countries, the level of informal employment is estimated at 90 per cent and women are the majority. Bonnet et al. showed that the most vulnerable groups in the informal economy are domestic workers, where women are the majority.<sup>79</sup> The high incidence of informal economy on the labour market has always been a challenge for coverage extension.<sup>80</sup> Van Ginneken explored gender gaps in the coverage, which may take several forms: Gaps in the range of protection provided, gaps in the level of benefit and gaps in the categories of persons covered.<sup>81</sup>

Based on the analysis of these researches, this study concludes that comprehensive pension coverage requires the existence of a national legislation that establishes all three components of the social security (*universal social insurance programmes; universal tax-financed benefit schemes and social assistance schemes*).

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<sup>77</sup> Peter Townsend (ed), *Building Decent Society: Rethinking the Role of Social Security in Development*, (ILO, Palgrave Macmillian 2009), pp.36-37.

<sup>78</sup> David E Bloom and Roddy McKinnon, 'The Design and Implementation of Public Pension Systems in Developing countries: Issues and Options' (IZA Policy Paper No.59 May 2013), p.4 <<https://www.iza.org/publications/pp/59/the-design-and-implementation-of-public-pension-systems-in-developing-countries-issues-and-options>> accessed 13 January 2020.

<sup>79</sup> Florence Bonnet et al., *Women and Men in the Informal Economy: A Statistical Brief* (ILO, Manchester, UK: WIEGO 2019), p.5.

<sup>80</sup> Id. (n 78).

<sup>81</sup> Wouter Van Ginneken, 'Social security for the informal sector: A new challenge for the developing countries' (1999a) *International Social Security Review* 52 (1), pp. 49-69.

### **2.3.2. Progress in extending universal non-contributory old-age pension schemes in low-income countries**

Significant progress has been made in extending pension systems in developing countries. There are many examples of low-income countries that are able to provide universal pension coverage.<sup>82</sup> The existing literature revealed that there is a need to look for the design of a pension legislation guaranteeing the right to basic income security in old-age in accordance with international social security standards. Therefore, the low coverage depends on a poor design of the pension scheme, but low pension coverage also results in low investment in social protection programs.

In the past, to extend pension coverage, policy and law makers had focused on their efforts in establishing mandatory and voluntary contributory pension schemes, thinking that everyone can save for his/her retirement through these schemes. However, the analysis of ILO Recommendation, 2012 (No.202) shows that to realize the right to social security for everyone, pension coverage should be universal and based on social solidarity.<sup>83</sup> Therefore, the State has the primary responsibility to enact legislation about a basic income guarantee to the entire population, as some countries such as Canada, Australia and South Africa have achieved progress in providing universal pension for older people that guarantee a basic level income security.<sup>84</sup>

In the context of the high level of informality and poverty that characterize developing countries, there are always people who are left out of protection as they are neither registered in formal mandatory pension schemes nor in voluntary pension schemes because they are not able to contribute or have already reached the retirement age or are disabled. The advantage of a universal non-contributory pension scheme is that it provides the same benefit for every beneficiary, regardless of income, assets or working history. In addition, a universal non-contributory pension is a potential tool to eradicate extreme poverty, to enforce pension rights embodied in international public law instruments, to

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<sup>82</sup> ILO (n 23) , p.XI.

<sup>83</sup> ILO Social Protection Floors Recommendation, 2012 (No.202), para. 3(a).

<sup>84</sup> ILO/OECD, 'Promoting adequate social protection and social security coverage for all workers, including those in non-standard forms of employment' (Paper presented at the 1<sup>st</sup> Meeting of the G20 employment working paper, Buenos Aires, Argentina, 20-22 February 2018), p.6.



increase social security pension coverage and to achieve the sustainable development goals (SDGs).<sup>85</sup>

The introduction of a universal non-contributory pension requires a basic minimum level of administrative and financial capacity and political will. Furthermore, legislation is needed that determines funding mechanisms to guarantee the provision of benefits. It is not always easy to get enough resources to fund a non-contributory pension scheme. However, a non-contributory universal pension scheme has limitations due to different factors: eligible people may not receive the benefits because of lack of information, administrative errors, fear of stigma, etc. Therefore, to make the task easy for the State to achieve universal pension coverage, a combination of non-contributory and contributory mechanisms supported by progressive formalization of the informal activities is suitable for low-income countries.

The following subsection describes pension systems and financing mechanisms with focus on the strengths and weaknesses of defined-benefit and defined-contribution pension systems. Different views are presented from scholars on pension design, particularly the contrasting views that have emerged between the ILO and The World Bank over the last decade.

### **2.3.3. Pension systems and financing mechanisms: Defined-Benefit and Defined-Contribution**

In social security pension schemes, financing is essential to achieve their long-term objectives. The legislation determines who pays, how much and on which basis, through which institution and which financing method. ILO C102 indicates that ‘The cost of the benefits provided in compliance with this Convention and the cost of the administration of such benefits shall be borne collectively by way of insurance contributions or taxation or both in a manner which avoids hardship to persons of small means and takes into account the economic situation of the Member and of the classes of persons protected.’<sup>86</sup>

From the aforementioned statement, it appears that the provision of benefit is based on collective financing. For example, universal coverage is generally financed by general taxation from the government when the objective of the social security system is to guarantee

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<sup>85</sup> Isabel Ortiz, ‘Social protection in the 2030 agenda and global initiatives: ILO Flagship programme on social protection Floors’ (Geneva, 26 October 2016) <<file:///C:/Users/USER/Downloads/54107.pdf>> accessed 20 January 2021.

<sup>86</sup> ILO C102, art. 71 (1); ILO Income Security Recommendation, 1944 (No. 67) para. 26.

the minimum level of income to the entire population. Contributory pension schemes are financed by income on employment in case the objective of the social security system is to replace the salary during the retirement. In most countries, pension systems are mandatory for salaried workers and are contributory under the form of a defined-benefit system financed by employers and employees on equal share, each one financing of 50 per cent.<sup>87</sup> Therefore, the design of a pension scheme has impact on coverage, considering that in contributory schemes, pension benefits are only paid to those who have contributed and in proportion to their contribution.<sup>88</sup>

With regard to the linkage between the contribution and benefits calculation, two types of pensions systems exist: a defined-benefit and a defined-contribution. Most social security institutions in the world manage one or both of the two systems of the social security. Gillion et al. have explored the structure of pensions schemes and point out that while countries structure social security retirement benefits in different ways, in all cases they need to decide the entitlement conditions under which benefits will be paid and the factors that determine the level of benefits.<sup>89</sup> Therefore, in defined-benefit system, the calculation of the contribution and the retirement benefits is based on the remuneration and the period of contribution. The benefit level that is defined in the pension legislation may have no strict relationship with the amount of the contribution actually paid by the contributor during his or her career. One of the advantages of a defined-benefit pension system is that it provides the possibility to adjust pensions benefits from time to time, based on changes in the cost of living as required by ILO Convention, 1952 (No.102).<sup>90</sup> Any change in benefits is subjected to periodical actuarial studies and calculations to ensure financial equilibrium.<sup>91</sup>

However, defined-benefit (pay-as-you-go) pension schemes are exposed to the risk of a decreased labour supply which can be caused by low fertility, decreased working hours, late entrance to the labour market, early retirement and slow productivity growth. Those

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<sup>87</sup> ILO C102, art.71 (2).

<sup>88</sup> Art.18 of Law No. 05/2015 of 30/03/2015 governing the organization of pension schemes, *OG* No. 20 of 18/05/2015.

<sup>89</sup> Gillion (n 13), p.5.

<sup>90</sup> ILO C102, art. 65, para. 10 and Art. 66, para. 8.

<sup>91</sup> ILO C102, art. 71 (3).

financial shortfalls in a pension system must be covered by increasing the retirement age, making other cuts in annual benefits or increasing the contributions.<sup>92</sup>

In a defined-contribution system, workers provide all the financing. The benefits provided at retirement are directly linked to the contributions paid, and the pension income of retired workers depends upon the investment performance of the accounts. In countries such as Bolivia, Chile and Peru, which opted for radical reforms using defined-contribution systems, social security contributions are paid entirely by the employee.<sup>93</sup> The limitation of a defined-contribution system is that benefits may be affected by low performance of investment returns or inflation. Under this system, each individual bears the risk of increased life expectancy relying on their own life time contributions (real or credited), rather than on the contributions of the current generations.<sup>94</sup>

Williamson and Howling investigated pension systems in different countries and found out that most of the countries around the world base their old-age pension programs largely on the pay-as-you-go defined-benefit.<sup>95</sup> Some eastern and southern African countries (former British colonies) adopted a mandatory defined-contribution system (provident funds) while central and western African countries (former Germany and Belgium colonies) adopted a defined-benefit system. Some countries like Uganda, the United Republic of Tanzania and Zambia reformed their pension systems and adopted the defined-benefit system because it has the advantage of ensuring the security of revenue at the retirement.<sup>96</sup> Throughout the 1980s and, more so, the 1990s, pension reforms were implemented in Latin America, Eastern Europe and the Former Soviet Union, in various European Union Member States, with Chile being the first country to legislate privatization of its pension system in 1981. The “Chilean model” evolved as a reform paradigm for Latin America and beyond. However, recently, there is a trend towards closing those funds and converting them to the defined-benefit/pay-as-you go system.<sup>97</sup>

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<sup>92</sup> Neil Gilbert, *Gender and Social Security Reform: What's fair for women?* Vol. 11 (International social security series, Transaction publishers, ISSA 2006), p.9.

<sup>93</sup> Gillion (n 13), p.282.

<sup>94</sup> Gilbert (n 92), p.8.

<sup>95</sup> John B Williamson and Stephanie A Howling, *The notional defined contribution approach to public pension reform: implications for women and low-wage workers* (Technical paper, 2003) *International Journal of Sociology and Social Policy* 23 (12), p.1-18 <<http://www.emeraldinsight.com/journals.htm?issn=0144-333x&volume=12&articleid=850474&show=abstract>> 20 March 2017.

<sup>96</sup> Deborah Kasente, ‘La Situation des femmes et la réforme de la Sécurité Sociale en Afrique’ (2000) *Revue Internationale de la Sécurité Sociale* 53 (3), p. 39.

<sup>97</sup> ILO (n 23), p.31.

### 2.3.4. Contrasting views between the ILO and the World Bank on defined-benefit and defined-contribution pension systems

Over the last decades, contrasting views have emerged between the ILO and The World Bank on the advantage of defined-benefit and defined-contribution pension systems. The World Bank report (1994) supports the reinforcement of the defined-contribution system to the detriment of the defined-benefit system and highlights some advantages of the defined-contribution: It is fairer than the defined-benefit at the level of redistribution between generations. The World Bank indicates that a defined-contribution pension system avoids contributions evasion as it makes the contributors more responsible and faces the economic and demographic risks).<sup>98</sup> In this perspective, during the last decades, the World Bank's work on pension reform has focused on contributory pension schemes with an emphasis on sustainability and has led to efforts to reform pay-as-you-go defined-benefit schemes.<sup>99</sup> The debate on pension reform based on the World Bank approach and the ILO approach has led to the conclusion that five fundamental objectives are necessary to guide the reform of the pension systems: Social acceptability, financial viability, political feasibility, compatibility with economic realities and the situation of labour market, conviviality of the management and of administration.<sup>100</sup>

The ILO has generally opposed the reinforcement of the defined-contribution system to the detriment of the defined-benefit system, arguing that the former system does not provide income security at retirement and does not take into consideration the indexation of pension benefits.<sup>101</sup> The ILO recognizes that there is no single model of social security, that it is up to each country to develop the required protection. Bar and Diamond shared the same idea with the ILO that there is no single best pension design.<sup>102</sup> For this purpose, ILO social security standards offer a range of options and a flexibility clause for the progressive achievement of the objective of the universal coverage and of social risks through adequate benefits levels.

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<sup>98</sup> Gilbert (n 92), p.210; J Turner, 'Régimes obligatoire de retraite à cotisations définies: Progrès ou régression?' (2000) *Revue Internationale de la Sécurité Sociale* 53 (4), p. 32.

<sup>99</sup> World Bank, "Pensions Overview" < <http://www.worldbank.org/en/topic/pensions/overview> > accessed 3 March 2015.

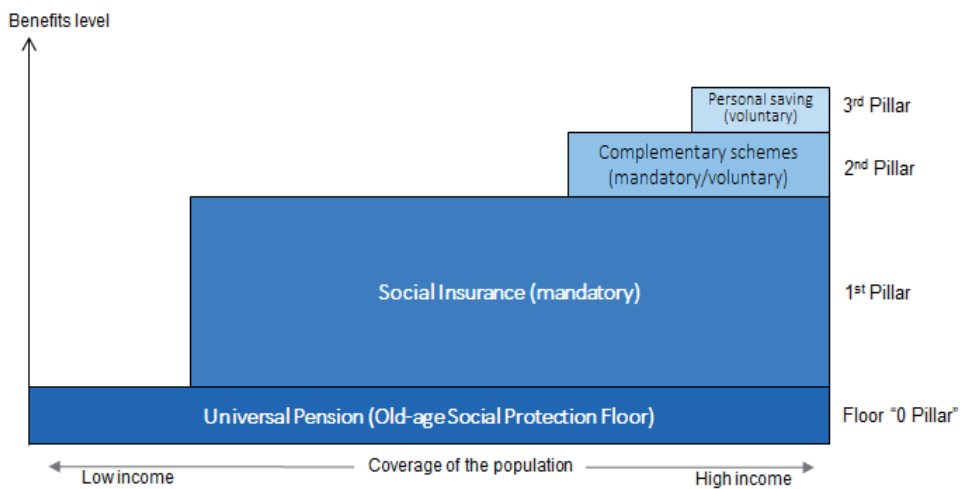
<sup>100</sup> AISS, 'Le point sur la réforme des pensions' (2000) *Revue Internationale de la Sécurité Sociale* 53 (1), p.7.

<sup>101</sup> Robert Holzmann, 'L'approche de la Banque Mondiale quant à la réforme des pensions' (2000) *Revue Internationale de la Sécurité Sociale* 53 (1), p. 35.

<sup>102</sup> Nicholas Barr and Peter Diamond, 'Reforming pensions: Principles, analytical errors and policy directions' (2009) *International Social Security Review* 62 (2), p.5.

They also provide guidance on the design, financing, implementation, governance and evaluation of social security schemes and systems in accordance with a right-based-approach.<sup>103</sup> In this regard, the ILO has developed a Multi-Pillar pension Model which combines a set of the social protection instruments, each of which plays one or more functions, to guarantee the whole range of objectives of the national pension system. The main components of the multi-pillar model based on the ILO principles are illustrated by the diagram in the following subsection, recommended to countries for a well-designed pension system capable of providing a comprehensive social security protection.

### 2.3.5. The ILO Multi-Pillar pension Model



Source:<sup>104</sup>

The ILO Multi-Pillar Pension Model consists of four pillars, namely: Pillar 0 is the Pension Floor (which is non-contributory universal coverage); The first pillar or Social Insurance Pillar (mandatory defined-benefits and contributory); The second pillar or Complementary Pillar (which is a complementary voluntary or mandatory and contributory defined-contribution or defined-benefit); The third pillar or Voluntary Personal Savings Pillar (which is a contributory voluntary private pension) generally managed by a private pension administrator, for those who have the economic capacity to make additional

<sup>103</sup> ILO (n 33), p.79.

<sup>104</sup> ILO, 'The ILO Multi-Pillar pension model: Building equitable and sustainable pension' (2018), Social Protection for All Issue Brief, p.3. <[www.social-protection.org](http://www.social-protection.org)> and [www.ilo.org](http://www.ilo.org) accessed 26 January 2020.

savings.<sup>105</sup> Therefore, to establish comprehensive pension systems, the ILO Multi-Pillar Pension model recommends that countries should not rely on one system. They should have the possibility of combining different social protection instruments, each of which plays one or more functions to guarantee the whole range of objectives of a national pension system.

Most countries, including Rwanda, have established three pillars (the first, the second and the third pillar) which are respectively mandatory and voluntary contributory pension schemes. A limited number of developing countries have established 0 Pillar or The Pension Floor; (which is non-contributory universal coverage). The ILO's policy on voluntary pension schemes (defined-contribution) indicates that the pension systems based on individual accounts such as those usually applied in the second and third pillar are not able to guarantee the principles of social security and should always complement and not replace the first Pillar and the second pillar.<sup>106</sup> Therefore, there is a need to establish 0 pillar (non-contributory universal pension scheme) to guarantee basic income security to all in need in old-age.

### **2.3.6. The Stockholm Initiative**

The relevance of The ILO Multi-Pillar pension Model was emphasized in the *Stockholm Initiative*. In 1996, the International Social Security Association (ISSA) launched the *Stockholm Initiative* under the title "The social security reform debate: In search of a new consensus". The objective was to bring together the often contrasting views of the national and international experts involved in the social security reform debate, in a first phase with a particular regard to public pensions. A broad consensus emerged among the specialists about the need to balance social goals and macroeconomic requirements in all systems.<sup>107</sup> The *Stockholm Initiative's* analysis shows that people relying on individual savings face higher risks in retirement from fluctuating economic conditions than those covered by the pooled risk of public pensions.

ISSA contributed to the research and it presented the consensus on the debate on pension reform, that concluded that it is necessary to establish a pension scheme based on three pillars: the first pillar which is a mandatory public pension scheme based on defined-benefit system/pay-as-you-go system; the second pillar which is a mandatory individual

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<sup>105</sup> ILO (n 23), pp. 18-19.

<sup>106</sup> Ibid., p.7.

<sup>107</sup> Karl Gustaf Scherman, 'A New Social Security Reform Consensus? The ISSA's Stockholm Initiative' (2000) *International Social Security Review* 53 (1), pp. 65-82.

account eventually managed by the private sector based on a defined contribution system and the third pillar which is a voluntary private or professional scheme.<sup>108</sup> It is important to note that these three pillars constitute what is called a “multi-pillar” social security system which offers many advantages. The multi-pillar pension system is also supported by the National Social Security Policy in Rwanda, as it ensures the sustainability of the schemes and the adequacy of pension benefits.<sup>109</sup> The ILO Social Protection Floors Recommendation, 2012 (No.202), which is the most current adopted standards focuses on the principle of universality of protection. Therefore, the ILO multi-pillar pension model is relevant as it includes 0 pillar (which is non-contributory universal).

## 2.4. Conclusions and Discussion

This analysis explored the literature on the legal basis of the right to old-age pension guaranteed by the international public law instruments, which are human rights instruments and international social security standards developed by the ILO. The study observes the power and influence of ILO Conventions on national legislation, where ratified or not, because of Member states’ reporting duty on measures they have taken to give effect to the provisions of certain Conventions or Recommendations.<sup>110</sup>

With its tripartite structure, ILO sets standards that are universal and legally-binding upon ratification, having substantial influence on regional and national social security legislation. Particularly, the study emphasizes the influence of the ILO’s flagship Social Security (Minimum Standards) Convention, 1952 (No.102) in providing international reference and guidance worldwide. It influenced also the implementation of other standards of higher level of protection such as: Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128), its accompanying Recommendation No.131 as well as the ILO Social Protection Floors Recommendation, 2012 (No.202) which focuses on the principle of universality of coverage and adequacy of benefits and defines State responsibility to guarantee by law basic income security in old-age.

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<sup>108</sup>ISSA, ‘Développement et réforme des régimes de retraite de la sécurité sociale: L’approche du Bureau International du Travail’ (2000) *Revue Internationale de la Sécurité Sociale* 53 (1), p.76.

<sup>109</sup>Republic of Rwanda, *National Social Security Policy* (MINECOFIN 2009), p.22 <<http://www.minecofin.gov.rw>> accessed 20 March 2019.

<sup>110</sup> Art. 19 (5. e) of ILO Constitution, 1919.

[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO) accessed 8 October 2020.

The analysis investigated the crucial role of public pensions in guaranteeing basic income security to all in old-age and found which pension model is suitable to a developing country like Rwanda for meeting the international standard level of pension protection. Therefore, this study provides useful literature on the legal framework and academic debate on pension provision, which has been limited to a small portion of the population. It was noticed that in the past, scholars were more interested in exploring the challenge of low coverage of social security pension and rarely commented on the legal implications of international social security standards. The present study focused on the state obligation to give effect to the international standards in national legislation and in practice for the full realization of the right to old-age pension benefits for everyone.

However, despite the impact of the ILO social security standards on regional social security instruments, the analysis noticed a low level of ratification and low social security pension coverage and benefits in Africa. The study observed the strength of the adopted ILO Convention, where ratified or not, due to the process of their adoption through the ILO tripartite structure. The reporting duty imposed on the ILO member States in accordance with art 19 of the ILO Constitution (to report at regular intervals on measures they have taken to give effect to the provisions of certain Conventions or Recommendations) reaffirms the strength of the adopted ILO Convention. While some countries decided not to ratify a Convention, they try to bring their legislation into line with it anyway. The study concludes that when national circumstances allow, ratification of the ILO standards is important as it has positive impact on national legislation. In the following discussion, the study investigates the compatibility of Rwanda's legislation on old-age pension with international social security standards.



## **CHAPTER 3: REVIEW OF RWANDA’S LEGISLATION ON OLD-AGE PENSION AND AN ANALYSIS OF ITS COMPATIBILITY WITH THE ILO’S SOCIAL SECURITY STANDARDS**

### **3.1. Introduction**

Since 1962 Rwanda has established a national pension system as an integral part of its social security systems, managed under a defined-benefit contributory pension system, which is mandatory for employed workers. Different reforms have been undertaken to extend pension coverage leading to the establishment of voluntary defined-contribution pension schemes.

However, the contributory nature of the existing design and the lack of a national legislation guaranteeing basic income security to all in need through non-contributory universal pension schemes, have deprived many people of the social security protection. This makes it difficult to achieve the levels of protection required by international standards namely the ILO Social Security (Minimum Standards) Convention, 1952 (No.102), Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128) and its accompanying Recommendation, 1967 (No.131). These standards provide reference framework on the right to old-age benefits, the way they are guaranteed, accessed, provided and maintained. They are strengthened by ILO Social Protection Floors Recommendation, 2012 (No.202) which requires the provision of basic income security to all in old-age, in national law and in practice. Therefore, this chapter aims to investigate the compatibility of Rwanda’s national legislation with these international social security standards with regard to old-age pension benefit provision, focusing on coverage and benefit levels.

Comprehensive pension coverage exists if there is legislation guaranteeing the right to pensions and its effective implementation. The effective implementation of the legislation can be measured by the number of working age people actually contributing to the pension scheme and the proportion of older persons receiving a pension, either contributory or not, on the basis of a periodical payment as required by international social security standards. In contrast, a non comprehensive social security system not only covers a small number of risks, but also excludes certain groups like informal economy workers. Furthermore, a less comprehensive social security system provides low benefits and low service to beneficiaries. A comprehensive social security system considers the adequacy of benefits as an important aspect of coverage, as it implies the way the benefit levels are calculated, the minimum

period to receive benefit, the way social security systems guarantee at least basic social security and health care for all.

The review of the national legislation and the assessment of its compatibility with international social security standards are necessary to assess whether the universal and legal character of international social security standards are applied in Rwanda's law and practice. Therefore, the analysis of legislation on old-age pension aims to find out key areas and weaknesses of the existing legal framework that deserve further attention. It will be followed by proposals to address the challenge of low coverage and benefits.

Thus, the following discussion explores Rwanda's national legislation on pensions regarding old-age benefits in the light of international social security standards (Section 2) while Section 3 deals with a comparison of Rwanda's legislation on pensions with the ILO international Social Security Standards. Section 4 contains an overall evaluation while Section 5 deals with conclusions and discussion.

### **3.2. Review of Rwanda's national legislation on pensions regarding old-age benefits in the light of international social security standards**

This section investigates how the national legislation of Rwanda guarantees the provision of old-age pension and complies with international social security standards. In a well-designed pension system, the law establishes basic social security guarantee, the national laws and the regulations specify the range, qualifying conditions and levels of the benefits giving effect to these guarantees.<sup>111</sup> Therefore, to realize the right to old-age benefits, social security systems that enhance compliance with international norms and national legal frameworks should be in place. The design of pension systems should be translated in a clear legal framework which sets up basic principles related to the definition of the contingencies to be covered, persons protected, benefit, financing, governance, in conformity with Part V of the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102).<sup>112</sup>

Thus, this section explores the attitude of Rwanda's Constitution regarding the incorporation of international treaties in the domestic legislation and the evolution of the

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<sup>111</sup> ILO R202, II. 7.

<sup>112</sup> Hirose Kenichi, *Pension Reform in Central and Eastern Europe. In times of crisis, austerity and beyond* (ILO 2011) Decent Work Technical Support Team for Central and Eastern Europe, p.31.

pension legislation in Rwanda with a focus on the aspects of reform introduced by the pension law adopted in 2015. It also reviews the structure of the Rwandan population and addresses the coverage gap in pension protection. Furthermore, the section describes the structure of the national pension schemes in Rwanda in comparison with ILO Multipillar-Pension Model. The existing social protection policies in Rwanda are also described and the need to cover “the missing middle” (with reference to persons who have been left out) is also addressed.

### **3.2.1. The Rwanda’s Constitution and the incorporation of international treaties in the domestic legislation**

The Constitution recognizes the importance of incorporation of international treaties and the binding force of international treaties and agreements which have been duly ratified or approved.<sup>113</sup> However, Rwanda has not yet ratified the ILO Social Security (Minimum Standards) Convention, 1952 (No.102) which constitutes the legal foundation of the social security systems, despite Rwanda becoming an ILO member State on 18 September 1962.<sup>114</sup> As a member state, Rwanda has the obligation to provide regular report on the application of adopted Conventions in accordance with article 19 of ILO Constitution.<sup>115</sup>

In accordance with article 51 of the Rwanda’s Constitution of 2003 revised in 2015, the state has the duty within the limits of its means, to undertake special actions aimed at the welfare of the indigent, the elderly and other vulnerable groups. The welfare of the elderly implies the provision of social protection including basic income security. However, the lack of a national legislation guaranteeing basic income security to all in old-age constitutes a constraint to compliance with international social security standards which established the principle of universality of coverage. The existing social protection support is limited to a small proportion of the population in the category 1 of the indigents, currently corresponding to *Ubudehe* category E considered as special category. It must be pointed out that errors of exclusion in targeting the poor prevent many elderly to benefit from social protection support. In contrast, errors of inclusion provide social benefits to people who do not

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<sup>113</sup> Republic of Rwanda, ‘The Constitution of the Republic of Rwanda of 2003 revised in 2015’ Art.168, *OG* No. Special of 24/12/2015.

<sup>114</sup> ILO, ‘Country profile, Rwanda’ < <https://www.ilo.org/dyn/normlex/en/f?p=1000:11003:::NO:>> accessed 21 April 2020.

<sup>115</sup> ILO, ‘ILO Constitution’, Art 19,5 (e)

<[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:1546169504103::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:1546169504103::NO:62:P62_LIST_ENTRIE_ID:2453907:NO)> accessed 26 August 2021.

deserve.<sup>116</sup>This happens when some households are excluded from the categories of social benefits beneficiaries, while their neighbours who may be in very similar situation are included.

### **3.2.2. The evolution of the pension legislation in Rwanda and the particular aspects of the current 2015 pension legislation**

The first pension systems date back to the colonial era when Rwanda was under Belgian colonial rule. During that period, social security was managed by two organizations set up by the Statutory Orders of 1<sup>st</sup> August 1949 for Occupational hazards and that of 6<sup>th</sup> June 1956 for pensions (retirements) and was limited to few workers.<sup>117</sup> Upon achieving independence on 1 July 1962, Rwanda enacted the Social Security Law of 15 November 1962, which provided for the creation of *Caisse Sociale du Rwanda* (The Social Security Fund of Rwanda), a public institution guaranteed by the State and responsible for managing both Occupational hazards and Pension schemes. Pension schemes were organized as a compulsory savings schemes (defined-contribution) guaranteeing benefits based on contributions and related interests.<sup>118</sup> This pension scheme proved unsuitable and was abandoned in 1974 in favour of a defined-benefit scheme mandatory for employed workers, governed by the Decree law of August 22/1974 concerning organization of social security.

Different pension reforms were undertaken to improve social security systems leading to the adoption of other legislations such as the Law n° 06/2003 of 22/03/2003<sup>119</sup> modifying and completing the decree law of August 22.1974 concerning organization of social security and the current Pension law No.05/2015 of 30/03/2015 governing the organization of pension schemes for employed workers in public and private sector. The pension law of 2015 provides the possibility for self-employed to adhere to public pension and the possibility for private insurance companies to manage private pension schemes on

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<sup>116</sup>Nasra Bishumba, 'Citizens demand for special category of Ubudehe' *The New Times* (Kigali, 04 September 2019) < <https://www.newtimes.co.rw/news/citizens-demand-special-category-ubudehe>> accessed 11 November 2021.

<sup>117</sup> CSR, 'Getting to know better the National Social Security Fund of Rwanda (Memorandum)' (1999) *Solidarité-Nta Mugabo Umwe* 13, Revue Semestrielle de la Caisse Sociale du Rwanda, p.36.

<sup>118</sup> François-Xavier Ngarambe, 'Social security in Rwanda: Overcoming indifference' (2003) *International Social Security Review* 56 (3-4), p11.

<sup>119</sup> Law No.06/2003 of 22/03/2003 modifying and completing the decree law of August 22.1974 concerning organization of social security, *OG* No.12bis of 15 June 2003.

voluntary basis to be licensed by the National Bank of Rwanda. The Bank identified the existence of a limited number of private pension schemes.<sup>120</sup>

#### ***A. The major reform introduced by the Rwanda's Pension Law adopted in 2015***

The major reform introduced by the Rwanda's Pension Law adopted in 2015 is based on five particular aspects: The increase of the retirement age from 55 years to 60; the increase of the period used as the basis for calculating the total average monthly earnings received by employee during the last five (5) years, which was previously three years (3) preceding the date of pension entitlement, serving the computation of old-age pension benefits<sup>121</sup>; the separation of the Pension schemes legislation from the Occupational hazards legislation which were combined in one legislation since 1962; the recognition of the possibility for authorized financial institutions to establish complementary pension schemes<sup>122</sup> and the increase of maximum age and contribution base for self-employed who decide to participate in mandatory pension schemes, initially established for employed workers. In this regard, the pension law of 2015 makes improvement by increasing the maximum age (from 45 to 50 years old) for right to membership for self-employed people who were not previously member of pension scheme.<sup>123</sup>

In addition, contribution base for the adhesion of the self-employed to public pension scheme, which was previously limited to a low ceiling of one hundred four thousand Rwandan francs (Rfw 104,000) has been increased. Under the 2015 pension law, the salary used as the basis for calculating the contribution shall not be less than the base salary and may not exceed one hundred and thirty per cent (130%) of final salary used as the basis for calculating contributions. This salary cannot increase by more than thirty per cent (30%) every three (3) years.<sup>124</sup> This reform helped to increase the number of affiliates to pension schemes.

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<sup>120</sup> National Bank of Rwanda, 'Private pensions schemes service providers', <<https://www.bnr.rw/index.php?id=196>> accessed 18 July 2020.

<sup>121</sup> Art.19 of law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>122</sup> Art.35 and 37 of law No .05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>123</sup> Art.5 of law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No. 20 of 18/05/2015.

<sup>124</sup> Art.7 of law No.05/2015 of 30/03/2015 governing the organization of pension in Rwanda

Previously, the Ministerial Order No.1424/06 of 27 October 1986 determining modalities of affiliation of self-employed people to pension schemes (art.5),<sup>125</sup> required that the salary used as the basis for calculating the contribution must neither be less than the legal minimum wage (which was considered Rwf 100 a day translating into Rwf 2600 a month at that time) nor more than forty (40) times that amount of salary.

### ***B. Pension coverage extension through Long-Term Savings Scheme ‘EjoHeza’***

While in Rwanda health insurance is mandatory for all residents, the participation in pension scheme is only mandatory for employed workers with a regular and predictable income. Due to the limited social security pension coverage, an innovative approach for pension coverage extension was introduced in 2017 with the adoption of the Law No.29/2017 of 29 June 2017 establishing a *Long-Term Savings Scheme* and its organization, with the aim to extend pension coverage to informal workers. This is a voluntary scheme for informal economy workers, commonly known as (LTSS)/*EjoHeza*, which is a fully funded national public pension and savings scheme.

Despite having the characteristics of a complementary scheme, as it is based on voluntary affiliation, *EjoHeza* is the only pension scheme to which many people have easy access. However, the voluntary nature of the scheme implies the absence of legal obligation to adhere to the scheme, which makes the implementation process difficult to achieve universal coverage envisaged by the international social security standards. As detailed in chapter 4 of this study, the absence of legal obligation to adhere to the *Long-Term Savings Scheme* implies the lack of penalties for those who do not register and those who register but fail to pay regular contributions until their reach retirement age. As a consequence, the level of coverage is affected and benefits are reduced and depend on investments performance. The international social security standards require that benefits should be sufficient to maintain the family of the beneficiary in health and decency.<sup>126</sup>

### ***C. Coverage gap in pension provision associated with labour force participation***

The population of Rwanda is still young and largely rural with limited capacity to find productive jobs with regular and predictable income to participate in the pension schemes. Data from the Labour Force Surveys (LFS) 2020 show that the labour force

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<sup>125</sup> Ministerial Order No.1424/06 of 27 October 1986 determining modalities of affiliation of self-employed people to pension schemes, *OG* No. 24, 1986.

<sup>126</sup> Art.67 of ILO C102.

participation occupies 56.4% and the majority of employed population are self-employed engaged in substance agriculture (55.3%) and women are majority in informal economy. In 2020, the unemployment rate stood at 17.9% and was the highest since 2017. It was higher among females (20.3 per cent) than among males (15.9 per cent) and higher among young people (22.4) than among adults (14.1 per cent), higher among urban people (18.1 per cent) than among rural people (17.7 per cent).<sup>127</sup>

The analysis of the experience of Rwanda in pension protection for older persons shows that the pressure is not a result of the ageing of the population, since older people aged 60 years and above represents 5.1 per cent of the Rwandan population.<sup>128</sup> Gaps in pension protection are originating from an accumulation of harmful exposures and limited opportunities over the life course.<sup>129</sup> These harmful exposures include lack of proper schooling and low access to formal employment, gender inequalities, which result in poverty and vulnerability that hurt from a young age to adulthood and old-age, and the continuation of work by many aged persons, mainly in the informal economy beyond their productive age.

### **3.2.3. Rwanda's Pension Pillars in comparison with the ILO Multi-Pillar Pension Model**

The Rwanda's pension system is based on three Pension Pillars: The 1<sup>st</sup> Pillar or Social Insurance Pillar is a mandatory defined-benefit which is a contributory public pension scheme managed by a public institution (RSSB). The 2<sup>nd</sup> Pillar or Complementary Pillar is a complementary voluntary and contributory defined-contribution named *Long-Term Savings Scheme* commonly known as *EjoHeza*, also managed by a public institution (RSSB). There is also a 3<sup>rd</sup> Pillar or Voluntary Personal Savings Pillar which is a contributory voluntary private pension generally managed by private pension administrators such as financial institutions (mainly commercial banks and insurance private companies), for those who have the economic capacity to make their additional savings.<sup>130</sup>

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<sup>127</sup>National Institute of Statistics of Rwanda, *Labour Force Survey Report 2020*, March 2021 <<https://www.statistics.gov.rw/publication/labour-force-survey-annual-report-2020>>, p. ii, accessed 25 August 2021.

<sup>128</sup> Republic of Rwanda, *National Social Protection Policy* (MINALOC June 2020), Kigali, p.27.

<sup>129</sup> Ibid.

<sup>130</sup> Art.35 of law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

### ***A. Lack of Pension Floor (Zero Pillar) : A gap in the Rwanda’s pensions system***

Pillar 0 is called also the Pension Floor, which is a non-contributory universal coverage. Universal non-contributory old-age pension scheme is a publicly financed pension scheme in the sense that beneficiaries are not required to previously pay the contributions to get pension benefits, rather the financial resources come from general taxes or particular goods. This pension model may sometimes be means-tested or universal and subjected to the requirement of age and residency for eligibility.

The relevance of a non-contributory “zero pillar” for poverty alleviation (like the basic pensions) is also recognized in The World Bank report on pension reform. (Old-Age Income Support in the Twenty-first Century: An International Perspective on Pension Systems and Reform) published in February 2005.<sup>131</sup>

The analysis of the structure of pension schemes shows that the established pension pillars in Rwanda are tailored to ILO Multipillar-Pension Model described in Chapter 2. However, the ILO Multipillar-Pension Model is based on the four pillars required to meet international social security standards. It is clear that, the Rwanda’s pension system lacks one important pillar (Pillar 0 called also the Pension Floor).

### ***B. The first Pillar or Social Insurance Pillar: A mandatory defined-benefit pension scheme with a flexibility clause in favor of the self-employed***

Public pension systems in Rwanda are under the state guarantee and comprise mandatory pension schemes and voluntary pension schemes. Mandatory pension schemes are managed under defined-benefits (pay-as-you-go /PAYG).<sup>132</sup> Currently, mandatory pension schemes are regulated by law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda to which all employees in the public and private sector are subjected. Despite the mandatory aspect of the pension law for employed workers, relatively few workers contribute to the pension schemes.

The pension law provides the possibility for other persons to contribute voluntarily to the mandatory pension schemes (established for employees) under certain conditions. Those persons are former employees who were members of a mandatory pension scheme but no

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<sup>131</sup> Robert Holzmann, ‘Global pension systems and their reform: Worldwide drivers, trends and challenges’ (2013) *International Social Security Review* 66 (2), p.11.

<sup>132</sup> Odette Nyiramuzima, ‘Explaining Rwanda’s Pension Structure: The choice of Defined-Benefit System’ (2015) *The RSSB Magazine* 2, A Publication of Rwanda Social Security Board, pp.18-20.



longer meet the conditions for maintaining membership, and on their own initiative and upon written request, may continue to contribute to the scheme. The right to membership in mandatory pension is also recognized for self-employed people who were not previously members, provided they make a request and are not aged over fifty (50) years. Self-employed voluntarily commit to paying a contribution of 6 per cent of their declared monthly income, which is ‘double’ given that for employed workers that contribution is equally shared by employers and employees who pay each 3 per cent of the employee’s earnings.<sup>133</sup> In line with the art.5 of law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, modalities of registration with mandatory pension scheme are determined by Ministerial Order No.004/16/10/TC of 19/4/2016.<sup>134</sup>

However, despite the progress made in making pension legislation flexible to allow the self-employed to adhere to pension schemes, the period requirement (contribution of fifteen (15) years) for eligibility to periodical payment of pension benefits may be high and very few self-employed manage to retire with regular or complete benefits.

### ***C. The second Pillar or Complementary Pillar: Voluntary public pension schemes***

In an effort to extend pension coverage to the informal economy workers, Rwanda introduced a public pension and savings scheme with a voluntary nature, designed to be accessible and affordable. Therefore, in 2017 Rwanda adopted Law No.29/2017 of 29 June 2017 establishing the *Long-Term Savings Scheme* and determining its organization with the aim to extend pension coverage to the informal economy. The *Long-Term Savings Scheme* is commonly known under the popular name “*EjoHeza*” which means a brighter future.

Despite the effort made by Rwanda to establish public mandatory pension schemes for employees and voluntary pension schemes for informal economy workers, the coverage remains low as the existing pension schemes only have a contributory character and are suitable for employed workers with regular and predictable incomes. In addition, voluntary pension schemes are characterized by the absence of a legal obligation for the unemployed population to participate in pension schemes.

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<sup>133</sup> Presidential Order No.009/01 of 10/05/2016 determining contributions rate to mandatory pension scheme, *OG* No.22 bis of 30/05/2016.

<sup>134</sup> Ministerial Order No.004/16/10/TC of 19/4/2016 determining Modalities of registration with mandatory pension scheme, *OG* No. Special of 05/05/2016.

While formulating policy recommendations aim at extending pension coverage to the unprotected population, the National Social Security Policy of 2009 recommended the establishment of a Provident Fund that provides pre-retirement benefits as defined by the law and it requires mandatory adherence to the Provident Fund for all workers with formal contracts with an employer.<sup>135</sup> According to that Policy, the self-employed and workers in organized groups must adhere to at least one scheme of the third pillar being complementary savings for the retirement managed by RSSB Provident Fund or by Qualified Private Pension Funds. Contrary to the mandatory nature of the Provident Fund recommended by the National Social Security Policy 2009, the Long-Term Savings Scheme ‘EjoHeza’ was established on a contributory basis and has a voluntary nature by opening a savings account with the scheme administrator.<sup>136</sup>

#### ***D. The third Pillar or Voluntary Personal Savings Pillar***

Rwanda’s Pension law of 2015 provides the possibility for authorized financial institutions to manage Personal pension schemes (Personal retirement saving accounts managed under a defined-contribution system) and recognizes that Complementary occupational pension schemes can also be established upon agreement between the employer and the employee.<sup>137</sup>

However, limited private pension schemes are established. Findings from different studies show that voluntary pension schemes based on individual savings accounts are not able to guarantee the principles of social security and should always complement, and not replace Pillar 1 and 2.<sup>138</sup> ILO R202 requires the establishment of a universal non-contributory scheme to guarantee basic income security to all the population which is not covered by the existing contributory pension schemes and reaffirms the relevance of the pre-existing international standards, mainly ILO C102, C128 and R131.

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<sup>135</sup>Republic of Rwanda, *National Social Security Policy* (MINECOFIN 2009), p.26 <<http://www.minecofin.gov.rw>> accessed 20 March 2019.

<sup>136</sup> Art.3 of the Law No.29/2017 of 29 June 2017 establishing *Long- Term Savings Scheme* and determining its organization, *OG* No. Special of 18/08/2017.

<sup>137</sup> Art.35 of law No.05/2015 of 30/03/2015 governing the organization of pension schemes.

<sup>138</sup> ILO (n 23), p.7.

### 3.2.4. Social protection policies in Rwanda: Addressing the need to cover ‘the missing middle’

Despite significant progress in establishing pension systems and social protection policies in Rwanda, a large share of the population is not covered by social security. The reason for exclusion in social protection is simply because non-registered persons in social security schemes are not covered by the applicable legislation and are also facing difficulties in accessing poverty-targeted social protection programmes because they are deemed not to be ‘poor enough’. The excluded categories called a ‘the missing middle’ are often under no legal obligation to join social protection schemes while there is no other alternative of being covered by non-contributory schemes, which are mostly not directly anchored in any legislation.

Even those who are registered in a pension scheme, they have the obligation to comply with the qualifying period of contribution (fifteen (15) years) for the future retirement with periodical payment of benefits. They many fail to meet that requirement due to income insecurity and fall into poverty in old-age.

#### ***A. Poverty-targeted social protection support: Limitations of Direct support provided to the poor and vulnerable people***

The National Social Protection Strategy<sup>139</sup> has been put in place to respond to the requirement of article 51 of the Constitution, regarding the duty of the state to undertake special actions aiming at the welfare of the indigent, the elderly and other vulnerable groups, within the limits of its means.<sup>140</sup> Social protection measures put in place to support vulnerable people include the direct support provided to the poor and vulnerable people by the government, through Vision 2020 *Umurenge* Program (VUP<sup>141</sup>) managed by the Ministry of Local Government.

However, the *Direct support* is limited to a small proportion of the population in the category of the indigents (*Ubudehe* category 1 currently corresponding to category E). Vision

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<sup>139</sup> Republic of Rwanda, ‘National Social Protection Strategy’ (MINALOC 2011 and 2020) <[https://www.minaloc.gov.rw/fileadmin/documents/Minaloc\\_Documents/National\\_Social\\_Protectiion\\_Strategy.pdf](https://www.minaloc.gov.rw/fileadmin/documents/Minaloc_Documents/National_Social_Protectiion_Strategy.pdf)> Accessed 20 April 2020.

<sup>140</sup> Republic of Rwanda, ‘The Constitution of the Republic of Rwanda of 2003 revised in 2015’, *OG* No. Special of 24/12/2015.

<sup>141</sup> Government of Rwanda, *Vision 2020 Umurenge*, An integrated Local Development Program to Accelerate Poverty Eradication, Rural Growth and Social Protection, EDPRS Flagship Document, August 2007 <<https://www.undp.org/content/dam/rwanda/docs/povred/VUP-VISION-2020-UMURENGE-DOCUMENT.pdf>> accessed 29 March 2020.

2020 *Umurenge* Program (VUP) reaches 85,542 households by old persons aged 65 years and above.<sup>142</sup>

The successful support is mainly the medical insurance guarantee (Community-based health insurance/ *Mutuelle de santé*) provided by the government to the indigents on the grounds that medical insurance in Rwanda is mandatory.<sup>143</sup>

### ***B. Ubudehe categorization: The basis for determining eligibility to a range of social benefits***

*Ubudehe* category is the system of classification of the population according to their financial capacity.<sup>144</sup> The naming of *ubudehe* categories was changed from numerical numbers to letters, the new categories being referred to as Category A, B, C, D & E. Special category E is for indigents expected to benefit full state social protection support.<sup>145</sup>

#### **➤ *Ubudehe: A traditional practice evolved into a targeting mechanism***

*Ubudehe* is a traditional practice where people used to sit together to analyse their problems and help each other in problem solving at a local level. *Ubudehe* practice has evolved into a targeting mechanism, used for determining households or individuals' eligibility for a whole range of social benefits and poverty reduction. From 2001, the government of Rwanda designed *Ubudehe* as a policy and approach to increase the level of institutional problem solving capacity at the local level by local government with the participation of citizen, through collective action.<sup>146</sup>

#### **➤ *Ubudehe management and database***

The *Ubudehe* program is currently managed by the Local Administrative Entities Development Agency (LODA) through District and Sector administration. The former was

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<sup>142</sup> Republic of Rwanda, *National Social Protection Policy* (Ministry of Local Government, June 2020), p.28 <[https://www.minaloc.gov.rw/fileadmin/user\\_upload/Minaloc/Publications/Policies/Social\\_Protection\\_Policy\\_Adopted\\_1.pdf](https://www.minaloc.gov.rw/fileadmin/user_upload/Minaloc/Publications/Policies/Social_Protection_Policy_Adopted_1.pdf), accessed 31 August 2021.

<sup>143</sup> Law No. 03/2015 of 02/03/2015 governing the organisation of the Community-based health insurance, *OG* No.15 of 13/04/2015).

<sup>144</sup> *Ubudehe* is a Kinyarwanda word referring to the long-standing Rwandan practice and culture of collective action and mutual support to solve problems within a community. Today, the concept has been translated into a home grown development programme whereby citizens are placed into different categories. These categories inform the level of support families receive through government social protection programmes. These categories have been utilised during the establishment of Long-Term Savings Scheme, an informal sector pension scheme which is a national public savings scheme fully funded.

<sup>145</sup> Julius Bizimungu, 'New *ubudehe* categories: What you need to know' *The New Times*, Rwanda's Leading Daily, (Kigali June 25, 2020); Republic of Rwanda, *National Social Protection Policy* (MINALOC June 2020) p.34.

<sup>146</sup> R Sebates-Wheeler et al., 'Challenges of Measuring Graduation in Rwanda' (2015), *IDS Bulletin* Volume 46 (2),p.2.

initiated by the Ministry of Finance and Economic Planning (MINECOFIN) in collaboration with the Ministry of Local Government (MINALOC) within the context of the Poverty Reduction Strategy (PRSP).<sup>147</sup> It must be pointed out that *Ubudehe* database serves as a reference in social protection programs such as the management of Community-Based Health Insurance and the Long-Term Savings Schemes as well as the social assistance programs.

➤ ***Process of categorization and indicators for the identification of the poor and the poorest***

Every Citizen is registered in *Ubudehe* database which contains data collected at village level, for each and every household, for household Head and household members regarding their living standards (socio-economic condition). Citizens are classified into categories, noting that the poor and the poorest are identified using indicators such as home ownership, livestock ownership, land ownership, lighting source, access to health care, access to education, access to paid employment, etc.

Community members participate not only in data collection but also in data validation, given that they have knowledge of their neighbours. Data from village level are submitted to Cell, Sector and Districts levels for validation and comparison with other existing socio-economic data, and finally they are validated at province level and then consolidated at national level.

On Tuesday, 19 February 2019, the Ministry of Local Government (MINALOC) launched National Consultations on *Ubudehe* categorization Review to gather information from the public countrywide on how to improve *ubudehe* categorization (which comprised four categories 1,2,3,4) and set criteria. Usually, *Ubudehe* categories are reviewed after three (3) years, so as to identify any changes in living standards of citizens.<sup>148</sup> Therefore, the new five *ubudehe* categories are represented by letters A,B,C,D and E; noting that Category A comprises households with the highest income, while E is the category of indigents (the most vulnerable in the society).

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<sup>147</sup> Local Administrative Entities Development Agency (LODA), ‘Ubudehe’, <<https://loda.prod.risa.rw/ubudehe>> accessed 31 August 2022.

<sup>148</sup> MINALOC, ‘MINALOC launches National Consultations on Ubudehe Categorization Review’ <<https://www.minaloc.gov.rw/news-detail/minaloc-launches-national-consultations-on-ubudehe-categorisation-review>> accessed 22 August 2022.

In terms of income security guarantee in old-age, social protection systems have left out of protection other categories of people in need not categorized in *Ubudehe category 1* of indigents (the elderly and other vulnerable groups such as people with a disability). They are not covered by the existing contributory pension schemes and are not classified in the special category of the poor to benefit poverty-targeted social protection support.

The analysis of the existing social protection policies shows that a lack of legislation guaranteeing basic income security to all people in need in old-age exposes them to vulnerability and constitutes a legal constraint on the application of ILO Social Protection Floors Recommendation, 2012 (No.202) as well as achieving specific targets contained within the SDGs and AU Agenda 2063.

### ***C. The need to invest in social protection, guided by the ILO standards***

Universal social protection coverage is at the core of the ILO's mandate, guided by ILO social security standards, including the Social Protection Floors Recommendation, 2012 (No.202).<sup>149</sup> In this regard, the ILO standards aim to provide clear guidance to the countries to implement social protection floors to achieve universal social protection. However, the challenge of low coverage is global and crucial in the poorest countries. Particularly in Africa, the Arab States and Asia, gaps in the coverage and benefits adequacy are associated with significant underinvestment in social protection.<sup>150</sup> For example in Africa, average spending on social protection is 3.8% of GDP and of 2% on health. It is estimated that low-income countries will need to invest an additional 15.9% of GDP per annum to guarantee at least a basic level of social security for all.<sup>151</sup>

The Social Policy Framework for Africa agreed at the AU conference of African Ministers in charge of Social Development held in Windhoek, Namibia on 31 October 2008 has noted that 'Investment in and access to social protection is still low in many countries. Social protection and social security will be built gradually, based on comprehensive longer-

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<sup>149</sup> World Bank Group and International Labour Office. 'Universal Social Protection: Country Cases, Global Partnership for Universal Social Protection USP 2030' (2016), p.2<<https://www.social-protection.org/gimi/gess/RessourcePDF.action?id=55072>> accessed on 4 May 2020.

<sup>150</sup> ILO, *World Social Protection Report 2017-19 : Universal Social Protection to Achieve Sustainable Development Goals*, p.XXIX <[https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_604882.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_604882.pdf)> accessed 4 May 2020.

<sup>151</sup> ILO, *World Social Protection Report 2020-22: Social protection at the crossroad in pursuit of a better future* (2021), p.40<[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_817572.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_817572.pdf)> accessed 5 November 2021.

term national social protection action plans.’<sup>152</sup> Therefore, there is a need to invest in social protection to establish a universal non-contributory pension scheme to compliment contributory schemes to cover the excluded population.

### **3.3. Comparison of Rwanda’s legislation on pension schemes with the ILO Social Security Standards**

This section reviews the provisions of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda in regard to old-age pension with the view to investigate its compatibility with the ILO social security standards, particularly ILO Social Security (Minimum Standards) Convention, 1952 (No.102) and Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128). The analysis focuses on the coverage and benefit aspects in accordance with articles 4 of Rwanda’s Pension Legislation related to persons subject to social security and on article 18 related to entitlement conditions to access old-age pension benefits as well as article 19 related to the computation of benefits. The study compares these national legal provisions with article 27 of ILO C 102 setting the minimum standard levels of the personal scope of protection and article 16 of C128 related to the required minimum level of coverage. In terms of the minimum standard levels of benefit to be provided in old-age pension, the study reviews articles 65, 66 and 67 of C102 and article 29 of C128, related to the level of the benefits in order to investigate the compatibility of the national legislation with these international social security standards.

#### **3.3.1. Personal scope of protection under Rwanda’s pension legislation in comparison with ILO Convention, 1952 (No.102) and Convention, 1967 (No.128)**

The personal scope of pension protection is determined by article 4 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda. The persons subject to mandatory pension schemes are salaried workers governed by the law regulating labour in Rwanda<sup>153</sup>, regardless of nationality, types of contract, duration of the contract and the amount of wages.<sup>154</sup> This means that the persons subject to pension law include temporary and casual workers; professionals and in-service trainees, apprentices. Also are subject to the pension legislation, civil servants, political appointees, government’s

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<sup>152</sup> African Union, ‘First Session of the AU Conference of African Ministers in charge of Social Development’ (Windhoek, Namibia on 27-31 October 2008), p.17

<<https://www.un.org/esa/socdev/cgms/docs/2009/Ghana/au2.pdf>> accessed 8 August 2021.

<sup>153</sup> Law No. 66/2018 of 30/08/2018 regulating Labour in Rwanda, *OG* No. Special of 6/09/2019.

<sup>154</sup> Art. 4 (1) of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

officials, and employees of international organisations and foreign governments residing in Rwanda.

***A. Situation of the membership of the mandatory defined-benefit pension schemes managed by RSSB at 30 June 2019***

In mandatory defined-benefit pension managed by Rwanda Social Security Board, the total contributing members at 30 June 2019 were 553,876 and the number of deferred contributors (which was 846,907) is rising at a faster rate than actives, while pensioners were 41.474.<sup>155</sup> It must be pointed out that few workers make contributions and relatively few elderly receive pensions. Low contribution density has impact on the sustainability of social security and exposes affiliates to the risk of not completing required period of contribution (15 years) to qualify for periodical pension benefits.

***B. Contributory character of pension schemes***

Existing pension schemes have a contributory character and are generally designed for employees in the formal and regulated sectors with regular and predictable incomes. In the informal economy, contribution is difficult to secure and maintaining up-to-date and correct records is administratively complicated when workers are casuals and work irregularly for different employers. In this case, determining pension benefits (conceived as a replacement of income) is difficult because of unpredictable income, considering that the income to be replaced is not easily determined. Even though the pension law is open to all employed workers and to the self-employed, the pension law has limitations for the self-employed with regard to age, considering that those aged over 50 years who were not previously members of pension scheme, are not allowed to adhere voluntarily to a public pension scheme.

***C. Social security number: A legal and technical norm to determine personal scope of coverage***

Different scholars have stressed the importance of the registration in social security issues. Paul-Anthelme considers the personal social security number for a registered member as a legal and technical norm, which is as much a mechanism for surveillance and monitoring

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<sup>155</sup> RSSB, *Rwanda Social Security Board Annual Report and Financial Statements for the year ended 30 June 2019*, p.6 <[https://www.rssb.rw/fileadmin/user\\_upload/Annual\\_Report\\_Financial\\_Statements\\_2018\\_-\\_2019.pdf](https://www.rssb.rw/fileadmin/user_upload/Annual_Report_Financial_Statements_2018_-_2019.pdf)> accessed 2 September 2021.



as it is a necessary instrument for giving effect to social rights.<sup>156</sup> Therefore, a social security number makes it easier to determine the level of coverage because enrolment in social security places the individual in the ranks of those who have a legal right to pension benefits. Goveia explored the issue of non-compliance and addressed related operational challenges, namely error, evasion and fraud. Error is considered as an administrative matter while evasion and fraud are primarily legal matters. The author recommended three generic types of intervention to tackle non-compliance worldwide, which are prevention, detection and deterrence.<sup>157</sup> In the same perspective, the ISSA has developed guidelines to provide a high-level reference point for its members to improve the contribution collection and compliance within social security institutions.<sup>158</sup>

From the analysis of the discussion on the personal scope of the pension protection, it appears that social security institutions should design institutional strategies to make the procedure of registration flexible, increase the number of new members in mandatory pension schemes in order to attain minimum standard levels of protection and to effectively maximize revenue collection, compliance as well as to ensure a flexible procedure for the access to benefits.

#### ***D. The minimum standards of pension coverage set by ILO Convention No.102 and Convention No. 128***

The minimum standard of coverage set by ILO C102 (art.27) is 50 per cent of all employees; or the economically active population forming not less than 20 per cent of all residents with means below a certain limit. ILO Convention No.128 (art.16) increases the level of protection to at least all employees, including apprentices; or categories of the economically active population (forming at least 75 per cent of the entire economically active population); or all residents whose resources are under a prescribed threshold. The Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128) requires the extension of the coverage to persons whose employment is of a casual nature; or all the economically active persons.<sup>159</sup> These social security standards limited the protection to a certain percentage of the population. Therefore, C102 and C128 are strengthened by ILO Social Protection Floors

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<sup>156</sup> Adèle Paul-Anthelme, 'The Social security number: A small device underpinning big systems' (2017) *International Social Security Review* 70 (1), p.3.

<sup>157</sup> Luana Goveia and Anahi Sosa, 'Developing a compliance-based approach to address error, evasion and fraud in social security systems' (2017) *International Social Security Review* 70 (2), p.87.

<sup>158</sup> ISSA, 'ISSA Guidelines: Contribution Collection and Compliance' <<https://www.issa.int/guidelines/ccc>> accessed 23 January 2020.

<sup>159</sup> ILO C128, art.16 (1.a,b).

Recommendation, 2012 (No.202) which emphasizes on the principle of universal coverage and requires governments to establish a national legislation guaranteeing basic income security to all in need in old-age.

In comparison with the minimum level of protection required by ILO C102 and C128, the personal scope of the social security pension protection in Rwanda remains low as the coverage rate falls below 10 per cent as reported by the National Social Security Policy.<sup>160</sup> The National Social Protection Policy reaffirms the limited access to any form of pension.<sup>161</sup>

### **3.3.2. Qualifying conditions and level of old-age benefit provided under Rwanda's Pension legislation in comparison with ILO Convention No.102 and Convention No.128**

#### ***A. Statutory retirement age***

The provision of old-age pension benefit is subjected to qualifying conditions such as reaching the statutory retirement age and compliance with the qualifying period of contribution. The prescribed retirement age is set at sixty (60) years in accordance with Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda. Individuals are eligible for a monthly pension if they have accumulated 15 years of service.<sup>162</sup> Retirement age for a public servant is set at sixty-five (65) years with the possibility of retiring early at the age of sixty (60) upon request to competent authority.<sup>163</sup>

The increase of the retirement age in 2015 as a strategy to maintain long-term financial sustainability of pension schemes (without increasing contribution rate) and to allow more workers to fulfil qualifying period of contribution for the eligibility to periodical pension benefit has become the main policy choice for Rwanda. However, raising the retirement age has been a subject of debate among members of Parliament, Trade Unions and Association of Pensioners in Rwanda who have called for the reduction of early retirement

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<sup>160</sup> Republic of Rwanda, *National Social Security Policy* (MINECOFIN 2009), p.10.

<sup>161</sup> Republic of Rwanda, *National Social Protection Policy* (Ministry of Local Government, June 2020), p.27 <[https://www.minaloc.gov.rw/fileadmin/user\\_upload/Minaloc/Publications/Policies/Social\\_Protection\\_Policy\\_Adopted\\_1.pdf](https://www.minaloc.gov.rw/fileadmin/user_upload/Minaloc/Publications/Policies/Social_Protection_Policy_Adopted_1.pdf)> accessed 31 August 2021. See also Republic of Rwanda, *National Older Persons Policy* (MINALOC 2021), p.9.

<[https://www.minaloc.gov.rw/fileadmin/user\\_upload/Minaloc/Publications/Policies/National\\_Older\\_Policy\\_fin\\_al.pdf](https://www.minaloc.gov.rw/fileadmin/user_upload/Minaloc/Publications/Policies/National_Older_Policy_fin_al.pdf)> accessed 6 November 2021.

<sup>162</sup> Art.18 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>163</sup> Art.85 of Law No. 017/2020 of 7/10/2020 establishing the general statute governing public servants, *OG* No. special of 8/10/2020.

age from the current minimum of 60 years to 55 years, arguing that this would create more opportunities for young graduates to get jobs, while it would allow elderly employees to retire while still relatively energetic.<sup>164</sup>

In accordance with ILO Convention No.102, the prescribed age shall be not more than 65 years. However, the Convention allows a higher pensionable age ‘as may be fixed by the competent authority with due regard to the working ability of elderly persons in the country concerned’.<sup>165</sup>

This study considers that, despite the current need to increase contribution rate in pension scheme, it does not seem so obvious that increases in contribution rate will be much more acceptable by scheme’s members than raising again the retirement age. In practice, actuarial reports recommend that a relatively balanced approach combining moderate gradual changes on the scheme’s parameters (contribution rate, retirement age, number of years of contributions used to determine the average salary for the calculation of the benefit,...) is to be considered as a more promising avenue than one-parameter change, for efficiently addressing the issue of financial deficits. Generally, those changes are not very popular: Participants in the scheme, when asked to share their views, say that they do not like increases in contribution rates, in retirement age,...or any change which seems unfavourable to them. But there must be some change anyway, to address the problem of financial deficits

### ***B. Minimum standard level of old-age benefit***

With regard to old-age benefit provision, reference is made to the level of benefits determined by the ILO C102, which sets minimum standard levels of benefit to be provided while calculating the periodical payments of benefit. These standards levels serve to evaluate to what extent the benefits guaranteed under national laws attain the rates required by ILO C102. Therefore, the periodical payment of benefit is calculated as follows:<sup>166</sup>

- Where the classes of employees or classes of the economically active population are protected, the minimum amount of the beneficiary must correspond for a standard beneficiary (40 per cent) to a given percentage of the previous earnings of the beneficiary or breadwinner. The percentage must be met if the previous earnings of the beneficiary or breadwinner are equal to or lower than the wage of a skilled manual male employee. In

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<sup>164</sup> Emmanuel Ntiringanya, ‘Calls grow to lower retirement age’ *The New Times* (Kigali, 27 March 2018), p.1.

<sup>165</sup> ILO C102, art.26 para. 2.

<sup>166</sup> ILO C102 art. 28 in connection with arts 65,66,67.

addition, a maximum limit may be prescribed for the benefit rate or for the earnings taken into account. ILO C102 is flexible as it allows countries to choose the formula to use in calculating the benefit, provided that a “standard beneficiary” set in article 67 which is a percentage of 40 per cent of reference wage or earnings is reached. The first formula is applied to the social insurance-based system as the one used in Rwanda;

- Where classes of employees or classes of the economically active population are protected, the minimum amount of the beneficiary corresponding to a standard beneficiary (40 per cent) of the wage of an ordinary (unskilled) adult male labourer is required and the benefit is at a flat rate, or

- Where all the residents are protected, the minimum amount of the beneficiary corresponding to a standard beneficiary (40 per cent) of the wage of an ordinary (unskilled) adult male labourer is required.

ILO C.128 sets the high level of benefit at 45 per cent of a reference wage, while Recommendation, 1967 (No.131) increased the level of benefit at a level of at least 55 per cent of the reference wage. The provision of benefits also considers the aspect of adequacy, which depends on the established level of benefits and its capacity to meet people’s needs, as well as the source of funding. To ensure adequacy of pension benefits, they have to be regularly adjusted to prevent erosion of the value of pension benefits overtime.<sup>167</sup> Old-age pensions are drawn for many years after they are initially calculated and awarded. Therefore, their purchasing power and real value over the years have to be ensured to avoid reducing the standards of living of the pensioners. In this regard, the mechanism to protect the value of pension benefits is done through adjustments or indexation.<sup>168</sup> Social Protection Floors Recommendation, 2012 (No.202) strengthens the pre-existing social security standards and requires that social protection floor guarantee levels should be regularly reviewed through a transparent procedure that is established by national laws, regulations or practice.

### ***C. Qualifying period of contribution for periodical payment of old-age benefits***

With regard to a qualifying period of contribution, a full old-age benefit to be discerned from a reduced benefit has to be paid to persons protected who have completed prior to the contingency in accordance with prescribed rules, a qualifying period which may

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<sup>167</sup> ILO C 102, art. 66 (8), ILO C128, art. 29; R131, art.24.

<sup>168</sup> Indexation is the method of adjusting pension benefits taking into consideration the evolution of salaries and market price. This method aims to provide benefits which reflect the real value of contributions and real value of salaries, under the condition that the regular actuarial studies confirm the viability of pension schemes.

be either 30 years of contributions or employment, or 20 years of residence.<sup>169</sup> ILO C102 also determines a qualifying period for a reduced benefit and allows pension benefits to be granted to persons protected who have completed half of the qualifying period for the normal pension. Therefore, a person who has completed only 15 years of contribution or employment qualifies for a reduced pension, where the qualifying period for a full pension is 30 years.

From the analysis of Law No.05/2015 of 30/3/2015 governing the organization of pension schemes in Rwanda, it appears that retirement benefits are a fixed function of past earnings and years of employment. The level of pension benefits for an insured person who contributed for at least fifteen (15) years is fixed at 30 per cent of his/her average salary in the last 5 years of employment. If a person has worked over 15 years, then the pension benefits shall be increased by two (2%) per cent for every twelve (12) months of contribution exceeding one hundred and eighty (180) months.<sup>170</sup> An insured person who reaches retirement age without qualifying for entitlement to monthly old-age benefit receives a lump-sum allowance equal to the average of his/her monthly earnings multiplied by number of twelve (12) months period of insurance. Therefore, a contribution to pension schemes for at least fifteen (15) years is required to be eligible to periodic payments of benefits, which should be increased under the condition that actuarial study conducted at least once every five (5) years, shows positive impact on the financial sustainability of pension schemes.<sup>171</sup>

### **3.3.3. Critical analysis of the qualifying periods for access to pensions and of the multivariable definition of the adequacy of the benefits**

From ILO C102 perspective, a qualifying period can either be a period of contributions or employment, or a period of residence, depending on the scope of the scheme concerned.<sup>172</sup> From the examination of the qualifying periods for access to pension benefits, it appears that the period of contribution and the period of employment are not differentiated. On that issue, Rwanda's pension law is clear in mentioning that those who have access to periodical payment are insured persons who contributed for at least fifteen (15) years. This precision is necessary as persons may be registered in social security for 30 years but fail to pay

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<sup>169</sup> ILO C 102, art.29.

<sup>170</sup> Articles 18 and 19 of Law No.05/2015 of 30/3/2015 governing the organization of pension schemes in Rwanda.

<sup>171</sup> Art.16 of Law No.05/2015 of 30/3/2015 governing the organization of pension schemes in Rwanda.

<sup>172</sup> ILO C102, art. 29.

contributions during the whole period of employment. This occurs in some developing countries with a low compliance by employers and a weakness in enforcement of contributions due to different types of evasion, error or fraud, poor management of the contributors' social security pension individual's account as well as poor Information and Technology (IT) systems.

With regard to the minimum level of benefit set out in C102 (art. 67) which is a rate of at least 40 per cent of the reference wage, Rwanda's pension legislation fixes the pension benefit rate at 30 per cent of the ensured average salary in the last 5 years, for a person who contributed for 15 years, with the particularity of granting the insured person an additional 2 per cent over 15 years of contribution.<sup>173</sup> Therefore, the sufficiency of the benefit depends on the adequacy of the salary and the length of the period of the contribution and a stable employment plays a determinant role in pension participation. For example, under ILO C102, a full old-age benefit is granted over a qualifying period of either 30 years of contributions at the rate of 40 per cent of the reference wage and/or a reduced benefit shall be secured to a protected person who has completed at least a qualifying period of fifteen (15) years of contribution or employment.<sup>174</sup> For example, under Rwanda's pension legislation, old-age benefit equal to 60 per cent of the reference wage is granted to an insured person who contributed for 30 years, which means that Rwanda is in conformity with ILO C102 with regard to the standard minimum level of benefits.

However, pension benefits are inadequate in a way that they are not periodically reviewed following substantial changes in the general level of earnings and changes in the cost of living with a purpose of maintaining the value of benefit over time. The irregular adjustment of pension benefit, the level of the salary and the low minimum wage (due to outdated minimum wage) base on which benefits are calculated, affect the adequacy of benefit, despite that Rwanda's Pension law determines the possibility to increase the pension benefit.<sup>175</sup> Therefore, the adequacy of the benefit is obviously not only limited to the percentage of the replacement ratio but it also implies the quality of the benefit in meeting

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<sup>173</sup> Art.19 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>174</sup> ILO C 102, art.29 para. 2 (a).

<sup>175</sup> Art.16 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

the objective of the pension schemes and in responding to the needs of the beneficiaries as well as providing information to the insured persons about their rights and obligations.

#### ***A. Concrete examples of the level of old-age pension benefits***

The level of pension benefits for at least fifteen (15) years of contribution is fixed at 30 per cent of the insured person average monthly earnings in the last 5 years preceding the date of pension entitlement. The average monthly earnings shall be equal to one sixtieth (1/60) of the total number of months of contribution from the five (5) years preceding the date of cessation of a remunerated activity.<sup>176</sup>

The pension benefits shall be increased by two (2) per cent for every twelve (12) months of contribution exceeding one hundred and eighty (180) months for the insured person who has contributed to the pension schemes for more than 15 years. In case the insured person has contributed to pension schemes less than 15 years, he/she is eligible to a lump sum settlement.

#### **Examples**

In case the person has contributed to pension schemes for 16 years, the level of benefit will be 32 per cent of his/her average monthly earnings in the last 5 years preceding the date of pension entitlement; for 17 years, benefit level will be 34 per cent; for 18 years, benefit level will be 36 per cent; for 19 years, benefit level will be 38 per cent, for 30 years, benefit level will be 60 per cent, etc.

##### ***1. The example of retirement benefits calculation for the person who has reached retirement age (60 years) on January 1, 2021 and who has contributed for 15 years***

For the person who has contributed to pension schemes for 15 years with the gross salary of 500,000Rwf per month (estimated to 700 \$)<sup>177</sup> during the last 5 years of employment (equal to 60 months, from January 2016 to December 2020), retirement benefits will be  $500,000 \times 30\% = 150,000$  Rwf per month. There is also the possibility of increase of benefits, under the condition that actuarial study conducted at least once every five (5) years shows positive impact on the financial sustainability of pension schemes.

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<sup>176</sup> Art.19 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>177</sup> BNR, 'Exchange Rate' <<https://www.bnr.rw/currency/exchange-rate/>> accessed 1 September 2021.

## ***2. The example of retirement benefit calculation for the person who has contributed for 30 years***

For the person who has contributed to pension schemes for 30 years with the same salary (500,000Rwf per month during the last 5 years of employment), retirement benefits will be  $500,000 \times 60\% = 300,000$  Rfw per month.

## ***3. The example of retirement benefit calculation for the person who has contributed for less than 15 years of contribution to pension schemes***

The person is eligible to a lump sum settlement. For example, the person who earned a gross salary of 500,000 Rwf per month during the last 5 years of employment and has contributed for 8 years, his/her lump sum settlement will be  $500,000 \text{frw} \times 8 = 4,000,000 \text{Rwf}$ .

### ***B. Important parameters that affect the adequacy of pension benefits***

It is clear that the access to decent and stable employment, the level of minimum wage, the adjustment mechanisms of pension benefits and the performance of investments are important parameters that affect the adequacy of pension benefits. In Rwanda's pension system, at the time of retirement, the accrual rate looks to be generous compared to the international standards.

However, the accrual rate benefits those who qualify for periodical pensions and those who have long period of contribution than those who have contributed less than 15 years. In addition, the lack of systematic indexation affects the adequacy of benefits as they lose value overtime due to cumulative inflation. Furthermore, consideration of earnings of the last 5 years of employment (while determining the average monthly earnings) without valorization of wages affects benefits adequacy, especially for those who have lost employment some years ago before they reach retirement age.

Particularly, Minimum wage has the implication on minimum pension benefits. Rwanda's pension legislation determines the minimum pension benefits for old-age, disability or early retirement benefits which shall in no way be less than fifty per cent (50%) of the minimum wage determined by an Order of the Minister in charge of labour.<sup>178</sup> The minimum pension and occupational hazard benefits granted to the insured person cannot be

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<sup>178</sup> Art.27 of Law No.05/2015 of 30/3/2015 governing the organization of pension schemes in Rwanda, OG No. 20 of 18/05/2015.



less than thirteen thousand Rwandan Francs (frw 13,000) per month.<sup>179</sup> However, from the analysis, it appears that while determining the Minimum pension benefit, the pension Law of 2015 refers to the Minimum wage while the Minimum wage has not yet been set. Currently, there is no national minimum wage in Rwanda, in most cases it is the minimum wage of 100 Rwf contained in the 1974, 1973 and 1972 labour laws that are referred to legally.<sup>180</sup> Therefore, the lack of a legislation setting a minimum wage affects the level of a salary base on which pension contribution and pension benefits are calculated.

***C. The assessment of the adequacy of the pension benefits: the measurement based on the replacement ratio and the quality of pension benefits***

Different views emerged among scholars on the assessment of adequacy of the benefit, which goes beyond the replacement ratio considered as a proportion of income when in employment. Traditionally, the definition of the retirement benefits adequacy has often focused on one measure alone, which is the replacement ratio and this measurement was considered by different researchers as being too narrow to assess the adequacy of the benefit. Providing a clear definition of adequacy is necessary to set criteria that help to know what an adequate benefit is and how benefits are accessed and maintained and if the way they are delivered is adequate. In this regard, the multidimensional concept of coverage and benefit is generally related to the extent of the population effectively protected, the scope of the protection guaranteed as well as the “depth” of this protection, which can be assessed by the levels of benefits and the quality of the service provided.<sup>181</sup> Therefore, while assessing the adequacy of pension benefits it is important to consider the legal coverage and the effective coverage which imply the aspect of availability, accessibility, appropriateness, meaning that it is important to evaluate how many people are covered, which types of benefits, how much they receive and how easily accessible the services are.

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<sup>179</sup> Art.2 of Presidential Order No.069/01 of 13/04/2018 increasing pension and occupational hazards benefits granted by Rwanda Social Security Board, *OG* No.16 bis of 16/4/2018.

<sup>180</sup> ILO, ‘Decent work country programme for Rwanda 2018-2022’, Memorandum of Understanding between the Government of Rwanda, International Labour Organization (ILO), Centrale de Syndicat de travailleurs au Rwanda, Representing other Federations of Trade Unions and The Private Sector Federation, p.9 <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/---program/documents/genericdocument/wcms\\_674581.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_674581.pdf)> accessed 23/April 2020.

<sup>181</sup> Michael Cichon and Hagemeyer Krzysztof, ‘Changing the development policy paradigm: Investing in a social security floor for all’ (2007) *International Social Security Review* 60 (2), pp.169-196.

Recent ILO Social Protection Report 2020-22 has emphasized on the relevance of legal reform of pension, arguing that in the past ‘Pension reforms have been dominated by an emphasis on fiscal sustainability, at the expense of other principles established by international social security standards, such as the universality, adequacy and predictability of benefits, solidarity and collective financing. These are critical for guaranteeing the income security of older people, which is and should remain the primary objective of any pension system’,<sup>182</sup>

The International Social Security Association provided a meaningful explanation on the concept of coverage indicating that coverage is not only about identifying those who have a legal right to receive benefits; it is also about the effective coverage of those who should contribute and be covered according to the law, as well as about the scope of those benefits and their adequacy.<sup>183</sup> In this regard, a multivariable definition of benefit adequacy considers the aspect of coverage extension at a maximum level by providing benefit and services to the widest number of people, by coverage of the greatest number of risks and by provision of adequate benefits. Therefore, the definition of benefit adequacy goes beyond cash benefit levels and implies meeting other goals of benefits provision including the quality of service, the labour market aims, the security of benefits and the interaction with other stakeholders.<sup>184</sup>

The importance of the adequacy of pension benefit is also expressed in The ILO Social Security (Minimum Standards) Convention, 1952 (No.102) which requires the review of the rates of benefits following substantial changes in the general level of earnings and/or cost of living. In addition, the benefits provided should be sufficient to maintain the family of the beneficiary in health and decency.<sup>185</sup> In the same perspective, ILO Social Protection Floors Recommendation, 2012 (No.202) requires the provision of a basic income security which allows life in dignity and corresponds to the monetary value of a set of necessary goods and services.<sup>186</sup> Under Recommendation, 2012 (No.202) all residents of a nationally

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<sup>182</sup> ILO, World Social Protection Report 2020-22: Social protection at the crossroad in pursuit of a better future (2021), p.22 <[https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms\\_817572.pdf](https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_817572.pdf)> accessed 5 November 2021.

<sup>183</sup> ISSA, ‘Pension system reform’ (2009) *International Social Security Review* 62 (2), p.1.

<sup>184</sup> Simon Brimblecombe, ‘A multivariable definition of adequacy: Challenges and opportunities’ (2013) *International Social Security Review* 66 (3-4), p.171.

<sup>185</sup> ILO C102, art.65 (10) and 66 (8); art.67.

<sup>186</sup> ILO social Protection Floors Recommendation, 2012 (No.202), II.8 (b).

prescribed age have to be covered and benefit in cash or in kind should be provided at a level that guarantees basic income security, so as to ensure effective access to necessary goods and services; prevent or alleviate poverty, vulnerability and social exclusion; and enable life in dignity and the level should be regularly reviewed.

From the analysis of old-age pension benefits provided in first pension pillar in Rwanda, it appears that the adequacy of benefits is measured based on replacement rate, which expresses the percentage of income of ensured person in active period. Therefore, the pension benefits at the entry point in retirement respond to the minimum standards level of benefits set out in ILO C102. However, due to the low level of salaries caused by gap in minimum wage setting, benefits are insufficient as the inflation deteriorates the value of benefit overtime.

### **3.4. The overall evaluation**

The above analysis discussed the regulations for old-age pension in Rwanda in comparison with international social security standards, particularly ILO Social Security (Minimum Standards) Convention, 1952 ( No.102). From the analysis, it appears that the Convention has had a substantial influence in the adoption of other standards setting a higher levels of protection such as Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128) and its accompanying Recommendation,1967 (No.131) as well as the Social Protection Floors Recommendation,2012 (No.202).These social security standards constitute an important international reference. The analysis examined the level of old-age pension protection required by these international legal instruments and the associated academic debates on effect given by the national legislation.The following discussion summarizes the progress that Rwanda has made and the associated problems as well as remedies.

#### **3.4.1. Progress made by Rwanda in establishing social security pension systems and identified gap**

Rwanda has made some progress in recognizing the right to social security envisaged in international human rights instruments and in international social security standards, with the inspiration of ILO C102. Particulary, the national legislation governing pension schemes has been adopted since 1962 as an integral part of the social security legislation.The latest established pension laws are Law No.05/2015 of 30/03/2015 governing the organization of

pension schemes in Rwanda for mandatory pension schemes and the Law No.29/2017 of 29/06/2017 governing a Long-Term Savings Scheme in Rwanda.

However, there has been some limits in the progress to achieve universal coverage as required by the ILO social security standards. The effective implementation of a pension legislation faces challenges in its application due to different types of evasion, the lack of a Ministerial Order for the implementation of the labour law with regard to minimum wage setting, which should facilitate the increase of the level of coverage. More particularly, the lack of a national legislation guaranteeing at least basic income security to all in need in old-age is a challenge for Rwanda to comply with international social security standards.

### **3.4.2. Looking beyond statistical data in assessing the level of pension coverage and benefits: The relevance of the multivariable definition of the adequacy of the benefits**

The analysis of the compatibility of the national legislation with ILO social security standards, particularly C102 and C128 and the associated academic debates identified the unique nature of these standards: they quantify in statistical terms the basic protection by setting the minimum coverage of the population and the levels of benefits to be provided by social security schemes in respect to the nine social risks covered by nine branches of the social security, including old-age benefit which is the focus of this study.<sup>187</sup> Therefore, the comparison of the minimum level of coverage sets in ILO standards C102 and C128 with the personal scope of Rwanda's pension legislation found out that Rwanda has not yet achieved the required level of coverage and this situation also affects the adequacy of the benefit provided and the sustainability of pension schemes.

From the analysis, it appears that in terms of the minimum level of old-age benefit, the rate of the benefit is compatible with C102. However, the adequacy of the pension benefit is only limited to the level of replacement ratio while there are other factors to be considered as well. For example, the low level of the personal coverage and the evasion of contributions as well as the low performance of investments affect the sustainability of pension schemes, which is the condition to ensure a periodical adjustment of the benefit.<sup>188</sup> In addition, the lack of updated minimum wage and gender inequalities in labour market affects the contribution

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<sup>187</sup> The nine Branches of social security are: Medical care, Sickness Benefit, Unemployment benefit, Old-age benefit, Employment Injury benefit, Family benefit, Maternity benefit, Invalidity benefit, Survivors' benefit.

<sup>188</sup> Art.16 of Law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

level and the adequacy of the retirement benefit calculation. Therefore, to ensure the adequacy of the pension benefit and equity among contributors, the calculation of the pension benefit should consider the valorisation of salaries and regular adjustment of pension benefit in order to maintain the value of the benefit overtime.

While assessing the level of compliance of the national legislation with international social security standards, the analysis revealed the importance of considering the multivaliable definition of adequacy of benefits by looking beyond the quantitative aspect reflected in statistical data on the minimum level of coverage set out by ILO C102 and C128. It means that the compliance of national legislation with the international social security standards implies setting of minimum standard level of benefit in national legislation and in practice. The adequacy of the pension benefits should be ensured through their periodical review following substantial changes in the general level of earnings and or cost of living to maintain the purchasing power of pensioners.

### **3.4.3. Lack of a legislation guaranteeing basic income security in old-age**

An investigation on the level of protection set in the flagship ILO C102 demonstrated that universal access to at least a minimum income security was never codified in ILO social security Conventions. The flagship ILO Convention, 1952 (No.102), limited its protection to a certain percentage of the population with preference for public schemes with a lesser extent for social insurance.<sup>189</sup> Therefore, ILO Social Protection Floors Recommendation, 2012 (No.202) which is the most current adopted ILO social security standard was adopted to fill that gap. The analysis of Rwanda's pension legislation shows that in Rwanda, there is no legislation setting a social security basic income guarantee in old-age to comply with international social security standards. The existing pension schemes are only contributory and they cover people with contributory capacity, capable to fulfill the required period of contribution (fifteen (15) years) to have access to periodical payment of old-age benefit.

Despite that some forms of social protection income support exist for the category of the poor, from the analysis of the existing social protection policies, it appears that a large part of the population lacks income security guarantee in old-age. There are older persons who are not covered in the existing contributory pension schemes, while they are also not classified in the special category of the poor, as they are not 'poor enough' to benefit from

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<sup>189</sup> Art.6 of ILO Convention, 1952 (No.102).

poverty-targeted social protection support. This situation exposes unprotected older persons to vulnerability and constitutes a legal constraint to the application of ILO Social Protection Floors Recommendation No.202. Therefore, a combination of contributory and non-contributory pension schemes is needed to cover the excluded population.

### **3.5. Conclusions and discussion**

Through an analysis of the compatibility of Rwanda's national legislation on old-age pension with international social security standards, it is evident that Rwanda has made progress in establishing public and private pension schemes. However, the review of the national legislation on pensions and the assessment of its application shows that the required minimum standard level of personal coverage has not yet been achieved, considering that the majority of the population is not protected.

The existing pension schemes are only contributory, meaning that the national legislation guaranteeing basic income security to all in need in old-age through universal non-contributory pension schemes is lacking. In addition, for those who receive a pension, the benefits provided to many pensioners are not adequate, despite the generous formula of pension benefit calculation (which generally benefits those who contributed during a long period), given that they do not match the cost of living to maintain the purchasing power of the retired workers. In accordance with the ILO C102, the pension benefit should be periodically reviewed following substantial changes in the general level of earnings and costs of living and should be sufficient to maintain the family of the beneficiary in health and decency.<sup>190</sup>

From the analysis, it appears that the ILO Convention No.102, Convention No.128 and its accompanying Recommendation No.131 constitute an international reference framework on old-age pension benefits provision by determining the way they are guaranteed, accessed, provided and maintained. These standards are the only ILO standards that require the use of statistical indicators for assessing and monitoring whether the minimum levels of protection in terms of persons protected and the benefits provided are reached in conformity with their requirements. Considering that these standards have limitations as they only set the minimum standards and do not cover the whole population to realize the right to social security for everyone, they continue to be relevant, but they are

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<sup>190</sup> Art.67 of ILO C102.

strengthened by Recommendation, 2012 (No.202), which is the most recently adopted ILO social security standard. Therefore, giving effect to international social security standards in law and in practice requires compliance not only based on the legislative conformity in terms of legal coverage but also in terms of quantifiable effective coverage and of the adequacy of benefits.

## **CHAPTER 4: OLD-AGE PUBLIC PENSION IN RWANDA, KENYA AND MAURITIUS IN THE LIGHT OF THE ILO TWO- DIMENSIONAL APPROACH FOR THE EXTENSION OF SOCIAL SECURITY: A COMPARATIVE ANALYSIS**

### **4.1. Introduction**

This chapter presents an analysis of the innovative approaches for old-age pension coverage extension in Rwanda, Kenya and Mauritius compared to the ILO two-dimensional strategy for the extension of social security. This strategy reflects the principles of the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) and the principles established by ILO Social Protection Floors Recommendation, 2012 (No.202). This ILO two-dimensional strategy combines the extension of coverage to all through nationally defined social protection floors with the progressive implementation of higher levels of social security through comprehensive systems. Therefore, the ILO two-dimensional strategy provides clear guidance on the future development of social security at all levels of development in compliance with the international social security standards.

A critical analysis of the innovative legal approaches used by Rwanda, Kenya and Mauritius in old-age pension coverage extension explores their consistency with the ILO two-dimensional strategy. The study also identifies key weaknesses of the existing pension systems in Rwanda, Kenya and Mauritius that need further attention. It also presents similarities, differences and lessons learnt that can serve as a model for other developing countries. Particularly, this study explores the endeavours of Mauritius to achieve universal pension coverage with its *Basic Retirement Pension* (universal non-contributory pension) and gives the reference to some examples from others countries across the world for a large audience.

A comparative legal analysis of Rwanda's social security pension legislation with international social security standards and the comparison with other countries has received little attention. This study fills that gap by a comparison between Rwanda, Kenya and Mauritius. There exists only a limited legal literature about the Rwandan pension schemes,



mainly the *Long-Term Savings Scheme* and there is little available data on its impact to date.<sup>191</sup>

Some scholars have studied the Mauritius universal non-contributory *Basic Retirement Pension* scheme and Kenya's *Mbao Pension Plan*, which is a strategy for pension and savings coverage extension, suitable for the unique nature of the informal sector.<sup>192</sup>

Kenya's *Mbao Pension Plan* has received more attention due to its accessibility and affordability as enrolment and savings are made possible through technological innovations using mobile phones that allow also small contributions.<sup>193</sup> The scheme has some similarities with Rwanda's *Long-Term Savings Scheme*.<sup>194</sup> The scholars share the same idea of persistent low pension coverage in Africa, which was reaffirmed in the ILO's World Social Protection reports.<sup>195</sup> In the rural areas of developing countries, one of the factors contributing to low social security coverage is the high rates of employment in the informal economy, where access to finance is a challenge to the contributory capacity of the unemployed population to participate in pension schemes. Therefore, this study reaffirms the importance of knowledge exchange in ILO member States.<sup>196</sup> The choice of Rwanda, Kenya and Mauritius for comparative analysis was motivated by their innovative approaches for the old-age pension coverage extension.

The chapter is composed of five sections. Section 4.1 introduces the chapter, Section 4.2 explains the relevance of the ILO two-dimensional strategy for the extension of social security coverage for Rwanda, Kenya and Mauritius; Section 4.3 deals with the comparative analysis of the legal approaches to old-age public pensions coverage extension; section 4.4

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<sup>191</sup> UNDP/ILO, *Informality and Social Protection in African Countries: A Forward-looking Assessment of Contributory Schemes* (UNDP 2021) p.78 <<file:///C:/Users/USER/Downloads/SP%20and%20Informality.pdf>>, accessed 18 November 2021.

<sup>192</sup> Lola Okulo, 'RBA Launches Sh 20 Pension Scheme for Informal Sector' (2011), Star (June 29), Nairobi <<https://allafrica.com/stories/201106300044.htm>> accessed 7 January 2020; ISSA, 'Good Practices in Africa. Mbao Pension Plan: A case of the Retirement Benefits Authority. Retirement Benefits Authority' (2011) <[www.issa.int/en\\_GB/africa/gp/-/asset\\_publisher...](http://www.issa.int/en_GB/africa/gp/-/asset_publisher...)> accessed 17 September 2019; Kabare Krystle, 'The Mbao Pension Plan: Savings for the Informal-Sector' (Development Pathways, Working Paper, October 2018) <<https://www.developmentpathways.co.uk/wp-content/uploads/2018/10/Mbao.pdf>> accessed 10 January 2020.

<sup>193</sup> Rose Musonye Kwena and John A Turner, 'Extending pension and savings schemes coverage to the informal sector: Kenya's Mbao Pension Plan' (2013) *International Social Security Review* 66 (2), p.80.

<sup>194</sup> Law No.29/2017 of 29/06/2017 establishing The Long-Term Savings Scheme and determining its organization, *OG* No. Special of 18/08/2017.

<sup>195</sup> ILO (n 150), p.XXIX; ILO, (n 151).

<sup>196</sup> R02-Social Protection Floors Recommendation, 2012 (No. 202), Art. 24 (1).

<[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R202](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202)> accessed 9 January 2020.

discusses comparative dimension of social security pension in other countries across the world; section 4.5 deals with the conclusions and discussion.

#### **4.2.The relevance of the ILO Two-dimensional strategy for the extension of social security coverage for Rwanda, Kenya and Mauritius**

The ILO has developed its two-dimensional strategy to provide guidance on the future development of social security at all levels of development. The two-dimensional strategy for the extension of social security was defined in the Resolution and Conclusion adopted by the International Labour Conference at its 100<sup>th</sup> Session in June 2011 to address the challenge of extending social security coverage.<sup>197</sup>

The strategy is based on a *horizontal dimension* that aims to establish and maintain social protection floors as a fundamental element of the national social security systems. This strategy is in line with the Social Protection Floors Recommendation, 2012 (No.202). The strategy has also a *vertical dimension* that aims to pursue strategies for the extension of social security that progressively ensure higher levels of social security to as many people as possible. This is guided by ILO social security standards, particularly in line with Social Security (Minimum Standards) Convention, 1952 (No.102).<sup>198</sup> These strategies aim at building comprehensive social security systems in line with national priorities, resources and circumstances.

From an ILO perspective, effective national strategies to extend social security in line with national circumstances, should aim at achieving universal protection of the population by insuring at least minimum levels of income security and access to essential health care, which are the floors of social protection. Social protection floors guarantees have a strong normative character as they originate from an international legal instrument which is the ILO Recommendation, 2012 (No.202) concerning social protection floors. The extension of social security protection constitutes one of the four pillars of the ILO Decent Work Agenda. ILO

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<sup>197</sup> ILO, *Social Security for all:Building social protection floors and comprehensive social security systems.The strategy of the International Labour Organization* (2012), p. 1.

<sup>198</sup> *Id.*, p.3.

defined Decent Work as ‘work that not only provides a sufficient level of income but also ensures social security, good working conditions and voice at work’.<sup>199</sup>

The application of a two-dimensional approach in extending social protection promotes decent work and helps to realize the human right to social security and to reduce and prevent poverty, vulnerability and social exclusion, hence to achieve Sustainable Development Goals 1 and 3.

The following discussion explores the ILO approach of guidance and the approach of coverage reflected in a two-dimensional approach that will help to assess their impact on Rwanda, Kenya and Mauritius in applying international social security standards. This discussion focuses on coverage extension mechanisms to supplement the analysis undertaken in chapter 3. That chapter focuses more on the analysis of the effectiveness of Rwanda’s legislation governing mandatory public pension and the importance of applying the ILO standards setting minimum levels of protection. Due to the limitations of contributory pension schemes, the study identifies ILO two-dimensional strategy that includes the ILO approach to guidance and coverage as an important tool to extend coverage to the whole population. This strategy helps to design comprehensive pension schemes that establish non-contributory pension schemes to provide basic income security in old-age to all in need and to improve the existing contributory pension schemes to progressively ensure a higher level of protection.

#### **4.2.1. ILO approach to guidance and coverage**

The ILO two-dimensional approach includes the approach of ILO guidance and coverage. The approach to the guidance of ILO social security standards reviews the normative principles underlying the design of pension schemes and the main trends and policy issues with regard to the coverage and the extension of social security. ILO has developed international standards with a legal and universal character as they affect the existence, the form and the development of social security worldwide.

The two-dimensional strategy reflects the principle of universality of protection set out in ILO Social Protection Floors Recommendation, 2012 (No.202), as the basis for social security development and the foundation of a right-based approach to social security. Even

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<sup>199</sup> ILO, *Decent Work Agenda in Africa 2007-2015*, adopted at the Eleventh African Meeting, April 2007, p.15.

though ILO Recommendation, 2012 (No.202) serves as non-binding guidelines, it is a legal instrument that has power and influence in ILO member states. It provides a clear guidance for developing and maintaining a comprehensive social security system. In this regard, ILO Recommendation No.202 provides ‘flexible but meaningful guidance to Member States in building social protection floors within comprehensive social security systems tailored to national circumstances and levels of development’.<sup>200</sup>

Coverage and benefits levels are important aspects in the design of social protection. Coverage takes into account both legal coverage and effective coverage, reflecting the objectives of the ILO two-dimensional approaches focusing on coverage extension and benefit levels. Ansiliero and Paiva point out that the greater the proportion of employed workers enjoying social protection, the better the system fulfils its basic function.<sup>201</sup> While exploring the design and implementation of public pension systems in developing countries, Bloom and McKinnon, realized that what is often lacking is comprehensiveness in terms of the population covered and of the risks covered and the capacity to offer adequate benefits and quality services in a sustainable manner.<sup>202</sup>

The idea of coverage extension was also emphasized by Gillion et al. who explored the multiplicity of factors influencing coverage extension and argued that the extent of population coverage for social security pensions depends on many factors. The following are particularly significant: the method of financing, the age of the scheme, the level of the economic development, the size of the formal sector, the capacity of social security administration and Government policy.<sup>203</sup> A study conducted by Cichon et al. explained the role of income transfers, also called “benefits” in standard social protection jargon, indicating that income transfers are means rather than ends in themselves as their role is to guarantee a minimum level of consumption for people living in poverty or on the threshold of it or to replace all or part of the income lost as a result of a certain contingency, or to achieve a higher level of income equality.<sup>204</sup>

ILO explored the challenge of limited social security coverage and the need to close the gaps. In June 2011, the 100<sup>th</sup> session of International Labour Conference considered the

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<sup>200</sup> ILO (n 197), p.1.

<sup>201</sup> Graziela Ansiliero and Luís Henrique Paiva, ‘The recent evolution of social security coverage in Brazil’ (2008) *International Social Security Review* 61 (3), p.2.

<sup>202</sup> Bloom (n 78),p.3.

<sup>203</sup> Gillion (n 13), p.8.

<sup>204</sup> Michael Cichon et al., *Financing Social Protection, Quantitative Methods in Social Protection Series* (ILO 2004), p.12.

triple role of social security as a human right, a social and economic necessity and noted the highest priority of closing the coverage gaps and the urgent need to extend coverage through a two-dimensional strategy, with a view to building comprehensive social security systems.<sup>205</sup>

From the analysis of these different researchers' views, it appears that previous researchers focused on the importance of coverage and benefits adequacy without reference to legal norms. This study therefore, proposes a legal approach to complement the existing research and is in line with ILO two-dimensional approach on coverage which considers the legal coverage and the effective coverage. This study shares the same opinion with previous researchers that coverage also implies the adequacy of benefits provided as well as the quality of services offered. From a legal perspective, in old-age pension scheme, social protection of individuals is not limited to the transfer of the money but rather from the transfer of entitlements to a certain level of consumption.

#### **4.2.2. The innovative approaches of old-age pension coverage extension:**

##### **Characteristics and limitations**

Some African countries have adopted innovative approaches to extend pension coverage and the importance of experience sharing of best practices among ILO member States has been reaffirmed in ILO Recommendation No.202.<sup>206</sup> Comparative study of Rwanda, Kenya and Mauritius offers a sample for analysis of how pension rights are guaranteed by national legislation with the influence of ILO social security standards. They have been inspired by ILO social security Standards.

To bring their legislation closer to the ILO Social Security (Minimum Standards) Convention,1952 (No.102) with regard to the contingencies covered, Rwanda, Kenya and Mauritius have established mandatory and voluntary pension schemes, even though these countries have not yet ratified the Convention. The common challenge for Rwanda and Kenya is the low social security coverage, with increasing informal economy not covered in social security.<sup>207</sup> Therefore, Rwanda and Kenya have used a similar approach (with some differences) of coverage extension by introducing voluntary pension and saving schemes

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<sup>205</sup> ILO (n 197), p. 1.

<sup>206</sup> Paragraph 24 (1) of R02-Social Protection Floors Recommendation, 2012 (No.202) <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R202](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R202)> accessed 9 January 2020.

<sup>207</sup> Republic of Rwanda, *National Social Security Policy (MINECOFIN 2009)*, p.10.

designed for informal economy workers. The experience of Mauritius is different as the challenge that led to the adoption of a legal approach to achieve universal coverage, is the pressure of demographic transition that pushed Mauritius to find an immediate solution to the increasing share of the elderly.

### ***A. Rwanda's Long-Term Savings Scheme***

In 2017, Rwanda introduced the Law n°29/2017 of 29/06/2017 governing a Long-Term Savings Scheme (LTSS) 'EjoHeza' into the national social security system to extend coverage to the informal economy workers and to help all Rwandans and foreigners living in Rwanda to have a pension saving scheme. 'EjoHeza' is a national public pension and savings fully funded scheme designed for low-income participants, based on contribution voluntarily given by opening a savings account with a scheme administrator'.<sup>208</sup> All workers in Rwanda may contribute on a voluntary and complementary basis regardless of their income or age.

#### **1. Accessibility, affordability and flexibility**

The particular characteristic of *Long-Term Savings Scheme* lies on the accessibility and affordability as well as the category of membership and Government incentives. Registration for membership and payment of contribution are digital-based and subject to the requirement of having a National Identity Card (ID) and a cell phone which are necessary to enrol and pay the contribution which depends on their financial capacity according to the categorization named "ubudehe".<sup>209</sup> The innovative aspect of the *Long-Term Savings scheme* is its design to enable the adhesion of everyone, including children below the age of sixteen (16) years in the scheme as beneficiary through an account opened by his/her parent or guardian.<sup>210</sup>

Members of the scheme have access to 40 per cent of the accumulated savings and related interests, provided that the remaining amount is not less than four million Rwandan francs (4,000,000 frw) to respond to the needs for housing and education.<sup>211</sup> The amount of pension to be provided at the age of eligibility (55 years) depends on an individual's savings and related interest from investment returns. The member of the *Long-Term Savings Scheme*

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<sup>208</sup> The art. 3 of Law No.29/2017 of 29 June 2017 establishing Long-Term Savings Scheme and determining its organization.

<sup>209</sup> *Ubudehe* category is the system of classification of the population according to their financial capacity.

<sup>210</sup> Art.6 of the law No. 29/2017 of 29 June 2017 establishing Long-Term Savings Scheme.

<sup>211</sup> Art.6 of Ministerial Order No. 001/18/10/TC of 05/12/2018 determining modalities of granting Long-Term Savings Scheme Benefits, *OG* No.50 of 10/12/2018.

is entitled to an allowance equal to twenty-five per cent (25%) of the total amount and the remaining amount is paid monthly over a period of twenty (20) years.<sup>212</sup>

## 2. Government incentives for a member of Long-Term Savings scheme

The other innovative aspects of the *Long-Term Savings scheme* “EjoHeza” are incentives of the Government composed of life insurance (death allowance and funeral expenses) provided to members of the scheme, based on the categorization of the population according to their financial capacity (Category of *Ubudehe*).<sup>213</sup> To motivate people to register to *Long-Term Savings Scheme*, the government provides an incentive of up to 18,000 Rwandan francs a year for subscription in the first three years starting on the date of its official launch on 14 December 2018.<sup>214</sup>

The *Long-Term Savings Scheme* ‘EjoHeza’ shows progress in extending coverage, but the scheme has limitations due to its voluntary nature reflecting the absence of legal obligation to adhere to the scheme. This leads to a low membership of 1,323,054 (as of 20 April 2021) registered since *EjoHeza* creation in 2017.<sup>215</sup> Although the scheme is open to everyone, many vulnerable people lack the contributory capacity to pension schemes.

## 3. Statutory retirement age and its implication

The statutory retirement age fixed at sixty (60) years in mandatory pension scheme differs from the retirement age of fifty-five (55 years) in *Long-Term Savings Scheme*.<sup>216</sup> This can reduce the level of coverage of self-employed who can hesitate to adhere to public pension schemes (mandatory for employed workers but extended to self-employed) governed

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<sup>212</sup> Art.3 of Ministerial Order No. 001/18/10/TC of 05/12/2018 determining modalities of granting Long-Term Savings Scheme Benefits, *OG* No.50 of 10/12/2018.

<sup>213</sup> Art.10 of Ministerial Order No. 001/19/10/TC of 14/01/2019 determining other incentives for the Long-Term Savings Scheme and terms for their administration, *OG* No. 03 of 21/01/2019.

<sup>214</sup> Melis Guven, *Extending Pension Coverage to the Informal Sector in Africa* (Social Protection & Jobs, Discussion Paper, No.1933 July 2019) International Bank for Reconstruction and Development/The World Bank, World Bank Group, p. 35. <<http://documents.worldbank.org/curated/en/153021563855893271/Extending-Pension-Coverage-to-the-Informal-Sector-in-Africa>> accessed 13 January 2020.

<sup>215</sup> Republic of Rwanda, Ministry of Finance and Economic Planning, ‘Budget Framework Paper 2022/2023-2024/2025’ (May 2022), p.16

<<https://www.minecofin.gov.rw/index.php?eID=dumpFile&t=f&f=43987&token=0ab46aca3c209c4a1da4616ff14cb516f6ec6636>>, accessed 15 September 2022.

RSSB, *Rwanda Social Security Board Strategic Plan July 2020-June 2025*, (Report& Publications), p.73 <<https://www.rssb.rw/index.php?id=38>> accessed 1 March 2021.

<sup>216</sup> Art.9 of Law No.29/2017 of 29/06/2017 establishing The Long-Term Savings Scheme and determining its organization, *OG* No. Special of 18/08/2017.

under defined-benefit pension system.<sup>217</sup> This system has the advantage of periodical increase of pension benefits and the totalization of periods of contributions during computation of benefits for former employees who were members of mandatory pension scheme but no longer meet the conditions for maintaining membership.

From the analysis of the *Long-Term Savings Scheme*, it appears that the legislation does not provide information on the duration of the contribution. As a consequence, contributors attaining the statutory retirement age of fifty-five (55) years can apply for benefits and continue to contribute, as the competent authority has not set maximum higher age with due regard to the working ability of elderly persons. This constitutes a gap that will create difficulties to the social security administration with regard to the management of endless operations. This gap may also lead to the speculation in a way that some elderly persons may contribute in a very short time targeting to benefit from the government incentives. For example, there is no legal basis limiting a 90 years old-person to contribute to *Long-Term Savings Scheme* as the scheme is open to everyone regardless the age.

### ***B. Kenya's Mbao Pension Plan***

The *Long-Term Savings scheme* established in Rwanda has some similarities with *The Mbao Pension Plan*, which is a voluntary defined-contribution pension and savings scheme designed for informal sector workers established by the Retirement Benefits Authority (RBA), in Kenya. Kenya's pension system defines four distinct categories of schemes: Public pension comprises the Civil Service Pension Scheme, which exists since the colonial times and provides retirement benefits to all civil servants employed by the government and mandatory Public Provident Fund for employed workers in the formal and informal sectors, managed by the National Social Security Fund (NSSF).<sup>218</sup>

There are also private pensions, The Private Occupational Pension Schemes, which are employment-based with a voluntary nature established by employers for the benefit of

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<sup>217</sup> Article 5 of law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>218</sup> The Republic of Kenya: Law of Kenya, The National Council for Law Reporting with the Authority of the Attorney-General, *National Social Security Fund Act No. 45 of 2013* <<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/97350/115470/F-463813696/KEN97350.pdf>> accessed 8 September 2021.



their employees and the Individual Retirement Benefits Schemes established by corporate institutions, usually insurance companies.<sup>219</sup>

### 1. Design and implementation of the *Mbao Pension plan*

The Kenya's *Mbao Pension plan* is a voluntary retirement savings scheme privately managed and it was piloted in the Nairobi area (the capital city of Kenya) and was extended later to other parts of the country. The Kenya's *Mbao Pension plan* was designed for low-income participants and the scheme uses mobile phones for members' registration and easy access to contribution payment. All workers in Kenya may contribute on a voluntary basis regardless of their income or age, by opening individual savings accounts. The main objective of the scheme was to extend the coverage of the retirement benefits to Jua Kali workers.<sup>220</sup>

Previous research on the performance of Kenya's *Mbao Pension Plan* described it as an innovative programme of saving, suitable for the unique nature of the informal sector. The scheme aims to encourage a savings culture for workers, but it can also be used for savings for other purposes.<sup>221</sup> Kenya's *Mbao Pension Plan* is based on the usage of mobile phones which facilitate participants to easily register and make small contributions anytime and anywhere, at relatively low cost. The International Social Security Association (ISSA)'s paper related to Good practices in Africa, recognized *Mbao Pension Plan* as a good practice and explained that the name " *Mbao*" refers to the amount of 20 Kenyan shillings (KES) which is the minimum daily contribution that a member can make.<sup>222</sup>

The experience of the Kenya's *Mbao Pension Plan* shows that one of the responses to the challenge of low coverage in developing countries is the development of microfinance initiatives, which should increase the contributory capacity of informal economy workers to pension scheme. Clearly, microfinance provides micro-credit to help low-income workers to

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<sup>219</sup> ISSA, 'Mbao Pension Plan: A case of the Retirement Benefits Authority, Good Practices in Social Security' (2011), p. 2 <[www.issa.int](http://www.issa.int)> accessed 7 January 2020.

<sup>220</sup> The term "*Jua Kali*" is derived from two Kiswahili words, *Jua*, meaning sun and *Kali* meaning hot. Those small scale workers eking out their living by manufacturing products and/or providing services in open air under the tropical sun are generally referred to as "*Jua Kalis*" or *Jua Kali* artisans. The *Jua kali* association is an umbrella association of primary artisan's small business association across Kenya.

<sup>221</sup> Lola Okulo, 'RBA Launches Sh 20 Pension Scheme for Informal Sector' (2011), *Star* (June 29), Nairobi <<https://allafrica.com/stories/201106300044.htm>> accessed 7 January 2020; Musonye Kwena & John A Turner, 'Extending pension and savings schemes coverage to the informal sector: Kenya's Mbao Pension Plan' (2013) *International Social Security Review* 66 (2), p.79.

<sup>222</sup> ISSA, 'Good Practices in Africa. Mbao Pension Plan: A case of the Retirement Benefits Authority. Retirement Benefits Authority' (2011) <[www.issa.int/en\\_GB/africa/gp/-/asset\\_publisher](http://www.issa.int/en_GB/africa/gp/-/asset_publisher)> accessed 17 September 2019.

start or improve a business and open micro-savings accounts for their old-age (micro-pensions).<sup>223</sup>

## 2. The impact of withdrawing savings before retirement

Although Kenya's *Mbao Pension Plan* has contributed to the extension of pension coverage to the informal economy and facilitates the investment and savings for participants, it has limitation with regard to the sustainability and the universality of coverage. The possibility for participants to withdraw their contribution or to use their savings as a loan security makes the scheme more like a savings plan rather than a pension plan. As an incentive to register to *Mbao Pension Plan* and to other pension schemes in Kenya, the Retirement Benefits Act was amended to allow participants to assign up to 60 per cent of their accumulated pension or savings accounts to access mortgage facilities.<sup>224</sup> This has an impact on accessibility to the retirement benefit because once the participant uses his/her accumulated pension or savings accounts as a security for a mortgage, he/she cannot access the money.

As a consequence, when he/she will attain retirement age still in a such situation, he/she will lose the right to old age pension benefits. There is clearly a gap in pension coverage for the people who retire between 60-70 years of age without having pension from the contributory schemes, because they are not yet eligible to *Inua Jamii Senior Citizens'* scheme, which is a social security mechanism established in Kenya to provide basic income to all citizens aged 70 and above who are not receiving a civil service pension.<sup>225</sup> The *Inua Jamii* cash transfer programme has enhanced household purchasing power, has increased savings and investments among the beneficiaries and therefore contributed to poverty reduction.<sup>226</sup>

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<sup>223</sup> Musonye (n 221), p. 81.

<sup>224</sup> ISSA (n 223), p. 89.

<sup>225</sup> ILO Social Protection Department, 'Inua Jamii Senior Citizens' scheme, Country Brief (2019),p.1 <<https://www.social-protection.org/gimi/ShowPublications.action>> accessed 23 December 2019.

<sup>226</sup> Simon K Chelugui, 'Brief on Inua Jamii cash transfer Programme', Republic of Kenya, Ministry of Labour & Social Protection, p.11 <<http://www.socialprotection.go.ke/wp-content/uploads/2020/05/BRIEF-ON-INUA-JAMII-CASH-TRANSFER-PROGRAMME.pdf>> accessed 2 February 2021.

From the analysis of *Kenya's Mbao Pension Plan*, it appears that progress has been made to the extent that the scheme helped to develop a culture of saving and may reduce poverty. However, the established voluntary pension and savings schemes in Kenya to complement existing mandatory pension schemes have not responded to the minimum standard levels of social protection in line with international social security standards. Therefore, to ensure that no one is left behind, ILO social security standards, particularly Social Protection Floors Recommendation, 2012 (No.202) reaffirms the principle of universality enshrined in the ILO Constitution and its body of standards, as well as in several UN instruments, including the Universal Declaration of Human Rights article 22 which states that '*everyone, as a member of society, has the right to social security...*'

### ***C. The universal non-contributory basic retirement pension scheme of Mauritius: A model for low-income countries to close the coverage gap***

The experience of Mauritius as one of the few African countries with near complete social protection floor of non-contributory benefit deserves attention. Mauritius, a socialist country, gained its independence in 1968. It has established a non-contributory universal basic retirement pension covering all residents from age of 60 and above, subject to certain residency requirements. Initially, on 21 March 1950 Mauritius introduced a 'basic flat pensions' under the form of a means test to be only temporary to take care of the needs of the elderly population and to be replaced later by a contributory, income-related system of pensions.<sup>227</sup> In 1958, the means test was abandoned and the scheme became universal under the form of non-contributory pension scheme (*Basic Retirement Pension*), financed from the government budget on yearly basis. The scheme became popular and durable and remained even when mandatory contributory schemes were established by the National Pensions Act 44/1976, which began to operate in July 1978. For this reason, some scholars argue that Mauritius ended up with a system of universal age pension by accident, not by design.<sup>228</sup>

#### ***1. Contributory schemes***

Mauritius has also established contributory schemes (publics and privates) in 1976, 1995 and 2012 respectively,<sup>229</sup> which are modelled to the social security schemes envisaged

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<sup>227</sup> Larry Willmore, 'Universal age pensions in developing countries: The example of Mauritius' (2006) *International Social Security Review* 59 (4), p.70.

<sup>228</sup> *Id.*, p. 87.

<sup>229</sup> The National Pensions Act 44/1976 adopted 1976-09-17), Part IV, P.9, Government Gazette, 1976-09-18, Legal Supplement. The National Pensions Act, 1976 provides for both non-contributory (universal) and

in international social security standards. It should be noted that contributions to the National Pensions Fund (NPF) under the National Pensions Schemes ceased on 31 August 2020 (National Pensions Act has been amended). As from 01 September 2020, contributions are paid to the “*Contribution Sociale Généralisée* (CSG)” which is a new system of social contributions introduced by Mauritius to replace the National Pensions Fund (NPF).<sup>230</sup>

## **2. Social Assistance Programmes**

Under the social assistance arm of the social protection programmes for the elderly, the Social Aid Act (1983) provides the following, in view of reinforcing the income security [ILO Social Protection Floors Recommendation, 2012 (No.202)], subject to an income test:<sup>231</sup>

A monthly Income Support for the purchase of rice and flour (to each member of the qualifying household); A monthly Incontinence allowance for medical evidence; One-off grant for purchase of the dentures; A monthly financial grant to Centenarians for the purchase of medicines; A monthly allowance to old-age pensioners living alone and paying rent; One-off gift to centenarians; Helps in kind (free): wheelchairs, spectacles and hearing aids; and Funeral grant on death of the pensioner to the person who has borne the funeral expenses.

It is important to note that pensioners drawing only from the old-age universal pension (BRP) qualify for the above assistance programmes. For others, an income test (as mentioned earlier) must be carried out.

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contributory (social Insurance) pensions but also includes work-related benefits (Industrial Injury Allowances, Disablement Benefit, Survivor’s Pension)

<[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=13649&p\\_country=MUS&p\\_count=667&p\\_classification=15.02&p\\_classcount=83](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=13649&p_country=MUS&p_count=667&p_classification=15.02&p_classcount=83)>, accessed 11 March 2020; The National Savings Fund regulated by The National Saving Act 14/1995,

<[http://socialsecurity.govmu.org/English/Documents/Act/National%20Savings%20Fund%20Act%201995/nsf9\\_5.pdf](http://socialsecurity.govmu.org/English/Documents/Act/National%20Savings%20Fund%20Act%201995/nsf9_5.pdf)> accessed 3 December 2019; Occupational and Private Pension Schemes in Mauritius regulated by The Private Pension Schemes Act No.15 of 2012, Government Gazette of Mauritius No.73 of 21 July 2012

<<https://www.fscmauritius.org/media/1012/the-private-pension-schemes-act-2012.pdf>> accessed 31 December 2019.

<sup>230</sup> Mauritius Revenue Authority, ‘Contribution Sociale Généralisée’,

<<https://www.mra.mu/index.php/business/csg>> accessed 04 March 2021.

<sup>231</sup> The Republic of Mauritius, Ministry of Social Security and National Solidarity, ‘Social Aid’ <<https://socialsecurity.govmu.org/Pages/Department/Social-Aid.aspx>> accessed 10 September 2021.

### 3. Comparison of the Mauritius pension structure with the ILO Multi-pillar Pension Model

The design of Mauritius social security schemes shows that Mauritius has established comprehensive social security schemes, despite that Mauritius has not yet ratified ILO Social Security (Minimum Standards) Convention, 1952(No.102). More particularly, *Basic Retirement Pension* (a non-contributory old-age pension) is the most important component of the pension system in Mauritius financed by the government.<sup>232</sup> Basic Retirement Pension responded to the ILO principle of universality of coverage envisaged in ILO social security standards, given that the non-contributory universal pension (Zero Pillar) established in Mauritius is one of the ILO Multi-pillar pension model explored in chapter two. This approach is legally accepted on the grounds based on the principle that there is no single model of social security.<sup>233</sup> The ILO Social Security Minimum Standards are flexible and recognize that it is up to each country to develop the required protection.

The study found out that contingencies covered are those determined by the ILO Convention No.102 and Mauritius pension pillars are in conformity with the ILO Multi-pillar Pension Model. This Model is characterized by the combination of non-contributory pension schemes with contributory pension schemes.<sup>234</sup>

Among the schemes established in Mauritius, the provided civil service pension is exceptionally generous in comparison with the private sector provision in Mauritius and the level of benefits set by international standards. The civil service pension scheme is a defined-benefit arrangement offering retirement benefits equal to two-thirds of the final salary after 400 months of service (33 1/3 years) with the possibility of the benefit being indexed to earnings after retirement.<sup>235</sup>

From the analysis of Mauritius' experience in social security protection, it appears that by the time Mauritius established *Basic Retirement Pension*, it was not developed but today, Mauritius has characteristics of a developed country as opposed to Kenya and

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<sup>232</sup> National Pension Act 1976 (Act No. 44 of 1976 adopted 1976-09-17), Part IV, 9, *Government Gazette, 1976-09-18, Legal Supplement*

<[https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=13649&p\\_country=MUS&p\\_count=667&p\\_classification=15.02&p\\_classcount=83](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=13649&p_country=MUS&p_count=667&p_classification=15.02&p_classcount=83)> accessed 11 March 2020.

<sup>233</sup> ILO (n 46),p.2 .

<sup>234</sup> ILO (n 23), pp.18-19.

<sup>235</sup> Country profile-Mauritius, p.4 <<http://www.iopsweb.org/resources/MauritiusPensionSystemProfile.pdf>> accessed 31 December 2019.

Rwanda. In July 2020, The World Bank has classified Mauritius as a high-income country with GDP per capita equal to 12.740 USD for the year 2019.<sup>236</sup>

However, the sustainability of pension schemes in Mauritius is threatened by an ageing population and the increase of public expenditure to finance non-contributory benefits provided to all citizens above age 60 as well as the relatively generous civil service pension.<sup>237</sup> Therefore, there is a need for reforms to balance benefits adequacy and the sustainability of Mauritius pension schemes.

### **4.3. A comparative analysis of the legal approaches to old-age public pensions coverage extension in Rwanda, Kenya and Mauritius**

This section compares the Rwanda's *Long-Term Savings Scheme* with the Kenya's *Mbao Pension Plan* and the Mauritius *Basic Retirement Pension scheme*. The study investigates if those innovative approaches have helped to attain the universal old-age pension coverage in line with the international social security minimum standards and identifies similarities, differences and lessons learned from the schemes.

From the ILO perspective, all pension schemes that contribute towards old-age income security are relevant. Their degree of relevance is however gauged by their compliance with ILO standards on social security.<sup>238</sup> This means that the flexible nature of ILO standards leaves the freedom to countries to design their pension systems according to their political and socio-economic situation and to progressively achieve the high level of protection.<sup>239</sup>

However, while countries have the option to design their own pension systems, they are subjected to the reporting duty on the implementation of ILO standards setting the minimum level of protection and to respect certain internationally accepted basic principles. This situation reflects the power of ILO standards adopted by the tripartite ILO constituents, considering that their consensus expresses the universal and legal character. Where ratified,

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<sup>236</sup> World Bank, 'World Bank classifies Mauritius as High-Income Country' (News Release, July 1, 2020) <[https://www.bom.mu/sites/default/files/pr\\_mauritius\\_high\\_income\\_econ\\_classification\\_1.pdf](https://www.bom.mu/sites/default/files/pr_mauritius_high_income_econ_classification_1.pdf)> accessed 18 May 2021; The World Bank, 'GDP per capita (current US\$)-Mauritius' <<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?locations=MU>> accessed 15 October 2020;

<sup>237</sup> Mauricio Soto et al., 'Pension Reforms in Mauritius: Fair and Fast Balancing social protection and Fiscal Sustainability' (*IMF Working Paper WP/15/126*, 2015), p.1, <<https://www.imf.org/external/pubs/ft/wp/2015/wp15126.pdf>> accessed 7 May 2020.

<sup>238</sup> ILO, *Social Protection for Older Persons: Policy trends and statistics 2017-19 (2018)* Social Protection Policy Papers, Paper No.17, International Labour Office-Social Protection Department, p.3.

<sup>239</sup> Old-Age, Invalidity and Survivors' Benefits Convention, 1967 (No. 128) .

the states are legally-bound. However, the adopted standards have influence in non-ratifying states. The ILO has the ‘solemn obligation to further among the nations of the world programmes which will achieve among others, the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care...’<sup>240</sup>

#### **4.3.1. Similarities and differences between the schemes**

From the comparative study, it appears that classical branches of the social security defined by the ILO Convention 102 have been a source of inspiration for Rwanda, Kenya and Mauritius in the establishment of their social security systems. In relation to the ILO two-dimensional approach for the extension of the social security, the common challenge for developing countries is that most social security pension schemes are contributory and generally cover formal sector workers and leave a large number of informal economy workers uncovered. In this regard, the study considers that method of financing is essential to determine the way coverage will be achieved.

##### ***A. Similarities: Limitation of voluntary contributory pension and savings schemes in Rwanda and in Kenya***

Rwanda and Kenya have made some progress in extending the pension coverage and have been inspired by the ILO social security standards while establishing their pension systems. However, the majority of the population remains uncovered. Voluntary pension schemes established in Rwanda (*Long-term Savings Scheme*) and Kenya (*Mbao Pension Plan*) to extend coverage to informal economy workers have in common the aspect of accessibility and affordability. They are digital pension schemes that allow members to register and pay their contribution using mobile phones and their National Identity cards serving as a saving account. These schemes are affordable as they are established to reach small earners.

#### **1. Limited personal pension coverage**

Voluntary pension schemes designed under defined-contribution system like those established in Rwanda and Kenya show a progress in pension coverage extension to low-income participants and in the development of a culture of savings. However, these schemes

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<sup>240</sup>ILO Constitution (Preamble and article 1), *Declaration of Philadelphia, 1944* article III (f); <[https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO)> Accessed 9 June 2021.

have limitations in insuring effective pension coverage and their sustainability faces the challenge of enforcement mechanisms in case of non-compliance. It is clear that in voluntary pension schemes, there is no legal obligation for the self-employed to register to the pension schemes. Therefore, there are no penalties for those who do not register to the schemes or for the registered members who fail to pay regular contributions until retirement age. In case of non-compliance, social security administration uses public education and awareness campaigns through a partnership with central and local government institutions and organizations, including cooperatives and associations to encourage the population to save for their retirement.

Informal economy workers may pay a small contribution or prefer to allocate their low and irregular revenue to immediate needs rather than saving for their retirement. As a consequence, the low period of contribution and the small amount of the contribution impact the adequacy of pension benefits. The need to effectively cover informal economy workers is addressed among eighteen principles (e) set out by ILO Social Protection Floors Recommendation, 2012 (No.202) to be applied by ILO Member States.

## **2. The implication of the withdrawal of savings on the adequacy of pension benefits**

Voluntary pension schemes established in Rwanda and in Kenya have similarity in a way they offer the possibility to withdraw savings and to use a part of the savings as loan security. As per the analysis, the withdrawal of savings before retirement age helps beneficiaries to satisfy their immediate needs but makes these schemes more like a savings plan than a pension plan. Members who withdraw a percentage of their accumulated savings or use their savings as a loan security reduce their future pension benefits. They may also lose the possibility to access regular payment of pension benefits while ILO Convention No.102 requires that the benefit shall be a periodical payment.<sup>241</sup> Therefore, the low rate of pension coverage, the absence of income security guarantee in old-age or the provision of inadequate benefits undermine the achievement of the objective of pension schemes which is social inclusion, eradication of inequalities and poverty and more particularly income redistribution.

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<sup>241</sup> Art.28 of ILO C102.



### **3. Benefits from being in the same geographical zone: The enforcement of pension rights for migrant workers**

Another aspect of similarity is that Rwanda and Kenya are in the same geographical zone, which facilitates the regional integration allowing free movement of persons, goods and services. Kenya and Rwanda are members of the East African Community (EAC), which encourages greater economic cooperation among Member States (Rwanda, Kenya, Burundi, Tanzania, Uganda and South Sudan).<sup>242</sup> The EAC is also a forum to address the challenge of enforcing pension rights for migrant workers with regard to portability of pension benefits. The cross border movement of workers requires the Partner States to find out a legal framework to maintain workers' pension rights through harmonization of legislation or developing pension arrangements that do not hinder free movement of workers.

#### ***B. Differences in social protection mechanisms and in pension structure***

Social security protection systems in Kenya are both public and private, and tax-financed schemes. Kenya has established a special scheme for public servants and a special scheme for the informal sector (*Mbao Pension Plan*) as well as tax-financed cash transfer programme under the name of *Inua Jamii Senior Citizens' scheme*. It provides basic income to all citizens over the age of 70 and above who are not receiving a civil service pension.<sup>243</sup> The *Inua Jamii* Cash Transfer Program targets three categories of vulnerable persons, namely: older persons, orphans and vulnerable children and persons with severe disabilities.

The analysis revealed that there is no specific legal framework on *Inua Jamii Senior Citizens' scheme* as a component of the social protection programme. The scheme finds its basis in the framework for the development of the social protection sector offered by the 2010 Kenyan Constitution and the 2012 National Social Protection Policy. In its article 43 (3), The 2010 Kenyan Constitution recognizes the right to social security for every person and the responsibility of the State to provide appropriate social security to persons who are unable to support themselves and their dependents.<sup>244</sup>

As per the analysis of the Kenyan pension system, due to the fact that official retirement age in Kenya is fixed at 60 in Mandatory individual account and Provident fund

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<sup>242</sup> EAC Partner States, available at *eac.int*, accessed 5 March 2020.

<sup>243</sup> ILO (n 225), p. 1.

<sup>244</sup> The Constitution of Kenya, 2010, published by the National Council for law reporting with the Authority of the Attorney-General available at *www.kenyalaw.org*, accessed 24 December 2019.

scheme, and at 70 for the universal tax-financed scheme (*Inua Jamii Senior Citizens'* scheme), the pension coverage gap remains for persons aged between 60 and 70 years who have not yet been guaranteed a minimum income when they retire. Therefore, to be in conformity with international social security standards, there is a need for Kenya to establish a legislation guaranteeing a non-contributory basic income security to all the elderly with no social security protection. The pension reform should legislate *Inua Jamii Senior Citizens'* scheme and retirement age for *Inua Jamii cash transfer programme* should be reduced from 70 to 60 for the entitlement condition to be in conformity with the retirement age of 60 set for other pension schemes.

Contrary to Kenya, in Rwanda's pension systems, all workers (public and private) are subjected to one pension law and Rwanda does not have a universal pension scheme as explained in chapter 3. The existing social protection mechanisms providing income support to the elderly are limited to a small proportion of the population in the category of the indigents who are classified in *Ubudehe* special category E (expected to benefit full State social protection support).<sup>245</sup>

With regard to the retirement age, in Rwanda there is a difference in retirement age fixed at sixty (60) years in mandatory pension schemes, while in voluntary public pension scheme (*Long-Term Savings Scheme*) the retirement age is fifty-five (55) years.<sup>246</sup> This means that the self-employed may hesitate to adhere to public pension scheme for salaried workers and lose related advantages such as totalization of periods of contribution for self-employed who were previously member of pension scheme.<sup>247</sup>

The study also identified the difference in the categorization of membership as the Rwanda's pension coverage extension approach (*Long-Term Savings Scheme/EjoHeza*) categorizes its members according to their economic status in "*ubudehe*". This categorization serves the basis of the government incentives provision in the first three years starting on the date of its official launch (14 December 2018).

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<sup>245</sup> Julius Bizimungu, 'New ubudehe categories: What you need to know' *The New Times*, Rwanda's Leading Daily, (Kigali June 25, 2020); Republic of Rwanda, *National Social Protection Policy* (MINALOC June 2020) p. 34.

<sup>246</sup> Art.9 of Law No.29/2017 of 29 June 2017 establishing Long-Term Savings Scheme and determining its organization, *OG* No. Special of 18/08/2017.

<sup>247</sup> Art.5 of law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

Another difference is that Kenya's *Mbao Pension Plan* allows the possibility to withdraw all the accumulated savings after one year of saving or the use of savings as loan security while in Rwanda participants are allowed to withdraw a certain percentage fixed at 40 per cent of their accumulated savings and related interests to respond to the needs for housing and education.<sup>248</sup>

#### **4.3.2. Lessons learned and suggestions for legislative reform**

From the comparative analysis of the innovative approaches for old-age pension coverage extension in Rwanda, Kenya and Mauritius, a number of general lessons is drawn as summarized below.

- *Contributory public pension schemes are suitable for employees with regular and predictable incomes.*

Pension legislation provides for mandatory affiliation of employed workers and voluntarily affiliation for self-employed, which means that unemployed population has no legal obligation to join pension schemes. As a consequence, many elderly who have not contributed to pension schemes are excluded from pension protection.

- *The full access to old-age benefits requires the combination of contributory and non-contributory (tax-financed) pension schemes*

The combination of contributory and non-contributory (tax-financed) pension schemes is necessary to achieve universal pension coverage, with the guidance of the ILO two-dimensional approach for the extension of a social security. This ILO approach reflects the principles enshrined in the ILO Social Security (Minimum Standards) Convention, 1952 (No.102) and Social Protection Floors Recommendation, 2012 (No.202) and helps to maintain the level already achieved and to progress toward achieving a universal protection for countries with low coverage.

The implementation of the universal non-contributory pension scheme requires both financial and administrative capacities. Adequate financial and administrative capacities can balance coverage, benefits adequacy and sustainability of non-contributory schemes as well as good performance of the existing contributory schemes. Based on the experience of Mauritius, the universal pension coverage is achievable and is a key to poverty eradication,

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<sup>248</sup> Art.6 of Ministerial Order No. 001/18/10/TC of 05/12/2018 determining modalities of granting Long-Term Savings Scheme Benefits, *OG* No.50 of 10/12/2018.

social inclusion and a global commitment for the realization of Sustainable Development Goals 2030. Therefore, universal pension coverage should be among the government's priorities, considering that realizing international obligation is often considered a matter of political will and of administrative aptitude. To meet the international commitment to progressively achieve universal social security coverage, social security administrators are key actors.<sup>249</sup>

- *Meeting priority needs and designing adapted solutions in accordance with national circumstances*

While, countries have the option to design their own pension systems in accordance with their national circumstances and levels of development, they have to establish comprehensive pension systems guaranteeing at least basic income security to all. The extension of old-age pension coverage to excluded population, mainly the informal economy workers requires identification of their priority needs and different factors that contribute to their vulnerability. Therefore, it is necessary to extend legal coverage and to adapt the legal framework to the needs of uncovered population and to encourage the transition from informal to formal economy.

- *Sharing experience and leaning from best practices among countries*

Exchange of information, experiences and expertise on social security strategies, policies and practices among countries and with the International Labour Office is necessary to build comprehensive pension schemes.

#### **4.4. Comparative dimension of social security pension in other countries across the world**

Over the last decades, reforms of pension programs have been a topic of interest not only in developing countries with low coverage, but also in developed countries. In developing countries, the main problems that lead to the reform of public pension systems are related to coverage extension to excluded population, benefit adequacy and the sustainability of pension schemes, as described in the examples of selected African countries (Rwanda, Kenya and Mauritius) for comparative analysis.

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<sup>249</sup> Katja Hujo, 'Introduction: Reflecting on the human right to social security' (2017) *International Social Security Review* 70 (4), p.5.

The reference to examples from other countries across the world are very relevant and potentially useful for a large audience, given that social security schemes and policies around the world are discussed by dividing the World into six regions: Asia, Africa, Latin America and the Caribbean, the Arab States of the Middle East, Central and Eastern Europe and Central Asia and the countries of Organization for Economic Cooperation and Development (OECD).<sup>250</sup> It must be pointed out that this division of the world is by geographical region, except for the OECD countries, which have as their unifying element that they are the most highly developed economies.

The International Social Security Association (ISSA) implements its activities and promotes social security and supports member institutions through its regional structure (Africa, Americas, Asia and the Pacific).<sup>251</sup>

#### **4.4.1. The experience of other African countries**

The reference to examples from other countries across the Africa is very relevant and potentially useful for a large audience as well, and compliments the comparative study of Rwanda, Kenya and Mauritius.

Significant progress in expanding social protection coverage towards universal pension coverage have been made by a number of African countries, such as South Africa, which has extended social insurance coverage to domestic workers, Algeria and Tunisia (coverage to agriculture workers), Cabo Verde and Cameroon (coverage of workers in small enterprises), Algeria, Cabo Verde and Cameroon (coverage of self-employed workers) as well as Côte d'Ivoire with the adoption of a law establishing a mandatory scheme for self-employed workers, managed by the National Social Security Fund (CNPS). Some other countries like Botswana, Cabo Verde, Lesotho, Namibia, South Africa and United Republic of Tanzania have introduced or expended large-scale non-contributory schemes for children, persons with disabilities and older persons.<sup>252</sup>

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<sup>250</sup> Gillion (n 13), p.19.

<sup>251</sup> ISSA, 'ISSA regional structures' < <https://www.issa.int/regions> > accessed 2 September 2022.

<sup>252</sup> ILO, 'Africa Regional Social Protection Strategy, 2021-2025. Towards 40%-a social protection coverage acceleration framework to achieve the SDGs', International Labour Organization, 2021 p.25, [https://www.ilo.org/africa/information-resources/publications/WCMS\\_828423/lang--en/index.htm](https://www.ilo.org/africa/information-resources/publications/WCMS_828423/lang--en/index.htm), accessed 23 August 2022.

#### 4.4.2. The pension reform in developed countries

The learning from the experience of developed countries is relevant given that they have achieved high level of social protection. It must be pointed out that while pension reform in developing countries generally target universal coverage, the target aspects of the pension reform in developed countries is the retirement age and measures to reduce the deficit of the state pension systems by increasing contribution rates or by adjusting the contributions of the mandatory funded pension systems. A new challenge confronting social security in developed countries is the social security coverage for digital platform workers not covered under existing legislation due to emerging new type of work in the context of the emerging digital economy.<sup>253</sup>

##### *A. Social security and Pension schemes in Countries of Central and Eastern Europe (CEE) and Central Asia*

Pension reform issues are one of the most pressing issues for social security administrations in many of the countries of Central and Eastern Europe (CEE) and Central Asia. Since 2009, the CEE countries have implemented or have been planning pension reforms. Countries like Croatia, Hungary, Bulgaria, Romania, and Poland are adopting defined-contribution system, noting that Croatia and Hungary will increase the normal retirement age for women to 65 years, and Bulgaria and Romania to 63 years by 2030.<sup>254</sup>

It must be noted that in some countries retirement age for men is higher than for women, allowing the former to accrue superior benefits. For example, in China and Bulgaria, normal pensionable age for men is 60 years while for women it is 55 years, 50 (men and women) if engaged in arduous work. Noting also that payments are adjusted according to an index combining local wage and price inflation.<sup>255</sup> In Pakistan retirement age is 60 for men and 55 for women.<sup>256</sup>

With regard to the coverage, over the past two decades, China has witnessed a significant and rapid extension of coverage under both contributory and non-contributory

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<sup>253</sup> ISSA, 'Closing the gap, Global challenges for social security development and innovation' (2019), p.16, available at [www.issa.int/10](http://www.issa.int/10).

<sup>254</sup> Kenichi Hirose, *Pension Reform in Central and Eastern Europe. In times of crisis, austerity and beyond*, ILO, Decent Work Technical Support Team for Central and Eastern Europe, Budapest, 2011, p.8.

<sup>255</sup> Felix Salditt, et al., 'Pension Reform in China' (2008) *International Social Security Review* 61 (3), pp.54-55.

<sup>256</sup> ISSA and SSA, *Social Security Programs Throughout the World: Asia and the Pacific, 2018* (SSA2019) p.200 <https://www.ssa.gov/policy/docs/progdesc/ssptw/2018-2019/asia/ssptw18asia.pdf> accessed 5 september 2022.

schemes, supported by management and administrative transformation and the innovative use of ICT.<sup>257</sup>

### ***B. Social security and Pension scheme in Asia and the Pacific***

The characteristic of this region is the large number of counties former British colonies with no mandatory pension schemes because they have Provident Funds which do not provide replacement income for the length of retirement as pension schemes do. For example the countries like Indonesia, Malaysia and Singapore provide benefits through Provident Fund. The countries less exposed to British influence like The Republic of Korea, The Philippines and Vietnam have set up social insurance pension scheme to cover employees and sometimes also the self-employed.<sup>258</sup>

### ***C. Social security in OECD countries***

Pension reform has been also a great concern over the recent decades in OECD countries, motivated by the fact that OECD countries have the oldest population. This challenge of ageing population has significant implications for fiscal, economic and social policies and it is common to all European countries, influencing pension reforms. For the provision of social security retirement benefits, OECD countries rely primarily on pay-as-you-go defined-benefit scheme.<sup>259</sup> These schemes are affected by the falling of the number of contributors and the increase of receivers, while the fully funded schemes are affected by falling asset values and reduced returns.<sup>260</sup>

The OECD countries spend on average 10 per cent of their Gross Domestic Product on old age retirement benefits exceeding their health care spending.<sup>261</sup> The example of OECD is relevant to developing countries with significant underinvestment (financing gap) in social protection.<sup>262</sup>

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<sup>257</sup> ISSA, 'Social security in the BRICS countries' <<https://ww1.issa.int/brics>> accessed 5 September 2022;

<sup>258</sup> Gillion (n 13 ), p.20

<sup>259</sup> Ibid., pp21-22.

<sup>260</sup> European Commission, 'An Agenda for Adequate, Safe and Sustainable Pensions' (White Paper) COM (2012)55final, p.3 <<https://op.europa.eu/en/publication-detail/-/publication/32eda60f-d102-4292-bd01-ea7ac726b731/language-en#>>.accessed 2 September 2022.

<sup>261</sup> Gillion (13), p.21.

<sup>262</sup> ILO (n 151), p.40.

#### ***D. Social Security and Pension Policy innovations in the United States of America: Example of Brazil, Argentina and Uruguay***

In different regions, some countries have introduced adapted mechanisms for groups of workers that are at particular risk of being exposed to protection gaps, such as part-time workers, temporary workers, self-employed workers and workers with unclear employment relationships and workers on digital platforms, who often share characteristics with the categories defined above. Therefore, adapting legislative frameworks and ensuring compliance is one of adopted policy innovations to recognize their employee status and to close coverage gap.<sup>263</sup>

Countries like Brazil, Argentina, and Uruguay have extended coverage by adapting and simplifying the administration and financing of protection, harnessing the potential of digital innovation. For example, through simplified tax and contribution collection mechanisms (Brazil, Argentina, Uruguay).<sup>264</sup>

#### **4.4.3. Lessons learned**

From the analysis of pension provision in some developing countries and developed countries, it appears that there is difference with regard to the target aspects of pension reform. Social security schemes vary greatly around the world, even within the regions, depending on culture and historical experience, legal systems and level of economic development. Therefore, sharing experience is relevant and potentially useful for both developing countries and developed countries.

#### **4.5. Conclusions and discussion**

Voluntary public pension scheme established in Rwanda (*Long-Term Savings Scheme* 'EjoHeza') and *Mbao Pension Plan* (privately managed) established in Kenya to complement mandatory schemes constitute some progress in increasing the coverage rate and saving capacity. From the analysis of the *Long-Term Savings Scheme*, it appears that pension coverage for informal sector workers remains a priority, due to persistent coverage gaps. The creation of an accessible and affordable public pension scheme, like *EjoHeza* enables informal economy workers to play a key role in creating a mass market for retirement

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<sup>263</sup> ILO, *Extending social security to workers in the informal economy: Lessons from international experience* (2<sup>nd</sup> edn, ILO 2021) p.184 <<https://www.social-protection.org/gimi/RessourcePDF.action?id=55728>> accessed 18 November 2021.

<sup>264</sup> Id. (n 10).



savings and increases the coverage rate. In addition, public education and awareness campaigns through a partnership with central and local government institutions and civil society, used in implementing *EjoHeza* scheme has created general financial and legal literacy.

However, the success of the informal economy pension scheme requires good governance, infrastructure and partnership frameworks to enable mass scale saving. The scheme may encounter technological challenges for registration and payment of contributions as its operations are digital-based, build upon the integration of different IT interfaces. In addition, the enforcement mechanism for voluntary pension scheme is a challenge, given that there is no legal obligation to join the scheme. In this regard, there are no penalties for subscribers who may register and do not respect regular payment of their contributions until they attain old age. The same situation applies to the voluntary affiliation of self-employed to the pension schemes established for the employed workers under the 2015 Pension legislation.

The study concludes that the *Long-Term Savings Scheme* should be reformed to make the scheme mandatory for self-employed with contributory capacity and workers in organized groups and to provide pension benefits for the duration of the contingency (old age). The identified gap is the lack of enforcement mechanism due to the voluntary nature of the *Long-Term Savings Scheme* and the provision of benefits in a limited period of twenty (20) years. This constitutes a challenge for contributors who will live longer, given that the scheme will deliver income security through regular pensions for the elderly until the age of 75 years, considering that the retirement age is fifty-five (55) years.<sup>265</sup> It must be pointed out that the ILO C102 requires that all pension benefits have to be paid in cash as periodic payments for the duration of the contingency.<sup>266</sup>

For the progressive realization of the universality of old-age pension coverage and the provision of adequate benefits, a combination of mandatory pension scheme with voluntary pension schemes and non-contributory universal pension schemes is necessary and achievable, with Mauritius and other countries across the world mentioned in this study, serving as good examples. In the same perspective, public and private pensions and social assistance programmes should be well coordinated.

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<sup>265</sup> Art.3 of Ministerial Order No. 001/18/10/TC of 05/12/2018 determining modalities of granting Long-Term Savings Scheme Benefits, *OG* No.50 of 10/12/2018.

<sup>266</sup> ILO C102, art. 28.

## CHAPTER 5: IMPROVING THE LEGAL FRAMEWORK AND POLICIES OF OLD-AGE PENSION PROVISION IN RWANDA

### 5.1. Introduction

A review of regulatory and policy framework and practices on pensions provision in Rwanda has shown significant challenges in closing coverage gaps for contributory pension schemes, despite the progress made in adopting innovative legal approaches for pension coverage extension. The informal economy has been one of the key areas that need development, given that low pension coverage can be attributed to the voluntary nature of pension schemes established for the fast growing informal economy workers. ILO Recommendation, 2015 (No.204) concerning the transition from the informal to the formal economy highlights the characteristics of informal economy, which are: decent work deficits, the denial of rights at work, inadequate social protection, the absence of social dialogue, among others.<sup>267</sup>

The extension of pension coverage to workers in the informal economy requires the adaptation of legal frameworks and policies which facilitate the realization of the right to old-age benefits for everyone guaranteed by international social security standards. ILO Social Protection Floors Recommendation, 2012 (No.202) provides that social security extension strategies should apply to persons both in the formal and the informal economy and support the growth of formal employment and the reduction of informality.<sup>268</sup> Therefore, the existing scope of legal coverage, which is limited to contributory schemes is not sufficient to achieve effective coverage and to facilitate the transition to the formal economy.

It is also necessary to take additional actions to ensure the effective implementation and enforcement of legislation. The actions to be taken include removing administrative and financial barriers to pension coverage, awareness-raising and building trust and taking into account special needs and circumstances of workers in the informal economy and other vulnerable groups.<sup>269</sup> In addition, legal coverage of the poor and vulnerable groups who do not have access to any other mechanisms of social protection is needed to guarantee a basic level of protection through non-contributory pension schemes.

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<sup>267</sup> R204- Transition from the Informal to the Formal Economy Recommendation, 2015 (No.204), Preamble <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)> accessed 7 May 2020.

<sup>268</sup> ILO R 202, para. 15.

<sup>269</sup> ILO (n 263), p.72.

Thus, this chapter identifies key barriers to the effective application of the legislation and policies on old-age pension benefits provision and looks for effective strategies to strengthen pension schemes, guided by international social security standards.

## **5.2. Barriers to the effective application of national pension legislation and policies**

The low access to public pension benefits is associated with various barriers, including legal barriers and administrative barriers. There are also barriers related to limited awareness or knowledge of social security programmes and barriers related to the disparities between legal systems in the region, that undermine the portability of the pension benefit for migrant workers. All those barriers constitute constraints that reduce the coverage rate and require a different strategy to ensure the full realization of the right to social security guaranteed by the international social security standards.

### **5.2.1. Legal barriers**

Pension legislation determines the persons who have legal rights and entitlement conditions. A number of formal and informal economy workers or self-employed are excluded from pension coverage. This subsection explores legal barriers to the compliance with mandatory pension scheme for employed workers and legal barriers to the extension of pension coverage to self-employed and informal economy workers.

#### **A. Barriers to the employed-workers' registration and payment of contributions in mandatory pension scheme: Employers' non-compliance**

The application of the pension legislation with regard to the registration of all salaried workers in mandatory schemes is not effective, despite the legal obligation of declaring and paying the social security contribution imposed on employers in the public and private regulated sector. Progress has been made in collection of contributions with income taxes to maximize the coverage but some workers are not registered with the social security due to the low enforcement of rules preventing different types of evasion of social security obligations. Public pension systems in Rwanda face the challenge of employers' non-compliance as reported by Rwanda Social Security Board, arguing that it becomes a major problem when a member reaches retirement and his/her contributions are missing, with a consequence of reduced pension benefits.<sup>270</sup>

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<sup>270</sup> RSSB, *RSSB Action Plan Fy 2020-2021*, June 2020, p.8. [https://www.rssb.rw/fileadmin/user\\_upload/RSSB\\_Action\\_Plan\\_2020\\_-\\_2021.pdf](https://www.rssb.rw/fileadmin/user_upload/RSSB_Action_Plan_2020_-_2021.pdf), accessed 25 August 2021.

There are different types of evasion where some employers do not register their employees or report incorrect number of workers where some are registered and have labour contracts, while others are not registered. Employers may also declare low salaries excluding allowances/indemnities or deduct contributions and do not submit the related declarations to the social security institution. This situation exposes individuals to the risk of not complementing required period of 15 years to qualify for periodical pension benefits, reduces the level of coverage and the level of future old-age benefits; hence, undermining compliance with international social security standards.

Rwanda Social Security Board conducts periodical enforcement, audit and inspection in public and private sector in case of non-compliance.<sup>271</sup> However, all employers are not effectively audited. The 2015 Pension law determines total penalties of three per cent (3%) to employer for delay of declaration (1.5%) or remittance of contributions (1.5%).<sup>272</sup> The ISSA has developed guidelines to provide a high-level reference point for its members to improve the contribution collection and compliance within social security institutions.<sup>273</sup> In case of employer's non-compliance, the employee has the right to claim, as explored in the case of *Twagiramungu Telesphore v ECOBANK Rwanda Ltd* and the case of *Twagiramungu François v AKAGERA BUSINESS GROUP LTD*.

### **1. The High Court decision RSOCA0171/15/HC/KIG of 22/04/2016.**<sup>274</sup>

In *Twagiramungu Telesphore v ECOBANK Rwanda Ltd*, RSOCA0171/15/HC/KIG [2016], at the appeal level, on 22/04/2016, the High Court based in Kigali-Rwanda decided on the case of the employer's non-compliance with social security legislation regarding declaration and payment of contributions. When Mr Twagiramungu Telesphore reached retirement age in 2013 he realized the irregularities in his social security contributions for the

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<sup>271</sup> Ministerial Order No.005/16/10/TC of 19/04/2016 determining modalities of forced recovery of contributions arrears under mandatory pension scheme, *OG* No.18 of 02/05/2016.

<sup>272</sup> Art.12 of law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *O.G* No. 20 of 18/05/2015.

<sup>273</sup> ISSA, *ISSA Guidelines: Contribution Collection and Compliance* <<https://ww1.issa.int/guidelines/ccc>> accessed 23 January 2020.

<sup>274</sup> The Judiciary of Rwanda, High Court Decision RSOCA0171/15/HC/KIG *Twagiramungu Telesphore v ECOBANK Rwanda Ltd* [2016]

<[https://www.judiciary.gov.rw/uploads/tx\\_publications/law\\_d7c6beba6c2283f4ef1e8cc43783f3201469522852.pdf](https://www.judiciary.gov.rw/uploads/tx_publications/law_d7c6beba6c2283f4ef1e8cc43783f3201469522852.pdf)> accessed 20/09/2021.

period worked in Burundi (since 1/7/2008 until July 2011) where he was transferred for a short period by his employer ECOBANK Rwanda Ltd. Therefore, he addressed the issue to his employer (ECOBANK Rwanda Ltd) who refused to comply arguing that Mr Twagiramungu's missing social security contributions should be paid by ECOBANK Burundi Ltd in the social security institution of Burundi (*Institut National de Sécurité Sociale* (INSS)) because he was seconded to work for the same enterprise in another country (Burundi) for a period exceeding twelve (12) months. This argument was supported by the Court in first instance in court decision RSOC Bis 0025/15/TGI/NYGE of 30/11/2015.

At the appeal level, the Court analysed the case and found out that the employment contract between Twagiramungu and ECOBANK Rwanda Ltd and the salary remained valid as mentioned in the secondment letter. Therefore, the Court referred to the article 4 of law No 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda and decided that ECOBANK Rwanda Ltd had the responsibility to declare and to pay the missing contributions of three (3) years worked in Burundi. The contribution base was 1900\$ monthly payment given to Mr Twagiramungu by ECOBANK Burundi Ltd as allowances, as well as related penalties for delay within Rwanda Social Security Board (RSSB).

➤ ***Assessment***

It appears that initially, the employer has not respected the provision of article 4 of law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda. It provides that 'Employees working for an enterprise operating in Rwanda but seconded to work for the same enterprise in another country shall remain subjected to pension scheme applicable in Rwanda provided the duration of work does not exceed twelve (12) months'. Thus, ECOBANK Rwanda Ltd should not assign the work for the period exceeding twelve (12) months, if it decided to continue to pay salaries to the seconded employee in another country.

**2. The Court of Appeal decision N° RS/INJUST/RSOC 00001/2019/CA**

In *Twagiramungu François v AKAGERA BUSINESS GROUP LTD*, RS/INJUST/RSOC 00001/2019/CA, at the appeal level, on 20/11/2020, the Court of Appeal based in Kigali-examined the High Court decision N° RSOCA 0110/15/HC/KIG of 20/11/2015 on the case of Twagiramungu François who claimed for refund of housing and transport allowances for three month (January, February, March 2007) deducted by error on his salaries and not reported to the social security institution (RSSB). It means that his

employer (AKAGERA BUSINESS GROUP LTD) has not reported the entire salaries based on which pension contributions were calculated.

The employer referred to the provision of article 83 and 142 of Law No.13/2009 of 27/05/2009 regulating Labour in Rwanda (which was in force at that time), providing for the prescription of salary payment fixed at two (2) years, and argued that the claim of Twagiramungu has no justification due to prescription of the right to salary as he delayed to claim his salaries. As a consequence, the employer argued that the claim for pension contribution has no justification, given that pension contributions are calculated based on salaries. This argument was supported by the Court in the first instance and in the appeal.

➤ *Assessment*

At the appeal level, the Court of Appeal examined the article 83 and 142 of the former Law No 13/2009 of 27/05/2009 regulating Labour in Rwanda and referred to the provision of article 4 (1°) of law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, determining the persons who should be registered in mandatory pension schemes. The Court of Appeal found out that the employer has paid part of pension contributions and supported the argument of the employer on the prescription of the rights to housing and transport allowances (part of salaries) and the prescription of the claim on the portion of pensions contribution not reported to social security institution (RSSB), as decided by the High Court.

This study examines the case and the law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda (article 7) and observes that the contribution due to mandatory pension scheme are based on gross salary composed of base salary, allowances, bonuses and other fringe benefits as well as the cash value of the benefits in kind. However, allowances with refund character and retirement benefits shall not be included in the contribution base. The article 2 (1°) of Ministerial Order No.002/16/10/TC of 19/04/2016 determining compensatory benefits and cash value of benefits in kind under mandatory pension scheme excludes transport allowances from allowances with compensatory character subject to contribution.<sup>275</sup>

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<sup>275</sup> Ministerial Order No.002/16/10/TC of 19/04/2016 determining compensatory benefits and cash value of benefits in kind under mandatory pension scheme, *OG* No.18 of 02/05/2016.

The 2015 pension law (art 12) determines penalties to the employer for delay of declaration and payment of contributions, while its article 14 determines forced recovery as follows: ‘Subject to the provision of the civil, commercial, labour and administrative procedure, the entity responsible for the management of pension shall have powers to carry out a forced recovery against the employer having failed to pay contributions. In this regard, a Ministerial Order No.005/16/10/TC of 19/04/2016 determines modalities of forced recovery of contributions arrears under mandatory pension scheme.

The study observed that there is no prescription of forced recovery of arrears of social security contributions, which means that the RSSB should use its powers to carry out a forced recovery against *AKAGERA BUSINESS GROUP LTD* on the portion of salary not declared (house allowances).<sup>276</sup> The study observed that the prescription of salary payment (2 years) was maintained even when the Law No.13/2009 of 27/05/2009 regulating Labour in Rwanda was replaced in 2018.<sup>277</sup> Therefore, the study considers that labour legislation and pension legislation should be harmonized with regard to the issue of prescription of salary payment. Since there is no prescription of the right to pension contribution and to pension benefits for insured person,<sup>278</sup> labour legislation should not determine the prescription of salaries based on which pension contributions are calculated.

## **B. Barriers to the adhesion of the self-employed workers and the informal economy workers to pension schemes**

Rwanda faces problems in effectively reaching the informal economy and the self-employed, who are characterized by irregular and unpredictable income with no legal obligation to adhere to voluntary pension schemes. The income for informal economy workers may be low, given that the minimum wage of Rwf 100 (\$ 0,097) used in Rwanda is out dated as explained in chapter three of this study. The absence of a legislation setting the minimum wage is a challenge to cover some categories of workers with particular characteristics such as domestic workers who are the most vulnerable group of the most serious decent work and pension deficits in informal economy where women are the

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<sup>276</sup> Art.9 (4 °) of Law No. 009/2021 of 16/02/2021 establishing Rwanda Social Security Board, *OG* No. Special of 17/2/2021.

<sup>277</sup> Art.76 of Law No. 66/2018 of 30/08/2018 regulating Labour in Rwanda, *OG* No. Special of 6/09/2018.

<sup>278</sup> Art.91 of Law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No. 20 of 18/05/2015.

majority.<sup>279</sup> The double challenge for Rwanda is to extend social security coverage and to help workers to grow out of the non-regulated work into the formal regulated employment.

### 1. Gender gap in pension provision

Different studies have shown gender inequality in social security coverage where it is low for women in comparison to men. Only one out of three women of working age has some form of legal coverage.<sup>280</sup> Generally, women benefit from social insurance of their husband if they are legally married, which often become their only source of income and if they divorce, they lose the right to pension benefits. In the situation of poverty, women have the least access to food, health, education training and opportunity for employment and other needs.<sup>281</sup>

Despite the progress made by Rwanda in gender equality and that pension legislation is not discriminatory, there is still much to be done to fight against inequalities in decent employment and in pension schemes participation. The inadequate integration of women in the labour force affects the pension coverage level, considering that women constitute the majority of the population and are predominant in informal work.<sup>282</sup> For example, women are the majority in agriculture or other sectors frequently not covered by existing legislation and their higher likelihood of having shorter and more often interrupted careers in formal employment constrains their ability to contribute to social insurance or other forms of pension insurance.<sup>283</sup> Therefore, gender gaps in the labour market constitutes barriers to access pension benefits and reduces the coverage rate at the national level leading to low compliance with the minimum standards level of coverage set out in international social security standards.

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<sup>279</sup> Florence Bonnet et al., *Women and Men in the Informal Economy: A Statistical Brief* (ILO, Manchester, UK: WIEGO 2019), p.5; An Mi-young, 'The gender impact of National Pension reforms in the Republic of Korea' (2009) *International Social Security Review* 62 (2), p.78.

<sup>280</sup> ILO, *Women and men in the informal economy: A statistical picture*, Second edition (ILO 2014), p.10.

<sup>281</sup> Convention on the Elimination of All Forms of Discrimination Against Women, UN General Assembly Resolution 34/180 of 18 December 1979.

<sup>282</sup> Republic of Rwanda, National Institute of Statistics of Rwanda, *Fourth Population and Housing Census, Rwanda 2012* (RPHC4 Thematic Report : Population Size, Structure and Distribution, NISR January 2014) , p.xv<<https://www.statistics.gov.rw/publication/rphc4-thematic-report-population-size-structure-and-distribution>> accessed 20 January 2021.

<sup>283</sup> Republic of Rwanda, Gender Monitoring Office, *The State of Gender Equality in Rwanda: From Transition to Transformation* (March 2019), p.47  
<[http://gmo.gov.rw/fileadmin/user\\_upload/Researches%20and%20Assessments/State%20of%20Gender%20Equality%20in%20Rwanda.pdf](http://gmo.gov.rw/fileadmin/user_upload/Researches%20and%20Assessments/State%20of%20Gender%20Equality%20in%20Rwanda.pdf).> Accessed 22 September 2021.



## **2. Legal exclusion : Absence of legal obligation for self-employed to participate in pension schemes**

Generally, the design of contributory social insurance schemes covers formal employment providing regular and predictable income. The reality in developing countries is that many jobs in rural areas are informal and excluded from the social insurance legislation.<sup>284</sup> The legal exclusion of self-employed workers has its origin in the absence of legal obligation for them to participate in pension schemes or their failure to meet certain eligibility criteria. Even in urban areas self-employed such as medical doctors who own clinics, advocates who own law firms may not adhere to voluntary pension schemes, despite having contributory capacity.

## **3. The low financial capacity of the self-employed to cope with the ‘double contribution’ in financing pensions**

The 2015 Rwandan Pension law provides the possibility for the self-employed to voluntarily adhere to public pension insurance system, but a very limited number of them do so due to different challenges.

First, the self-employed face the challenge of age restriction imposed by the pension legislation which granted the right to membership only to the self-employed who are not aged over fifty (50) years.<sup>285</sup>

Secondly, self-employed workers are subjected to the same contribution rate as that applied to employed workers (6 per cent of gross salary) while they are not in the same conditions. It means that self-employed workers face the challenge of paying the full contribution rate of pension schemes, which is high compared to that paid by the employed workers who share the contribution rate with their employers on equal basis, each one paying 50 per cent of the contribution. In line with the ILO Convention 102, the total of the insurance contributions to be paid by insured employees shall not exceed 50 per cent of the total of the financial resources allocated to the protection of employees and their wives and children. Contribution rate is determined in a manner which avoids hardship to persons of

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<sup>284</sup> Andrew M. Allieu, 'Implementing nationally appropriate social protection systems and measures for all: gaps and challenges facing rural areas' (*A presentation at the UN DESA Expert Group Meeting on Eradicating Rural Poverty to implement the 2030 Agenda for Sustainable Development*, Addis Ababa, 27 February 2019), p.4.

<sup>285</sup> Art. 5 of Law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No. 20 of 18/05/2015.

small means and takes into account the economic situation of the country and of the classes of persons protected.<sup>286</sup>

Contribution to be paid by self-employed may be unaffordable or unattractive and may act as a disincentive or a barrier to social security coverage. Therefore, to encourage the self-employed to adhere to a pension scheme, it is necessary to put in place adapted mechanisms such as subsidies and change in payment schedule to facilitate self-employed with very low earnings to afford to pay the required social security contributions. The Cabo Verde has provided a good example by introducing a contribution system based on income categories and leave the workers flexible to choose which category to contribute to.<sup>287</sup>

In the agricultural sector the respect of periodicity of payment and the maintenance of the same amount of contribution may be difficult for self-employed due to their volatile earnings often linked to seasonality. Therefore, Rwanda can learn from the experience of countries like Tunisia, Ecuador, Colombia, that have reformed their legal system to find innovative solutions to cover particular categories of the excluded population like the agricultural workers.<sup>288</sup>

### **C. Disparities between legal systems in the region: A barrier to the portability of pension benefits for migrant workers.**

Social security systems are established under national legislation and take into account the periods of employment, economic activities or residence to provide benefits. These considerations often prevent workers who migrate from one country of employment to another from enjoying their pension right due to the *principle of territoriality* which limits the scope of application of the social security legislation, leading to the loss of coverage and the limitation on the portability of the benefit abroad.<sup>289</sup> Therefore, it necessary to harmonize legal systems in the region and to sign reciprocal agreements to increase the level of coverage while facilitating the portability of the pension benefits for migrant workers.

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<sup>286</sup> ILO C102, art. 71(1, 2).

<sup>287</sup> Fabio Durán Valverde et al., *Innovations in extending social insurance coverage to independent workers: Experience from Brazil, Cabo Verde, Colombia, Costa Rica, Ecuador, Philippines, France and Uruguay* (ILO 2013) ESS Document No. 42, p.22.

<sup>288</sup> ILO (n 263) pp.85-87.

<sup>289</sup> Kulke (n 30), p.7.

### ***1. The example of reciprocal agreement in Great Lakes Region: The portability of social security benefits under the CEPGL General Convention***

After the 1994 Genocide against the Tutsi, Rwanda faced the problem of portability of pension benefits for migrant workers who returned home from different countries. Only one regional reciprocal agreement on social security exists between Rwanda, Burundi, the Democratic Republic of the Congo, under the Economic Community of the Great Lakes Countries Convention. The CEPGL General Convention covers the workers who are subjected to the social security legislation of any of the member countries or who have contributed to the social security institution in any member-state.<sup>290</sup>

The General Convention allows the combination of careers in different member countries, with the advantage that in the absence of the General Convention, the worker who does not qualify for old-age pension (because he/she has worked in each country for less than 15 years) would simply receive a lump sum paid only once by each country, instead of the guaranteed monthly pension. The CEPGL General Convention also allows the portability/transfer of the social security benefits to be channelled through national Central Banks to the social security institution that regularly pays the beneficiary in the country of residence.<sup>291</sup>

### ***2. The example of bilateral social security agreement***

Another example of reciprocal agreement is the General Social Security Convention between The Republic of Rwanda and The Republic of the Congo (also called Congo-Brazzaville), signed on December 23<sup>rd</sup>, 2016.

### ***3. Pension benefits for migrant workers in the East African Community***

Other regional organizations in which labour and social security rights are an integral part have been created to facilitate regional integration. Those are the East African Community (EAC) and the East and Central Africa Social Security Association (ECASSA) which have been established to promote the development of legal mechanisms that will facilitate the harmonization of the schemes benefits and the qualifying criteria in order to facilitate a cross border labour mobility.<sup>292</sup> Therefore, the analysis pointed out the need to

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<sup>290</sup>Ellis Ruhumuriza, 'Aglance at the Social Security General Convention in the Great Lakes Countries (Burundi, DRC, Rwanda)' (2002) *Solidarité - Nta Mugabo Umwe* No.17, Revue Trimestrielle de la Caisse Sociale du Rwanda, p.10.

<sup>291</sup> Art.40 (4) of The CEPGL General Convention on social security, 1978.

<sup>292</sup> ECASSA, 'Ecassa Update', *A Newsletter for the Social Protection Schemes in East and Central Africa*

harmonize legislation in the East African Members States and to sign a reciprocal agreement facilitating the portability of contributions or pension benefits for migrant workers of the region.

The analysis of 2015 Rwanda's pension legislation (art.33) has shown restrictions to social security rights due to the *principle of territoriality*, considering that pension benefits are not transferred abroad if beneficiaries no longer resides in Rwanda, unless there are reciprocal agreements or international convention. The following discussion proposes strategies to improve legal framework and policies towards compliance with international social security standards.

### **5.2.2. Administrative barriers and limited awareness or knowledge of the social security programmes**

Self-employed workers may also face the challenge of low education and technological level to deal with complex administrative processes and procedures in registration, contribution collection, benefit payment and record-keeping, used by social security programmes. Considering that most public pension schemes are mandatory for employed workers, the responsibility of registration and payment of contribution is assigned to employers.<sup>293</sup> They benefit from social security training on their rights and obligations while for self-employed workers, without having an employer, they are isolated with limited awareness or knowledge of the social security programmes. Most of the self-employed workers and the informal economy workers are in rural areas and face the challenge of legal illiteracy while they have to deal with all administrative process and procedures themselves.<sup>294</sup>

### **5.3. Strategies to improve the legal framework and policies of old-age pensions provision**

This section proposes strategies related to the effective enforcement of the existing pension legislation to maximize registration, and collection of contribution and compliance, by removing legal and administrative barriers. The study also suggests strategies related to the introduction of non-contributory universal pension schemes, guided by the basic

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(2008), Nairobi, p.5.

<sup>293</sup> Art.9 Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No. 20 of 18/05/2015.

<sup>294</sup> ILO (n 263), p.4.

principles set out in international social security standards. The effective national strategies should be in line with national priorities, administrative feasibility and affordability and should aim at achieving universal coverage. This implies providing at least the basic income security to the population (horizontal) and progressively ensuring a higher level of protection (vertical dimension), guided by ILO C102 and other standards, providing higher levels of protection such as ILO C128 and R131 as well as ILO R202.

The proposed strategies also consider the update of the national employment and social security policies to guarantee the right to pension for everyone. The literature suggests strategies for pension coverage extension to meet the standard level of protection set out in international social security standards. Bloom and McKinnon choose the combination of policies that will optimize coverage, benefits and financing given a country's demographic history practices regarding family support of the elderly, political system, extent of informal labour and fiscal situation.<sup>295</sup>

Gillion et al. suggest three approaches to the extension of pension coverage:<sup>296</sup> The first concentrates on coverage for formal sector workers and presumes that economic development will gradually lead to an expansion of coverage as the formal sector grows. The second approach gradually extends coverage to include all employed people and devise special arrangements for some self-employed with the limits of administrative capacity. The third approach provides almost universal coverage under the law, but recognizes that for the foreseeable future, compliance levels will be low.

Hagemejer and McKinnon argue that the design and implementation of comprehensive national floors of the social protection should be based on four essential elements: respect for the rights and dignity of people holding rights to social security; full participation of the civil society, universal coverage at the local, national and international level; and concern for vulnerable groups.<sup>297</sup>

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<sup>295</sup>Bloom (n 78), p.1.

<sup>296</sup>Gillion (n 13),p.203, see also Clive Bailey, 'Extending social security coverage in Africa'(2004), p.14 <[http:// www.ilo.int/public/english/protection/socsec/pol/campagne/files/addispaper.pdf](http://www.ilo.int/public/english/protection/socsec/pol/campagne/files/addispaper.pdf)> accessed 4 April 2017.

<sup>297</sup>Krzysztof Hagemejer & Roddy McKinnon, 'The role of social protection floors in extending social security to all', (2013) *International Social Security Review* 66 2-4, p. 13.

### **5.3.1. Legal and administrative reform: Strengthening the existing contributory pension schemes**

This subsection describes three strategies for legal and administrative reform to strengthen the existing contributory pension schemes. The study focuses on strengthening enforcement and inspection mechanisms as well as increasing contribution rate; removing administrative barriers to the registration, declaration of incomes, payment of contributions and receipt of pension benefits and strengthening administrative and legal innovation.

#### ***A. Strengthening enforcement and inspection mechanisms as well as increase of contribution rate***

Different types of evasion exist where legal provisions regarding registration and payment of contributions are not respected by some employers, especially in private companies like tea and coffee factories, restaurants and domestic work among others. Thus, prevention, punishment of contribution evasion, effective enforcement and inspection are important strategies. Penalties for employers' non-compliance should be increased to ensure the registration of all workers and a maximum contribution collection and compliance in order to access pension rights and ensure the sustainability of pension schemes. There is also a need for reform on the level of contribution rate to allow periodical adjustment of pension benefits while ensure the sustainability of pension scheme. Different actuarial studies have reported that contribution rate of 6 per cent introduced in 1974 is not an actuarially fair contribution rate given the current parameters of RSSB's pension scheme.<sup>298</sup>

#### ***B. Removing administrative barriers to the registration, declaration of incomes, payment of contributions and receipt of pension benefits***

It is necessary to simplify administrative process and procedures used by social security programmes and consider the realities of rural areas population who constitute the majority of the population highly dependent on agriculture with a higher level of informality in employment arrangements. For example, the use of mobile phone technology in registration and payment of contribution as well as in receipt of pension benefits can facilitate the adhesion of more self-employed to pension scheme as most of people in Rwanda has mobile phone linked to the national identity card. Other strategies are the

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<sup>298</sup> Republic of Rwanda, *National Social Security Policy* (MINECOFIN February 2009), p.21  
<[https://www.rssb.rw/fileadmin/user\\_upload/national\\_social\\_security\\_policy\\_0.pdf](https://www.rssb.rw/fileadmin/user_upload/national_social_security_policy_0.pdf)> accessed 2 October 2020.

improvement of the quality of infrastructure (like electricity and internet) and the increase of public awareness.

### ***C. Strengthening administrative and legal innovation***

In Rwanda, the establishment of joint working partnerships between Rwanda Social Security Board and Rwanda Revenue Authority for unified social security contribution collection with tax collection had a positive result.<sup>299</sup> In addition, the significant decentralization process of social security operations at district level, started in 2006-2007 by opening branches of Rwanda Social Security Board in all 30 districts of the country had positive impact. Contributions collected increased by over 50 percent from 2006 to 2007 and coverage of informal sector increased and service delivery in claims processing was improved.<sup>300</sup>

However, in the rural area, limited knowledge of self-employed, the poor quality of infrastructure (like electricity and internet) is a challenge to afford the technology and the complex procedure used by social security institutions. For example, to register and to declare social security contributions, self-employed workers often require the assistance of tax advisors with the associated cost reducing their earnings. Therefore, strengthening decentralization process and joint working partnerships, removing administrative barriers with regard to completing registration, declaration and making contribution payments and accessing benefits, the increase of public awareness campaigns on social security systems and the availability of infrastructure are good strategies to encourage the enrolment of informal economy workers in the pension scheme.

Despite the Rwanda's legal innovation by introducing a *Long-Term Savings Scheme* with some flexibility for membership to extend pension coverage to the informal sector, in a country with a predominant informal sector, the performance of a voluntary scheme to guarantee the provision of pension benefits is limited. The reasons behind are the lack of enforcement mechanisms for members who drop out since there is no legal obligation to adhere to a voluntary pension scheme and low contributory capacity of informal economy workers due to irregular and unpredictable incomes. Therefore, it is necessary to introduce tax-financed mechanisms to compliment contributory pension schemes.

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<sup>299</sup> Art.11 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda, *OG* No.20 of 18/05/2015.

<sup>300</sup> ISSA, *Handbook on the extension of social security coverage to the self-employed* (2012), p.23 <[https://www.issa.int/sites/default/files/documents/publications/2\\_handbook-extension-selfemployed-26571.pdf](https://www.issa.int/sites/default/files/documents/publications/2_handbook-extension-selfemployed-26571.pdf)> accessed 22 September 2021.

### **5.3.2. Guaranteeing in national legislation basic income security to all elderly through a variety of financing options**

Ensuring the guarantee of pension benefits in old-age to all in need implies not only strengthening the existing contributory pension scheme (mandatory and voluntary) but also establishing non-contributory universal pension schemes. The idea of universal coverage is defined and concretized by ILO Social Protection Floors Recommendation, 2012 (No.202), which strengthens pre-existing ILO standards, particularly ILO C102 and C128, which are not based upon universal coverage, but only determine the minimum standard of protection and require gradual extension of the scope of protection. For example, by the time the ILO C102 was established in 1952, the extension of social security coverage was considered a long-term process determined by the pace of the formalization of labour markets.<sup>301</sup> Therefore, ILO R202 determines the State responsibility to provide basic income security to all in need in the form of a non-contributory pension scheme (universality of protection, based on social solidarity, among others).<sup>302</sup> Considering the compulsory and long-term nature of pension rights, adequate regulation in this domain is crucial to allow the benefits to be realized in compliance with the international social security standards.

However, in Rwanda, like in most developing countries, the lack of a legislation setting social security basic income guarantee in old-age, justifies a strong need to establish non-contributory universal pension schemes as an alternative to complement the existing contributory schemes and to close the coverage gap. Therefore, the adaptation and the update of the social security legal and regulatory framework as well as the diversification of financing options are important strategies to comply with international standards and to respond to the current needs of society.

#### ***A. Learning from some successful stories***

Different countries provide some experience in achieving universal pension coverage through a pension model which sometimes may be under the form of means-tested and sometimes universal and subjected to the requirement of age and residency for eligibility such as those introduced in Mauritius, Botswana, Namibia, Nepal and Samoa.<sup>303</sup> Universal

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<sup>301</sup> Cichon (n 31), p. 24.

<sup>302</sup> ILO R202 , I.3, (a).

<sup>303</sup> Robert Holzmann and Richard Hinz, *Old age income support in the 21<sup>st</sup> century: An international perspective on pension systems and reform* (World Bank 2005), p.97.



non-contributory schemes are also introduced in high-income countries like New Zealand and Brunei<sup>304</sup>, New Zealand having a longer history of universal pensions established in 1898.<sup>305</sup> Means-tested non-contributory schemes have been developed in developing countries such as Argentina, Bangladesh, Brazil, Chile, Costa Rica, India, South Africa, Sri Lanka, and Uruguay.

Universal non-contributory old-age pension schemes may be suitable for developing countries in meeting the needs of the poor elderly and in closing the pension coverage gap. Therefore, the establishment of non-contributory pension schemes is important as it helps, to some extent, to bridge the coverage gap between men and women. The experience of Cabo Verde is worth to be mentioned where women over the retirement age are the majority to receive non-contributory pension benefits (41.4 per cent) than men (31.6 per cent) who occupy the predominant place in receiving pension benefits in contributory schemes (11.4 per cent compared to 28.2 per cent).<sup>306</sup>

Some scholars find the implementation of non-contributory schemes difficult and point out the negative effect of universal non-contributory old-age pension scheme on intra-family and intra-community transfers and total family labour supply.<sup>307</sup> There is also an argument that a universal non-contributory old-age pension scheme may be too expensive and if funded through general taxes they may encourage work in informal economy where taxes are not easily collected.<sup>308</sup>

Other scholars argue that the implementation of non-contributory schemes is affordable in developing countries.<sup>309</sup> Both sides have a common view that most developing

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<sup>304</sup>ISSA and SSA, *Social Security Programs Throughout the World: Asia and the Pacific, 2018* (SSA 2019), p.68, p.188 <<https://www.ssa.gov/policy/docs/progdsc/ssptw/2018-2019/asia/ssptw18asia.pdf> > accessed 29 March 2020.

<sup>305</sup> Larry Willmore, 'Universal pensions in low-income countries' (Initiative for Policy Dialogue), (Working Paper Series, IPD-01-05, Initiative for Policy Dialogue, Columbia University 2001),p.11 <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=381180](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=381180)> accessed 29 March 2020.

<sup>306</sup> ILO (n 71), p.21.

<sup>307</sup> Colin Gillion et al. (eds), *Social security pensions: Development and reform* (International Labour Office 2000); Nanak Kakwani and Kalanidhi Subarao, 'Ageing and poverty in Africa and the role of social pensions' (United Nations Development Programme Working Paper No.8, August 2005), United Nation Development Programme, International Poverty Centre.

<sup>308</sup> E Overbye, 'Extending social security in developing countries: A review of three main strategies' (2005) *International Journal of Social Welfare* 14 (4).

<sup>309</sup> Robert Holzmann, 'Social protection of the rural population: The need to think outside the box'(Paper presented at plenary session Social Protection of the Rural Population at the General Assembly of the International Social Security Association, Beijing, 12-18 September 2004) International Social Security Association.; J K M Johnson and J B Williamson, 'Do universal non-contributory old-age pensions make sense for rural areas in low-income countries?'(2006) *International Social Security Review* 59 (4), p.47; Larry Willmore,'Universal age pensions in developing countries: The example of Mauritius'(2006) *International*

countries do not have sufficient resources to finance universal flat old-age pensions. Other studies have provided solutions for financing social protection floors in order to guarantee basic income security to all in old-age at a reasonable cost, even in resource-constrained circumstances, which serves as a platform for the gradual implementation of a full social protection system.<sup>310</sup>

***1. The source of financing and fiscal cost as a percentage of GDP for the development of non-contributory pension scheme: Domestic resource mobilization***

With regard to the fiscal cost as a percentage of GDP for the development of non-contributory pension scheme, the cost of benefits depends on the proportion of older persons in the population and the level of the national poverty line (which determines the level of the benefit. A study conducted by the ILO in 57 lower income countries has shown that an average of 1.6 per cent of GDP could be required to finance universal pensions for older persons over 65 years of age, set at a level of 100 per cent of national poverty line).<sup>311</sup>

This study explored the experience of universal pensions in low and middle-income countries in Africa and found that at around 1 per cent of GDP, Rwanda can put in place universal pension. For example in Kenya, approximately 833,000 recipients of the *Inua Jamii Senior Citizens* Scheme are entitled to KES 2,000 (US\$ 19.7) per month with related cost of 0.13% of GDP.<sup>312</sup> Therefore, this study estimates benefits of RWF 25,000 (US\$ 25) per month to be entitled to the elderly, since older people aged 60 years and above represents 5.1 per cent of the Rwandan population (estimated to 600.000 older persons).<sup>313</sup> The total expenditure to be allocated to the universal non-contributory pension scheme is estimated to 180.000.000 million per year. The Government of Rwanda has made some progress in

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*Social Security Review* 59 (4), p.87.

<sup>310</sup> Elliott Harris, 'Financing social protection floors: Considerations of fiscal space' (2013) *International Social Security Review* 66 (3-4), p.111.

<sup>311</sup> Isabel Ortiz et al., 'Universal Social Protection Floors: Costing Estimates and Affordability in 57 Lower Income Countries' (2017) (ESS-Extension of Social Security, ESS-Working Paper No.58, ILO Social Protection Department, p.24<[https://ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc\\_sec/documents/publication/wcms\\_614407.pdf](https://ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_614407.pdf)> accessed 22 November 2021.

<sup>312</sup> ILO Social Protection Department, 'Inua Jamii Senior Citizens' Scheme' Country Brief 1, p.3 <<https://www.developmentpathways.co.uk/wp-content/uploads/2019/05/Inua-Jamii-Country-Brief-1.pdf>> accessed 6 November 2021.

<sup>313</sup> Republic of Rwanda, *National Social Protection Policy* (Ministry of Local Government, June 2020), p. 27 <[https://nyarugenge.gov.rw/fileadmin/user\\_upload/REPORT/Approved\\_Social\\_Protection\\_Policy.pdf](https://nyarugenge.gov.rw/fileadmin/user_upload/REPORT/Approved_Social_Protection_Policy.pdf)> accessed 2 February 2021.

increasing the budget allocated to the social protection sector from 5.7 per cent in 2018/19 to 6.5 % of GDP in 2019/20.<sup>314</sup>

## **2. Learning from Rwanda's strategy for universal health coverage**

In Rwanda, a recent experience of mandatory health insurance for all population has shown that developing countries are capable of improving their revenue effort to implement health coverage.<sup>315</sup> The experience of Rwanda, which has successfully implemented universal health coverage financed by domestic resources and reached the highest health coverage rates in Sub-Saharan Africa, demonstrates that it is also possible to implement universal pension coverage using domestic resources.<sup>316</sup> To explain this, in Rwanda, Community-Based Health Insurance is financed by the beneficiaries' annual contributions, but these contributions are not sufficient to cover medical costs. Therefore, the Prime Minister's Order No.105/03 of 30/09/2020 related to the Community-Based Health Insurance Scheme contributions determines the source of financing as follows: government's subsidies, subsidies from health insurance entities operating in Rwanda, subsidies from telecommunication companies levied on telephone calls, subsidies from petrol and gas oil trade companies as well as extra funding from statutory deduction of 0.5 per cent on public and private employee's monthly net salary.<sup>317</sup>

## **3. Putting in place a National Social Protection Fund**

As per the analysis, this study suggests other strategies, such as putting in place a National Social Protection Fund to finance non-contributory universal old-age pension. Deduction of 1 per cent on all financial transactions can be a source of financing. Other possible options that this study suggests are from the experience of other countries in which financing universal pensions come from cigarettes and luxury goods like in Ghana, taxes on tourism like in Liberia.<sup>318</sup> Ortiz et al. made a significant contribution to the study and

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<sup>314</sup> UNICEF/Rwanda, 'Social Protection Budget Brief: Investing in inclusiveness in Rwanda 2019/2020' (December 2019), p. 3 <<https://www.unicef.org/rwanda/media/1926/file/Social-Protection-Budget-Brief-2019-2020.pdf>>, accessed 22 November 2021.

<sup>315</sup> Law No.48/2015 of 23/11/2015 governing the organization, functioning and management of health insurance schemes, *OG* No.4 of 25/01/2016.

<sup>316</sup> ISSA, 'Rwanda wins ISSA Award for Outstanding Achievements in Social Security' (World Social Security Forum, Brussels, 14-18 October 2019)<<https://ww1.issa.int/news/rwanda-wins-issa-award-outstanding-achievements-social-security>> accessed 8 October 2020, see also Laurent Musango et al., 'Rwanda's health system and sickness insurance schemes' (2006) *International Social Security Review* 59 (1), p.93.

<sup>317</sup> Art.2 of Prime Minister's Order No.105/03 of 30/09/2020 related to the Community-Based Health Insurance Scheme contributions, *OG* No. Special of 1/10/2020.

<sup>318</sup> Isabel Ortiz et al., 'Universal Basic Income proposals in light of ILO standards: Key issues and global

suggested six options to finance universal Basic Income at adequate benefit levels to effectively reduce poverty and inequalities including the following: re-allocation of public expenditures, increasing tax revenues, lobbying for aid and transfers, eliminating illicit financial flows, using fiscal and central bank foreign exchange reserves, restructuring existing debt.<sup>319</sup>

Thus, the study considers that the establishment of non-contributory 0 pillars in Rwanda is feasible, based on the experience of other low and middle income countries and the experience of Rwanda in achieving universal health coverage. It must be pointed out that Rwanda has put in place social assistance programs with non-contributory component (Direct income support and Community-Based Health Insurance), which covered essentially old-age people and disabled who are Head of households and classified in *Ubudehe* category 1 as explained in chapter three.

Evidence from the studies conducted by ILO confirms the feasibility of the establishment of non-contributory 0 pillars in low-income countries. For example, in 2008, ILO has conducted a study to investigate if low-income countries can afford basic social security, emphasizing that the cost of keeping people excluded will be higher and higher and translates into poverty, increasing inequalities and the growing likelihood of conflicts. According to the ILO calculation, less than 2 per cent of the global Gross Domestic Product (GDP) would be necessary to provide a basic set of social security benefits to all of the world's poor.<sup>320</sup> Evidence comes from the ILO two costing studies, one in Africa for seven countries (Burkina Faso, Cameroon, Ethiopia, Guinea, Kenya, Senegal and the United Republic of Tanzania) and the other in Asia for five countries (Bangladesh, India, Nepal, Pakistan and Viet Nam).<sup>321</sup>

### **5.3.3. Policy reform: Job creation and decent work promotion through formalization**

The process of formalization implies the transition from informal to the formal economy. In Rwanda, informal workers are present in every sector of the economy, ranging from construction site workers to housekeepers, agricultural labourers to office workers,

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costing, ESS-Extension of Social Security' (ESS-Working Paper No.62, 2018) International Labour Office, Social Protection Department, Geneva, p.19 < [https://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---soc\\_sec/documents/publication/wcms\\_648602.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_648602.pdf)> accessed 2 February 2021.

<sup>319</sup>Ibid. (n 318), pp.19-20..

<sup>320</sup> ILO, 'Can low-income countries afford basic social security?' (2008) Social Security Policy Briefings, Paper No.3, International Labour Office, Social Security Department, p.2-3.

<sup>321</sup> Id.p.5.

street vendors to mine workers.<sup>322</sup>The high unemployment rate that characterizes most developing countries is an obstacle to the access to formal employment where social security rights are respected. In the context of growing informalization, casualization and feminization of labour markets, the emphasis is no longer on the promotion of full employment but rather on the need for decent work.<sup>323</sup> Access to decent employment is a good strategy to contribute to social security, considering that benefit levels provided in contributory pension schemes tend to be higher than those from non-contributory pension schemes. Therefore, social security strategies should support the growth of formal employment and the reduction of informality, and should be complemented by active labour market policies whenever appropriate.

Considering that most pension schemes are contributory, strategies for social security extension are closely associated with employment policies. Moving from the informal to formal economy is an important strategy facilitating the access to a decent work providing the security of revenue and pension coverage. Therefore, it is necessary to build an economic and social framework that leads to sustainable enterprise creation and growth of decent and productive employment to meet international goals.

#### **A. The 2030 global goals for Sustainable Development (SDGs)**

Globally, it is estimated that, 734 million jobs will be required between 2010 and 2030 to accommodate recent and demographic shifts, account for plausible changes in labour force participation rates, and achieve target unemployment rates of/ or below 4 per cent for adults and/or below 8 per cent for youth. Otherwise, failure to create the jobs that are needed through 2030 would put currently operative social security systems under pressure and undermine efforts to guarantee the national social protection floors enshrined in the Sustainable Development Goals (SDGs), particularly, Goal 8.<sup>324</sup>

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<sup>322</sup> Rwanda Civil Society Platform, *Social Security in the Informal Sector in Rwanda* (2013), p.3 <[http://www.rcsprwanda.org/MG/pdf/final-report\\_CSPII-2-RCSP\\_doc.pdf](http://www.rcsprwanda.org/MG/pdf/final-report_CSPII-2-RCSP_doc.pdf)> accessed 2 February 2021.

<sup>323</sup> ILO, 'Building a Social Protection Floor with the Global Jobs Pact', 2nd African Decent Work Symposium 2010, 06-08 October 2010, Yaounde-Cameroon, p.xvi.

<sup>324</sup> David E Bloom et al., 'Global employment and decent jobs, 2010-2030: The forces of demography and automation' (2019) *International Social Security Review* 72(3), p.43.

## ***B. The National Strategy for Transformation (NST1)***

In Rwanda, during the elaboration of The National Strategy for Transformation (NST1), job creation was included as one of the key components of the economic pillar. It is estimated that 1,500,000 jobs will be created by 2024.<sup>325</sup> In this perspective, job creation and the reduction of informality will create employment relationship with the social security legal obligations imposed on employers to register their workers in social security and to pay contributions which will increase the level of coverage. Under Rwanda's pension law, an employer has the obligation to register a newly hired employee with a public institution in charge of pension schemes within seven (7) working days from the date of employment.<sup>326</sup>

Thus, the extension of coverage to the category of workers in the informal economy through the process of formalization is an important strategy to increase the level of coverage. It must be pointed out that encouraging formalization is part of Target 3 of Goal 8 of the 2030 UN Agenda for Sustainable Development, which itself (Goal 8) is about Decent Work and Economic Growth.<sup>327</sup>

The process of formalizing jobs can be done by facilitating the transition of workers and economic units from the informal to the formal economy (where undeclared and unregistered jobs become declared and become registered, facilitating the enforcement of social security rights); promoting the creation, preservation and sustainability of enterprises and decent jobs in the informal economy; and by preventing the informalization of formal economy jobs.<sup>328</sup>

During the process of formalization, it is important to use the sector-based approach rather than the general approach to achieve effective pension coverage extension. While informality and many of its causes affects sectors across national economies, the informal employment may be concentrated in particular sectors with sector specific forms and drives. This is the case for domestic workers, highly characterized by informal arrangements

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<sup>325</sup> Republic of Rwanda, National Institute of Statistics of Rwanda, ' Rwanda toward achieving 1.500.000 job creation', <https://www.statistics.gov.rw/publication/rwanda-toward-achieving-1500000-job-creation> accessed 29 September 2021.

<sup>326</sup> Art.6 of Law No.05/2015 of 30/03/2015 governing the organization of pension schemes, *OG* No.20 of 18/05/2015.

<sup>327</sup> ILO, *Promoting Employment and decent work in a changing landscape* (2020), International Labour Conference, 109<sup>th</sup> Session, Geneva, p.151 < [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_736873.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_736873.pdf) accessed > accessed 18 May 2020.

<sup>328</sup> R204- Transition from the Informal to the Formal Economy Recommendation, 2015 (No.204), I.1 <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:R204](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204)>, accessed 9 May 2020.

significantly contributing to informality, especially among women. The nature of a domestic worker's contract is specific for this reason: the employment relationship takes place within the private sphere, the household (while for formal workers, the contract takes place in employer's premises); it can be blurred or distinguished by social norms and highly personalised contexts; and it falls outside the conventional regulatory frameworks of many countries in designing coherent and integrated strategies to facilitate the transition from the informal to the formal economy.

### ***C. Improving investment policy and assessing pension benefits adequacy in relation with the Rwanda Social Security Board investment of reserves***

Over the last decade, the social security investments has received increasing attention. There has been growing concerns over Rwanda Social Security Board (the national institution managing all public social security systems) involvement in investment activities. Contributors and pensioners several times questioned whether the Fund should makes investments and if the return from investments benefits to contributors and pensioners. Considering the compulsory and long-term nature of mandatory funding of pension schemes, adequate regulation is crucial for the availability of sufficient fund for the administration cost and payment of benefits. Therefore, every pension scheme shall establish its investment policy for its development and the best interest of beneficiaries pursuant to the internal investment policy. The legislator may establish regulations regarding the content of investment policy and areas of investment.<sup>329</sup>

Investment has an impact on pension benefits adequacy in a way that if investment provides an inadequate rate of return, pensions may be insufficient to ensure satisfactory living standards for retirees. Low rate of return may arise owing to investment in low-yielding assets or to excessive administration costs. Meanwhile, if investments are too risky, pensioners risk poverty if they retire in unfavourable market circumstances, even if the mean rate of return over time is high. Excessive risks may arise if assets are inadequately diversified.<sup>330</sup>

#### **1. Why investments and do they benefit pensioners?**

Rwanda Social Security Board's investments are classified in two categories: *Fixed income investments* (bank term deposits, corporate bonds/loans, treasury bonds/bills,

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<sup>329</sup> Art.70 of Law No. 05/2015 of 30/3/2015 governing the organization of pension schemes in Rwanda.

<sup>330</sup> Colin Gillion et al.(eds), *Social Security Pensions: Development and reform* ( International Labour office 2000), p.155.

mortgage) and *Non-fixed income investments* (Real Estate, Equity/local, equity/foreign). The objective of RSSB investment is to get a competitive return (dividends and capital gains) in order to ensure institutional long-term financial sustainability. Investment is critical concern for the institution as it provides the institution with capacity to effectively finance its liabilities. This is made possible by generating revenues in response to growing benefits as well as operational costs related to all schemes.

- ***Advantage of the formula used in calculation of pension benefits for beneficiaries***

In pension systems managed under defined-benefit, beneficiaries benefit from the formula used in calculation of pension benefits, given that it considers salaries and the period of contribution, rather than considering contributions paid by employees and employers on equal share (6% of employee's gross salary). With the increase of 2% of every additional year to required period of 15 years of contribution to benefit 30% of monthly average salary pension and the possibility of increase of benefits, the investment of reserves play a vital role to make adjustment of pension benefits realizable. The investment of reserves also allows social security institution to provide benefits to insured person until death and to extend benefits to legally survivors (spouse and children, or parents for single insured). However, the study identified irregularities in pension benefits adjustments and the lack of systematic indexation to maintain the value of pension benefits overtime.

- ***Continuous access to medical care for retirees with periodical pension benefits***

The insured person who was a member of medical scheme and is entitled to a periodical pension continues to benefits medical services during retirement. He pays a half of contribution equal to 7, 5 per cent of his/her monthly pension rather than paying the total contribution rate of 15 per cent in medical scheme.<sup>331</sup> This means that other portion is supported by social security institution (RSSB) and the budget comes from investment return. However, limited workers comply with qualifying period of contributions for periodical old-age benefits. As a consequence, when retired, they lose the right to the public medical insurance for employed workers to which they have participated.

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<sup>331</sup> Republic of Rwanda, MINECOFIN, Ministerial Instructions No. 002/11/10/TC of 24/05/2011 governing health insurance of old age pensioners, art.5.



## 2. Balancing sustainability of pension schemes and benefits adequacy

The sustainability of social security systems and the provision of adequate replacement ratio in pension scheme are realized if contributing members are increased, given that they are the major source of social security financing, and if investments provide adequate rate of return to guarantee periodical adjustment of pension benefits. The lack of indexation of pension benefits or irregularities in benefit adjustment creates a gap between pensioners' living standards and those of the people who are still economically active. This situation exacerbates the economic and social exclusion of pensioners who are not able to access the finance like loans and cannot afford to access new, modern technologies and new goods and services changing the lives of more affluent groups in society.

The reform of pension schemes to extend coverage and provide adequate benefit while ensuring the sustainability of pension schemes is the focus of much policy attention. ILO social security standards provide guidelines for the provision of old-age benefit and the adjustment respecting different dimensions of benefit adequacy such as the age of eligibility and other entitlement conditions, benefit levels and protection of purchasing power.<sup>332</sup> ILO leaves the freedom to the State to take policy decisions to adjust and reform pension schemes but requires careful monitoring of the schemes to ensure adequacy and at the same time balancing with sustainability through actuarial valuations undertaken both regularly and whenever any important parameters of the scheme change and if necessary, ILO provides technical assistance.<sup>333</sup>

However, the practice in many countries is the absence of regular actuarial valuations or the delay in implementing the recommendations of actuarial valuations. ILO studies realized that pension reforms encounter the problem of short time horizons within the electoral cycle of the politicians who are competent to implement the recommendations, while decisions on pension systems have a very long-term character and affect also future generations.<sup>334</sup>

From the analysis of pension benefits adjustment in Rwanda, it appears that Rwanda Social Security Board (RSSB), the public institution managing social security system at the national level, has experienced delay in pension benefits adjustment, as the current

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<sup>332</sup> ILO C102, art.26, 65-67.

<sup>333</sup> Art.10 of ILO Constitution, 1919.

<sup>334</sup> ILO, *Social protection for older persons: Key policy trends and statistics* (2014) Social Security Policy Papers, Paper No.11, International Labour Office-Social Protection Department, p. 29.

adjustment was done in April 2018.<sup>335</sup> This came after fifteen (15) years of the previous pension benefits adjustment done in 2002.<sup>336</sup> It means that pension benefits of people who retired in 2002 remained the same without being adjusted. As a consequence, the purchasing power of pensioners was affected due to inflation.

Thus, regular adjustments of the pension benefits to the cost of living are necessary to prevent absolute poverty among the recipients, provided that initial benefit levels were set at adequate levels. It is clear that the adjusted benefit does not prevent recipients from experiencing relative poverty, as benefits will lag behind the growth of working population average income.<sup>337</sup>

The fund collected from active contributors to finance benefits for inactive pensioners should be well managed and invested judiciously to overcome inflation and to ensure excellence in social security administration. Investment of reserves allows periodical adjustment of pension benefits and the respect of the principle of equity in a way that pension benefits have implications on labour market and social cohesion.<sup>338</sup> An adequate pension benefit provokes the labor mobility and reduces unemployment rate, considering that old people do not hesitate to leave the job and give opportunity to young people. In addition, adequate investment ensures the sustainability of pension schemes and equity between generations in a way that future generation will not have to pay significantly more than the current generation. Hopefully, recent administrative and financial autonomy granted to RSSB will facilitate to make investment more profitable.<sup>339</sup>

#### **5.4. Conclusions and discussion**

The present chapter examined some aspects of the legislation and policies of pension systems that need to be reformed to improve the pension coverage and benefits adequacy, in the light of the international social security standards. Therefore, the study identified legal and administrative barriers to the effective application of national pension legislation and

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<sup>335</sup> Presidential Order No.069/01 of 13/04/2018, which increased pensions and occupational hazards benefits granted by Rwanda Social Security Board, *OG* No.16 bis of 16/4/2018.

<sup>336</sup> Presidential Order No.36/01 of 8/04/2002 determining revalorization of pensions and annuity allocated by Social Security Fund of Rwanda.

<sup>337</sup> ILC, *Social protection floors for social justice and a fair globalization* (Report IV (1), International Labour Conference, 101th Session, Geneva, June 2012), International Labour Office, p.29.

<sup>338</sup> Townsend Peter (ed), *Building Decent Society: Rethinking the Role of Social Security in Development* (ILO, Palgrave Macmillian 2009),p. 82.

<sup>339</sup> Art.4 and art 6 of Law No. 009/2021 of 16/02/2021 establishing Rwanda Social Security Board, *OG* No. Special of 17/2/2021.

policies and suggested strategies to improve the legal framework and policies of old-age pension provision.

Strategies for legal reform in mandatory pension schemes focus on the importance of strengthening inspection and the enforcement of the legislation. In this regard, increasing the rate of penalties is necessary to prevent evasion of contributions by employers who underreport the real numbers of their workers or real salaries. An assessment of two cases of employers' non-compliance with social security legislation, reported to the Court show the importance of enforcing workers' rights. The study observed that low enforcement of pension legislation to prevent and punish different types of evasion is a barrier to the maximum registration of all salaried workers and to the collection of contribution and compliance.

It is also relevant to adopt strategies for administrative reform, such simplifying administrative processes and procedures in order to facilitate registration and contribution collection and avail appropriate infrastructure in rural areas like electricity and internet connection as well as training to facilitate social security services delivery. The study also proposed strategies for policy reform to extend old-age pension coverage, based on job creation with the increase of women participation in the labour market and decent work promotion to facilitate the transition of workers from informal to formal economy, guided by the ILO Recommendation, 2015 (No. 204).

In respect to the principle of universality of coverage envisaged in ILO Social Protection Floors Recommendation, 2012 (No.202), the adoption of legislation on non-contributory pension schemes is a strategy to guarantee basic income security in old-age to all the population.

With regard to benefit adequacy, regular adjustment of pension benefits is necessary to meet the needs of pensioners. Current Rwandan pension law does not provide an automatic adjustment to avoid deterioration of the purchasing power of the pensioners, which would push them into poverty. Irregularities in pension benefits adjustment or suspension of benefits severely and immediately affect the standard of living of pensioners and their families. In line with the ILO C102, the benefit must be sufficient to maintain the family of the beneficiary in health and decency.<sup>340</sup> They should be adjusted periodically following substantial changes in general level of earning and/or cost of living in order to be sufficient

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<sup>340</sup> ILO C102, art. 67 (c).

to maintain the family of the beneficiary in health and decency.<sup>341</sup> In this regard, it is important to improve investment policy to balance the adequacy of benefits and the sustainability of pension schemes.

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<sup>341</sup> ILO C102, articles 65 (10), 66 (8) and 67.

## CHAPTER 6: CONCLUSION

The problem of limited access to old-age pension benefits in Rwanda led to the analysis of the legal basis of old-age pension provision to investigate the compatibility of Rwanda's national legislation on pensions with the ILO's social security standards, a topic which has received little attention in the past. In this regard, the study analysed old-age public pension schemes (mandatory for employed workers), governed by law No.05/2015 of 30/03/2015 and *Long-Term Savings Scheme* commonly known as '*EjoHeza*' which is a voluntary public pension and savings schemes governed by law No.29/2017 of 29/06/2017.

This study shows that the challenges for most developing countries in Africa with high unemployment rates and a growing informal economy, is a low pension coverage and inadequate benefits, which also affect equity and sustainability of pension schemes. Pension coverage is very low because existing pension schemes are contributory and generally protect workers in formal and regulated employment with regular and predictable incomes.

From the analysis of Rwanda's experience in pension provision, it appears that the existing mandatory contributory pension schemes for salaried workers face the challenge of low enforcement due to different types of evasion. In addition, most of the informal economy workers are not registered in pension schemes, as there is no legal obligation for unemployed people to adhere to pension schemes. The self-employed adhere to pension schemes on a voluntary basis and may face the challenge of financial capacity to register and to contribute to the existing voluntary pension schemes until they reach the statutory retirement age. Even those who are registered, (formal or informal workers) may fail to comply with the entitlement conditions for old-age benefit due to non-stable employment. As a consequence, a large portion of the population is left out of the social security and has no access to the basic income security in old age, considering that in Rwanda the provision of basic income security to all in old age is not anchored in any national legislation.

The analysis also considered the multivariable definition of adequacy of benefits to assess if old-age benefits provided under Rwanda's pension legislation are adequate. Traditionally, the assessment of the benefit was only limited to a measurement based on the replacement ratio (a proportion of income when in employment) and other aspects of adequacy were not considered. ILO Social Security (Minimum Standards) Convention, 1952 (No.102) focuses on the aspect of quantity (replacement rate) and the aspect of quality and

requires that benefit should be sufficient to maintain the family of the beneficiary in health and decency. They should be periodically reviewed following substantial changes in the general level of earnings and the costs of living.

However, in Rwanda, the lack of indexation mechanism, which is an important determinant of adequacy and the delay in pension benefits adjustment have affected the purchasing power of retirees overtime. Therefore, the main goal of this study has been that it provides a summary of the progress made by Rwanda in pension legislation in relation to the international social security standards, which are international legal norms setting the minimum standards level of social protection coverage and benefit to be achieved by each State. Even if Rwanda, like most other African countries, which are ILO member States, has not ratified ILO C102, it is the flagship Convention and it has a universal and legal character and has influence on national legislation.

Based on the comparative analysis, the study identified African countries with the best practices in pension coverage extension to all residents like Mauritius and referred to examples from other countries across the world. The study suggests strategies for the extension of old-age pension to all older people in Rwanda modelled on the ILO Two-dimensional approach (horizontal and vertical dimension) for the extension of social security. The study provides strategies towards effective legal and policy pension reform to meet the international obligations. It concludes that the need to extend old-age pension coverage through a combination of contributory and non-contributory pension schemes is most urgent with a view to apply international social security standards.

Three research questions were formulated and examined mainly in chapter 2 and chapter 3, and in chapter 4 dealing with the comparative study as well as in chapter 5. The following sections review key answers to the research questions.

## **6.1. Key answers to the research questions**

The research problem has been specified by three research questions. Therefore, the key answers to the research questions will be discussed in this section.

### **6.1.1. The first research question**

*To what extent do the international public law instruments entail a right to old-age pension?*

In answering the first research question, the study reviewed the international public law instruments in chapter 2, and observed the following:

***A. Social security is not a charity, but a fundamental human right***

The international human rights instruments particularly, the Universal Declaration of Human Rights, 1948 (article 22 and 25) and the International Covenant of Economic, Social and Cultural Rights (ICESCR, 1966) (article 9 and 11) and other human rights instruments recognize the right to social security for everyone. It includes the right to basic income security in old age and the State is required to recognize and to realize that right by all appropriate means, including legislative means.

***B. Concretization of the right to social security by the ILO social security standards***

While international human rights instruments only declared the existence of a right to social security, ILO Conventions and Recommendations adopted in the field of social security take a right-based approach to provide a universally agreed definition of social security. They also set minimum levels of protection to be ensured, the strategy for achieving such levels of protection and basic principles to comply with for the realization of the right to social security and building sustainable social protection systems. Notably, ILO C102 establishes nine branches of social security and determines the contingencies to be covered including old-age. The study realized that international social security standards have had a substantial influence on regional and national legislation as they provide guidance in the development of the social security system worldwide.

**6.1.2. The second research question**

*Are the old-age public pension systems in Rwanda compatible with International Labour Organization social security standards?*

In answering the second research question, in chapter 3, the study reviewed national legislation on pensions and investigates its compatibility with International Labour Organization social security standards with regard to the personal scope of coverage and the levels of benefits in the branch of old-age benefit.

**A. Compatibility versus conformity**

In the second research question, the study used the term compatibility rather than conformity because Rwanda has not ratified ILO C102. Ratification serves as an indicator of legal conformity as it allows the incorporation of international Conventions into national

legislation and enables ILO supervision and direct technical assistance. Non-conformity of national legislation is an obstacle to ratification of ILO standards. Compatibility of pension systems with ILO social security standards may exist even when a country has not ratified the Convention. While emphasizing on the importance of ratification, the ILO recognizes that the Conventions' impact and that of ILO C102 most particular, should not be measured in terms of number of ratification only, given that ILO has other means of action. For example, the study observed that Rwanda has set up pension schemes modelled on ILO Social Security (Minimum Standards) Convention, 1952 (No.102) and has benefited different types of technical assistance from the ILO. In accordance with the article 10 of ILO Constitution, upon request, ILO provides technical assistance to Member states, as another means of action to achieve its mandate.

The study explored the positive effects of the application of international standards on the national legislation. However, the analysis found out that the minimum standard levels of personal scope of coverage is not achieved. In addition, special legal provisions that are necessary to establish predictable and enforceable rights to benefits are lacking, especially in the domain of non-contributory benefits, which should guarantee at least basic income security to all elderly.

Despite that ILO C102 is not legally-binding to Rwanda, the study observed that while Member States can choose whether or not to ratify Convention, in accordance with the article 19 of ILO Constitution, Rwanda as a member state has a reporting duty. As requested by the ILO Governing Body, ILO Member states have to report at regular intervals, to the ILO Director General on measures they have taken to give effect to the provisions of certain Conventions or Recommendations. They may be requested also to indicate in their report any obstacles which have prevent or delay the ratification of a particular Convention. It must be point out that low level of coverage and inadequate benefits are among obstacles to ratification. Therefore, it is important to consider the crucial role of the ILO and to apply its social security standards to establish comprehensive social security systems providing old-age pension protection to all. The Declaration of Philadelphia which is part of the ILO Constitution specified 'the solemn obligation of the ILO to further among the nations of the world programmes which will achieve among others, the extension of social security



measures to provide a basic income to all in need of such protection and comprehensive medical care...

### **1. Incompatibility with regard to the minimum levels of personal scope of old-age pension coverage**

The answer to the second research question is that the old-age public pension systems in Rwanda are not compatible with the ILO social security standards with regard to the minimum levels of personal scope of coverage. From the analysis, it appears that the Rwandan pension system was established with reference to the ILO C102 and the National Social Security Policy 2009 refers to the definition of social security provided by ILO C102 and to the contingencies covered.

However, the standard minimum level of coverage is not attained, given that coverage by contributory social insurance programmes is mostly restricted to formal workers. Coverage of the informal economy workers by voluntary pension schemes is not sufficient, while they represent considerable portions of the labour force. ILO R202 focuses on the principle of universality of protection based on social solidarity and requires that social security extension strategies should apply to persons both in the formal and informal economy...

### **2. Compatibility with regard to the levels of benefits provided under the 2015 Pension law**

With regard to the benefits, the 2015 Pension law provides the required level of the benefit but the adequacy of the benefit is not effective due to the delay in adjusting the pension benefits and the lack of indexation mechanisms to maintain the value of the pension benefits at a sufficient level to maintain the family of the beneficiary in health and decency, as required by the international social security standards. The study mentioned the example of pension benefits of people who retired in 2002, adjusted after fifteen (15) years.

### **3. Incompatibility with regard to the minimum levels of personal scope of old-age pension coverage and with the duration of benefits provided by *Long-Term Savings Scheme***

A comparative analysis in chapter 4 helped to get knowledge of the social security legislation in Rwanda, Kenya and Mauritius and identified the legal approaches used in these countries to extend old-age pension coverage to unprotected population. For Rwanda, the

study analysed Law No.29/2017 of 29/06/2017 establishing *Long-Term Savings Scheme* and determining its organization, aims at extending the pension coverage to informal economy workers in comparison with the similar scheme established in Kenya in 2011 under the name *Mbao Pension Plan* covering informal sector workers. These schemes have the same characteristics of complementary schemes which are accessible and affordable. The study also explored the Mauritius *Basic Retirement Pension Scheme* and observed that it is unique and serves as a good example of universal pension. The study also referred to some examples of best practices from other countries across the world for a large audience as well.

Despite that Rwanda's *Long-Term Savings Scheme* is the only pension scheme which many people can easily access and can afford, low old-age pension coverage persists since the voluntary nature of that scheme implies the absence of legal obligation to adhere to it. This character makes the enforcement process difficult to achieve universal coverage envisaged by the international social security standards, notably ILO Social Protection Floors Recommendation, 2012 (No.202). In addition, while ILO C102 (art. 28) requires periodical payments of pension benefits for the duration of the contingency, Rwanda's *Long-Term Savings Scheme* allows the withdrawal of part of the savings before the retirement and the use of savings as a loan security. Therefore, the scheme looks more like a saving plan rather than a pension plan. Particularly, under the *Long-Term Savings Scheme*, the provision of periodical pension benefits is limited to the period of twenty (20) years and requires total savings of at least four million (4,000,000Rwf).

### **6.1.3. The third research question**

The third research question is formulated as follows: *How can the existing legal framework and policies of pensions in Rwanda be improved to comply with the international social security standards?*

Chapter five of the study identified legal and administrative barriers to the effective application of the national legislation and implementation of policies on old-age pension provision. Therefore, the study proposed strategies to strengthen existing pension schemes (mandatory and voluntary) and innovative legal mechanisms, such as combination of contributory and non-contributory pension provision to achieve universal coverage.

The following section provides concrete suggestions to improve the legal, policy and administrative framework in old-age pension provision towards achieving the level of protection envisaged by the international social security standards.

## **6.2. Concrete suggestions for legislative and policy reform for Rwanda**

A successful coverage extension of pension rights to all the population needs to have a well-designed legal and policy framework and a stable structure on which schemes are based; a well-defined income which determines the contribution base and benefits level. The implementation of legislation and policies also depends on the administrative institutional capacity to ensure delivery of services and the preservation of pension rights. Therefore, in the context of a changing world, it is important to consider the dynamic aspect of the social security in general and of pension systems in particular with a view to find innovative approaches to meet specific needs and to cope with the current realities towards compliance with international social security standards.

The effective approaches to the compliance of the national legislation with the international social security standards should address the availability of quality employment opportunity, the adequate coordination of labour market policies, especially active labour market policy and wage policies with the social security policy as well as the guarantee of basic income security to all in need.

### **6.2.1. Consideration of universality, progressiveness, Pluralism and outcome focus for extending pension coverage to all**

The realization of pension rights requires to consider the element of universality that corresponds to the concept of a rights-based approach linked to the recognition of the right to social security for everyone. The aspect of progressiveness must also be taken into account, as a country should not stop at the ground floor of setting basic income security in the context of universality. It is necessary for a country to move toward higher levels of social security to cover as many people as possible when economic development permits. Based on the principle that there is no single model of social security, setting basic income security guarantee to all in need in old age can be implemented in different ways, which implies the element of pluralism.

## **A. Mandatory pension schemes**

This study suggests the regular review of regulatory and policy frameworks and practices to identify legal and administrative barriers to coverage and key areas that need reform. In this regard, a diagnostic of non-compliance is necessary to address related operational challenges, namely error, evasion and fraud in order to put in place prevention, detection and deterrence mechanisms. Therefore, it is important to strengthen enforcement and inspection mechanisms in order to maximize registration and collection of contribution and compliance.

The study suggests the increase of contribution rate in pension scheme to ensure sustainability of pension schemes and regular adjustment of pension benefits. It is also necessary to put in place legal and policy frameworks facilitating the portability of the pension benefits for migrant workers.

## **B. Voluntary pension schemes**

Effective pension coverage of the informal economy workers (generally subjected to voluntary pension schemes) is necessary through formalization of informal employment using a sector-based approach rather than a general approach. The study suggests to analyse the risks the informal economy workers face and the different factors contributing to their vulnerability and to assess if mandatory affiliation can be realized to bring them under pension legislation. In this regard, priority-setting, time frame and sequence of actions are necessary for the progressive achievement of the objectives.

### **6.2.2. Investing in social security and involving stakeholders**

Investing in universal social protection for the full realization of the rights to social security for everyone, through a combination of contributory and non-contributory pension schemes is necessary to achieve the Sustainable Development Goals. The study also suggests ensuring regular monitoring of the implementation of national social protection strategies in line with ILO R202.

The study also suggests raising awareness through effective communication and education on social security rights and obligations in order to increase pension coverage and the tripartite participation of workers' and employers' representatives and other relevant stakeholders through effective social dialogue.

### **6.2.3. Area for future research**

This study introduces Rwanda's Pension legislation to a wide audience by assessing its compatibility with the international social security standards with regard to the provision of access to old-age pension benefits. By doing so, the study contributes to the debate about how to extend coverage of old-age pension to all older people. Therefore, the study serves as a key reference for practitioners, academics and the general public. Hopefully, the practices and recommendations put forward in chapter 7 of this study will help countries, especially Rwanda, to progress towards achieving a universal pension coverage and meeting sustainable development goals (SDG) by 2030 to achieve the right to social security for everyone.

The study leaves space for further research, which will continue to assess the design of a legislation guaranteeing basic income security to all elderly people, for example how basic income (benefit package) will be determined and which payment mechanism, through which institution universal non-contributory pension schemes will be managed, the entitlement conditions and financial resources. In brief, to introduce a Universal non-contributory pension, a basic minimum level of administrative and financial capacity as well as political will is required.

Further research will continue to assess whether the required minimum standards of pension protection are achieved in line with the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Invalidity, Old-Age and Survivor's Benefits Convention, 1967 (No.128), which is the most advanced norm setting high level of protection and its accompanying Recommendation No. 131. In order to encourage countries not to only remain on the minimum level of protection, but to achieve high level and to guarantee basic income security to all in need, further research will have to assess the application of ILO Social Protection Floors Recommendation, 2012 (No.202). It is relevant to mention that moving towards a comprehensive social security implies not only achieving the minimum level of coverage, or covering all population, but also ensuring benefit adequacy.

Future study is also needed to analyse how private pensions managed by private insurance companies can be developed to complement basic pension provided by public institutions. In addition, in order to continue to enforce fundamental human rights to social security, the present study leaves space to future research on the design of a new pension

legislation or the adaptation of the existing legislation and policies to new forms of work. Due to the transformation of the labour market in a rapidly changing world there will be new forms of work that are not protected by existing laws, while there will also be other workers who will lose their jobs due to digitalization. Therefore, future researchers have to think about a jobless future because technologies create jobs as well as they destroy them/others types of jobs: jobs created are not the same as those disappearing and higher skilled jobs are created which means that some workers with low skills will lose their jobs which may decrease pension coverage. It must be pointed out that in theory, the process of building capabilities in line with new technologies should be continuous overtime, with practically all active people making adjustments on the way they work. So, for most of active people in the long-term, being without job at all should be only temporary, as the creation of salaries and taxes and pension liabilities should continue in one way or another.

#### **6.2.4. Added value**

Apart from the relevance of answering research questions, which have been analytically described and justified in the introductory chapter, this doctoral thesis added value to the academic and policy debates about how to guarantee pension rights in law and in practice to all older people in Rwanda. The study consists of the first formal comprehensive academic legal analysis of national pension legislation in connection with the international social security standards in a specific developing country of Africa.

Despite the progress made over the past decades in elaborating a basic legal framework for the regulation of pension systems, the challenge of low access to old-age pension benefits in Rwanda undermines the full realization of the right to social security, guaranteed by international human rights instruments and international social security standards. Therefore, this study sets up a comprehensive pension reform agenda for Rwanda to strengthen the existing contributory pension schemes and to introduce new pension schemes such as universal non-contributory pension scheme in order to achieve universal coverage. The idea of adopting legislation governing universal non-contributory tax-financed pension scheme is new to Rwanda's pension system. The study refers to the principle of universality of coverage based on social solidarity envisaged by the ILO Social Protection Floors Recommendation, 2012 (No.202) and shows positive effects of the application of international standards on the national legislation.

The experience of Rwanda in achieving universal health coverage, which is mandatory for all residents and financed by domestic resources, builds the confidence that it is also possible to implement universal pension coverage in Rwanda. This study addresses the need to reform *Long-Term Savings Scheme* and to make it mandatory for self-employed with contributory capacity and workers in organized groups and to provide pension benefits for the duration of the contingency (old age).

Thus, the study forms a useful basis for discussion and further research, given that the methodology used, findings, analysis, strategies, conclusions and recommendations, both enrich and supplement the findings of the latest international, regional and national social security research.

## CHAPTER 7: RECOMMENDATIONS

Having completed this research, some recommendations are formulated to the different stakeholders that play an active role in the social security sector. Those are, The Government of Rwanda, Social security institutions, employers and workers' unions, the civil society and the community as well as the ILO.

### 7.1 The Government of Rwanda

- *Maintaining social security schemes under State guarantee*

The government of Rwanda should continue to be a guarantor of the mandatory social security schemes and to guarantee in law and in practice the provision of basic income security to all in need in old-age, ensure the maximum coverage of the social assistance programmes, put in place an enabling environment for smooth operations of the social security and effective coordination, institute regulatory and legal framework and should continue to ensure the supervision of the social security sector.

- *Ratification of the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102)*

The study recommends the incorporation of the ILO social security minimum standards into Rwanda's Constitution (which is the country's fundamental law) through the ratification of ILO Conventions, 1952 (No.102) and others standards providing higher levels of protection which are not yet ratified, such as ILO C128. In the legal hierarchy, once ratified and incorporated in the Constitution, international social security standards, mainly Conventions, have the priority and are used for the interpretation in case of conflict in national legislation or in case there is confusion in terminology. The ratification also allows Member States to benefit from ILO technical support and supervision on a priority basis and serves as an indicator of the legal conformity. In addition, the ratification reflects a strong commitment for ratifying-countries to progress towards higher levels of social security protection while maintaining the level already achieved.

- *Implementing national floors of social protection*

Social protection floors, which are 'nationally defined sets of basic social security guarantees which secure protection aimed at preventing or alleviating poverty, vulnerability and social exclusion' should be implemented to ensure effective application of ILO



Recommendation, 2012 (No.202). This Recommendation sets up principles to be applied in the gradually extension of population coverage and in determining the range and level of benefits. Therefore, the state responsibility in implementing national floors of the social protection should focus on progressive realization, including setting targets and timeframes; coherence with social, economic and employment policies; regular monitoring of implementation and periodic evaluation; tripartite participation and consultation with the representative of persons concerned.

## **7.2. Social security institutions**

The following recommendations are addressed to social security institutions, mainly the Rwanda Social Security Board (RSSB) which manages the social security at national level.

- *Strengthen contributory pension schemes*

RSSB should strengthen the existing contributory pension schemes through the reinforcement of mandatory adhesion; strengthen the integrated collection of contributions with tax collection to prevent and detect evasion of contribution payments, undeclared work and fraud which reduce the coverage and lead to low compliance with the minimum standard levels of coverage set out by the international social security standards.

- *Offer quality pension benefits and services*

RSSB shall continue to reform the pension systems and administration in order to ensure effective application of laws and regulations so as to maximize coverage in mandatory and voluntary contributory pension schemes and to offer quality benefits and services. Proper management of investments is recommended to ensure sustainability of pension schemes and regular adjustment of pension benefits. RSSB should conduct regular actuarial studies to have accurate data; ensure good governance of pension schemes, involve stakeholders, and increase the legal literacy of the population on social security rights through sensitization campaigns focusing on informal economy. Recent administrative and financial autonomy granted to RSSB will improve RSSB efficiency.<sup>342</sup>

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<sup>342</sup>Art. 4 of Law No. 009/2021 of 16/02/2021 establishing Rwanda Social Security Board, *OG* No. Special of 17/2/2021.

- *Reform Long-Term Savings Scheme (EjoHeza)*

The important gap identified is the lack of enforcement mechanism due to the voluntary nature of the *Long-Term Savings Scheme*. Another gap is the provision of benefits limited to the period of twenty (20) years, while ILO C102 (art 28) requires that all pension benefits have to be paid in cash as periodic payments for the duration of the contingency. This constitutes a challenge for contributors who will live longer, as the scheme will deliver income security through regular pensions for the elderly until the age of 75 years, since the retirement age is fifty-five (55) years.<sup>343</sup>

Thus, the study recommends legal reform of *Long-Term Savings Scheme* to make the scheme mandatory for self-employed with contributory capacity and for workers in organized groups. The study also recommends the provision of pension benefits for the duration of the contingency (old age). The approval and commitment by the Government on RSSB's proposal for such an important reform will be needed, given the importance attached politically to the *Long-Term Savings Scheme* for the protection of informal sector workers and their families.

- *Introduce non-contributory universal pension schemes (tax-financed)*

This study recommends the adoption of a legislation governing non-contributory universal pension schemes to guarantee at least basic income security to all elderly residents from age of sixty (60). The scheme will not be a means test and will cost around 1% of GDP.

The experience of Rwanda in achieving universal health coverage, through compulsory coverage, provides evidence that achieving old-age pension coverage by guaranteeing basic income security to all the elderly is possible. Pension schemes have a long-term character and are provided under conditions of the retirement age, and those who reach the retirement age are not as many as those who are covered in medical schemes.

- *Improve the Information and Communication Technologies in the social security management*

The effective management of social security and the efficiency in service delivery require improving the Information and Communication Technologies, making faster, simpler

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<sup>343</sup> Art.3 of Ministerial Order No 001/18/10/TC of 05/12/2018 determining modalities of granting Long-Term Savings Scheme Benefits, *OG* No.50 of 10/12/2018.

and more client-oriented the administrative processes and procedures used by social security systems in the registration, collection of the contributions and the payment of the benefits while also providing adequately trained staff to ensure the availability of the necessary specialists in social security.

### **7.3. Employers and workers' unions**

- *Employers shall register all employees and ensure timely and accurate remittance of declaration and payment of contributions and shall provide training to their employees on social security rights.*
- *Workers' union shall support social security systems through their participation in national social dialogue consultation and assist their members to know their social security rights and obligations.*

### **7.4 Civil society, Non-Government Organizations (NGOs) and communities**

During the reform process of pension schemes, the role of the citizens and the civil society in policies adoption and implementation to push for the necessary change is crucial. Therefore, the civil society shall participate in the national social dialogue consultation and non-governmental organizations shall complement the efforts of the Government in the provision of social assistance programmes and the establishment of supplementary schemes as well as raising awareness for the realization of the right to pension for everyone.

Communities shall have a culture of saving for their future retirement and continue to strengthen their local initiatives of savings through micro-finance in order to have a contributory capacity allowing them to participate in voluntary pension schemes.

Communities shall have the values of solidarity and pooling of resources, as they are the foundation for any national or community-based scheme aimed at ensuring at least a minimum income or service for all members, including those with a sustainable savings capacity.

### **7.5 The ILO**

This study has been inspired by the findings from the General survey conducted in 2019 by the ILO Committee of Experts on the Application of Conventions and Recommendations in accordance with articles 19 and 22 of the ILO Constitution, reported

during the International Labour Conference, 108<sup>th</sup> Session, 2019. The Committee considers that all approaches to the development and implementation of social protection legislation and policies must be rooted in the principles set out in ILO Recommendation No.202 and other ILO social security standards with a view to building universal and comprehensive social protection systems that provide adequate benefits.

- *Strengthening training, education and research activities*

Enhancing collaboration between the ILO and the Government of Rwanda through training, education, and research activities is recommended to help advance all efforts related to the realization of human rights to social security, especially awareness of the ratification of international social security standards. The importance of ratifying ILO Conventions is that ratifying countries benefit from ILO experience and technical assistance (policy advice, capacity building, actuarial studies,...) on a priority basis.

- *Strengthening regional and international cooperation*

Strengthening regional and international cooperation is necessary for experience and expertise sharing in social security as well as for labour mobility and portability of pension benefits for migrant workers. Therefore, it is necessary to take measures to strengthen the international cooperation, particularly with the ILO and effectively applying international social security standards in law and in practice, customizing ILO technical advice, enhancing technical cooperation and strengthening national dialogue. For effective implementation of ILO Recommendation, 2012 (No.202), Member States may seek technical assistance from the ILO and other relevant international organizations in accordance with their respective mandate.

## SUMMARY

### **Legal analysis of access to old-age public pension benefits in Rwanda: Challenges and Trends**

This study explored the topic entitled '*Legal analysis of access to old-age public pension benefits in Rwanda: Challenges and Trends*' aims at investigating if old-age public pension systems in Rwanda are compatible with the international social security standards developed by the ILO.

Rwanda has made progress in elaborating a basic legal framework for the regulation of pension systems. However, the right to social security including basic income security in old-age is not realized for many old people, despite the international recognition of the right to social security for everyone (Art 22& 25 of The Universal Declaration of Human Rights, 1948).

The application of the pension legislation with regard to registration of all salaried workers in mandatory schemes is not effective due to different types of evasion, while the adequacy of pension benefit is also undermined by the lack of a systematic indexation mechanism to the cost of living. Therefore, Rwanda should take further steps towards the trends in most countries that focus on pension reforms by adapting the existing legislations and policies on pensions for the excluded population and ensure the provision of adequate benefits.

The study used research methodology based on doctrinal legal research, focus group discussion and comparative legal analysis to explore the research topic and to find answer to the research problem. The study also used a rights-based approach to social security to examine to what extent the international public law instruments entail a right to old-age pension and to find out effective strategies to improve the legal framework and policies on old-age pension provision in Rwanda. By doing so, the study introduces the Rwandan pension legislation to a wide audience and contributes to the academic debate about how to extend coverage of old-age pension and provide adequate benefits to all older people in Rwanda.

In the past, little attention had been given to the research on the legal perspective of old-age pension provision in Rwanda in the light of international social security standards. The gap in that area of research leads to the situation where pension provision has been

generally limited to salaried workers with a contributory capacity who enjoy a regular and predictable income, thus leaving out of protection the unemployed population, particularly informal economy workers.

With regard to benefits, traditionally, the assessment of the adequacy has been limited to the aspect of quantity (the level of replacement ratio) while there are other factors to be considered as well. For example the quality of benefit provided, the way it is accessed, delivered and maintained.

ILO social security standards constitute an international reference framework on old-age pension provision by determining the way benefits are guaranteed, accessed, provided and maintained. ILO C102 remains the flagship Convention and it is strengthened by other social security standards providing a higher level of protection such as Invalidity, Old-Age and Survivors Benefits Convention, 1967 (No.128), and its accompanying Recommendation, 1967 (No.131). These standards are strengthened by ILO Social Protection Floors Recommendation, 2012 (No.202) which focuses on the principle of universality of protection and defines more the State responsibility to make the right to basic income security to all in need in old-age realizable.

Despite that Rwanda has not ratified ILO C102 to be legally-bound, in accordance with the article 19 of the ILO Constitution, Rwanda like any other ILO Member state has the reporting duty. The Governing Body has the authority to request Member states to report at regular intervals on measures they have taken to give effect to the provisions of certain Conventions or Recommendations. Due to the ILO tripartite structure, adopted Conventions are internationally accepted as they reflect common values and principles, therefore, provide international reference. Therefore, ILO norms are relevant to Rwanda given that the design and the implementation of social security systems in Rwanda have been influenced by ILO C102.

Through an analysis of the relevant legislation and the practice in Rwanda and the investigation of the level of compatibility with international social security standards, the study found out that currently, public pension schemes are governed by law No. 05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda to which all employees of public and private sector are subjected. Therefore, this law was analysed in comparison with the provision of ILO C102 and C128 with regard to the level of the personal old-age pension coverage and benefit. The study observed the challenge of low enforcement

of the Rwanda's pension legislation to prevent different types of evasion in mandatory pension schemes, which leave out of protection some workers in formal employment.

With regard to the level of old-age benefits, Rwanda's pension legislation meets ILO minimum standards, but benefits are not sufficient due to different factors, including low salaries influenced by gap in minimum wage setting and lack of automatic indexation mechanism to prevent deterioration of the value of benefits overtime.

The study also examined voluntary public pension scheme which is governed by Law No. 29/2017 of 29 June 2017 establishing *Long-Term Savings Scheme* and determining its organization whose aim is to extend the pension coverage to the informal sector. *Long-Term Savings Scheme* commonly known as *EjoHeza* (meaning a brighter future) is a fully funded public pension managed under a voluntary defined-contribution pension system. The design and implementation of this scheme are analyzed in comparative study between Rwanda, Kenya and Mauritius in chapter four in the light of ILO two-dimensional approach for the extension of a social security which reflects the principles envisaged in the ILO C102 and R202. To be more impactful, the study referred to examples from other countries across the world for a large audience as well.

The study observed the challenge of the lack of enforcement mechanism for a voluntary pension scheme, such as *Long-Term Savings Scheme* and the provision of benefits in a limited period of twenty (20) yeas. Therefore, the study suggests legal reform of *Long-Term Savings Scheme* to make the scheme mandatory for self-employed with contributory capacity and for workers in organized groups. The study also suggests the provision of pension benefits for the duration of the contingency (old age), given that the ILO C102 (art.28) requires that all pension benefits have to be paid in cash as periodic payments for the duration of the contingency.

Despite the existence of these legal texts and the progress made in pension reforms, the study noted that the existing pension schemes are generally limited to a minority of the population with a contributory capacity. The study also noticed that there is a lack of a legislation guaranteeing basic income security to the elderly people in Rwanda. Therefore, a combination of different approaches such as contributory and non-contributory schemes is suggested in this study as an effective strategy to achieve universal pension coverage and adequate benefits, balanced with the element of sustainability. It must pointed out that any

pension reform requires social acceptability, financial viability, political feasibility, compatibility with economic realities and the labour market, transparent management and administration for the users.

The study also suggests the implementation of policies that consider changing work patterns that prevent poverty and promote decent work by facilitating the transition from informal to formal economy and avoiding informalization of formal economy. The proposed legal and policies strategies are relevant as they help to maintain the level of coverage moving towards higher level of coverage, guided by international social security standards.

Strengthening international and regional cooperation is necessary to benefit from international technical assistance and experience sharing, especially with international organizations such as the ILO and the ISSA, given that they play a leading role in social security development. It is also necessary to strengthen a regional cooperation that facilitates labour mobility and export of social security benefits based on reciprocal agreements that enforce social security right for migrant workers.

Thus, this study constitutes a useful basis for discussion and further research, given that it has demonstrated the importance of applying international social security standards in national legislation to achieve universal pension coverage and Sustainable Development Goal (SDGs) by 2030. Some recommendations are formulated for different stakeholders to play an active role in the social security sector. Those are The ILO, The Government of Rwanda, Social security institutions, employers and workers' unions, civil society and community as well as scholars.

Public pensions are important tools to provide a basic income security to all and to achieve Sustainable Development Goals. The State should continue to be responsible for pension schemes as the continuous capabilities of the State to govern the public social security system is justified by the principles anchored in ILO Convention,1952 ( No.102), art.71-72.

In conclusion, the study leaves space for further research, which will continue to assess if the required minimum standards are achieved in mandatory contributory pension schemes and to assess the design of a legislation guaranteeing basic income security to all the elderly, for example, how the basic income (benefit package) will be determined and the payment mechanism, through which institution universal non-contributory pension schemes will be managed, the entitlement conditions and the financial resources.



Future study is also needed to analyse how private pensions managed by private insurance companies can be developed to complement basic pension provided by public institutions. In addition, in order to continue to enforce fundamental human rights to social security, the present study leaves space to future research on the design of a new pension legislation or the adaptation of the existing legislation and policies to new forms of work.

## **SAMENVATTING (DUTCH SUMMARY)**

### **Juridische analyse van de toegang tot publieke ouderdomspensioenregelingen in Rwanda: uitdagingen en trends**

Dit onderzoek betreft het onderwerp '*Legal analysis of access to old-age public pension benefits in Rwanda: Challenges and Trends*'. De analyse betreft de vraag of de publieke ouderdomspensioenregelingen voor ouderen in Rwanda verenigbaar zijn met de internationale normen voor sociale zekerheid die door de ILO zijn ontwikkeld.

Rwanda heeft vooruitgang geboekt bij het uitwerken van een wettelijk basiskader voor de regulering van pensioenstelsels. Het recht op sociale zekerheid, met inbegrip van de basisverzekering op oudere leeftijd, wordt echter voor veel ouderen niet gerealiseerd, in het bijzonder de internationale erkenning van het recht op sociale zekerheid voor iedereen (Art 22 en 25 van de Universele Verklaring van de Rechten van de Mens, 1948).

De registratie van alle werknemers in loondienst is niet doeltreffend. Er bestaan verschillende vormen van ontdoiking, terwijl de toereikendheid van de pensioenuitkeringen ook wordt ondermijnd door het ontbreken van een systematische indexering voor de kosten van levensonderhoud. Net als andere landen moet Rwanda zich richten op hervormingen van de bestaande wetgeving, met name ten aanzien van de verruiming van de kring van pensioengerechtigden en de verhoging van de uitkeringen.

De studie is gebaseerd op klassiek juridisch (bronnen)onderzoek, de uitkomst van focusgroepdiscussies en een rechtsvergelijkende analyse. Op deze manier wordt een antwoord gezocht op de onderzoeksvraag. De studie maakt ook gebruik van een op rechten gebaseerde benadering van de sociale zekerheid, om na te gaan in hoeverre de internationale publiekrechtelijke instrumenten een recht op ouderdomspensioen inhouden. Ook wordt getracht om effectieve strategieën te vinden om het wettelijk kader en het beleid inzake ouderdomspensioenvoorzieningen in Rwanda te verbeteren. Op die manier brengt de studie de Rwandese pensioenwetgeving onder de aandacht van een breed publiek en draagt zij bij aan het academische debat over de uitbreiding van de dekking van het ouderdomspensioen en het bieden van adequate uitkeringen aan alle ouderen in Rwanda.

In het verleden was er weinig aandacht voor het juridische perspectief van de oudedagsvoorziening in Rwanda in het licht van de internationale normen voor sociale zekerheid. Deze lacune heeft geleid tot de situatie dat de pensionvoorzieningen over het algemeen beperkt zijn gebleven tot werknemers in loondienst met een regelmatig en voorspelbaar inkomen. Als gevolg hiervan worden met name werknemers in de informele economie niet beschermd.

De traditionele beoordeling van de toereikendheid van de uitkeringen is beperkt gebleven tot het vervangingsniveau. Er zijn echter ook andere factoren waarmee rekening moet worden gehouden. Bijvoorbeeld de kwaliteit van de voorzieningen, de manier waarop toegang is geregeld, de handhaving en de manier waarop wordt uitbetaald.

De normen voor de sociale zekerheid van de ILO vormen een internationaal referentiekader voor de ontwikkeling van ouderdomspensioenen. Deze normen bepalen op welke wijze uitkeringen worden gegarandeerd, aangevuld, verstrekt en gehandhaafd. De ILO Conventie 102, wordt versterkt door andere socialezekerheidsnormen die een hoger beschermingsniveau bieden. Een voorbeeld is het Verdrag inzake invaliditeits-, ouderdoms- en nabestaandenuitkeringen van 1967 (nr. 128) en de bijbehorende aanbeveling van 1967 (nr. 131). Deze normen worden versterkt door de ILO Social Protection Floors Recommendation, 2012 (No.202), die zich richt op de universaliteit van de bescherming. Ook definieert het de verantwoordelijkheid van de staat om het recht op basisinkomenszekerheid voor iedereen in nood op oudere leeftijd te realiseren.

Hoewel Rwanda ILO Conventie 102 niet heeft geratificeerd, heeft het land net als elke andere ILO-lidstaat een rapportageplicht. De ILO heeft de bevoegdheid om de lidstaten te verzoeken op gezette tijden verslag uit te brengen over de maatregelen die zij hebben genomen om uitvoering te geven aan de bepalingen van bepaalde verdragen of aanbevelingen. Vanwege de tripartiete structuur van de ILO zijn aangenomen verdragen internationaal aanvaard, omdat ze gemeenschappelijke waarden en beginselen weerspiegelen en daarom internationale standaarden bieden. Daarom zijn de ILO-normen toch relevant voor Rwanda, aangezien het ontwerp en de implementatie van socialezekerheidsstelsels zijn beïnvloed door ILO Conventie 102.

In deze studie is een analyse gemaakt van de relevante wetgeving en de praktijk in Rwanda, alsmede naar de mate van verenigbaarheid met internationale socialezekerheidsnormen. Daaruit blijkt, dat publieke pensioenregelingen worden gergeld

door wet nr. 05/2015 van 30/03/2015 betreffende de organisatie van pensioenregelingen in Rwanda, waaraan alle werknemers in de publieke en private sector zijn onderworpen. Deze wet is vergeleken met de bepalingen van ILO Conventies 102 en 128 met betrekking tot de hoogte van de persoonlijke ouderdomspensioendekking en -uitkering. De studie constateert het probleem van een laag niveau van handhaving van de Rwandese pensioenwetgeving. Er bestaan verschillende soorten van ontduiking van de verplichte pensioenregelingen, waardoor ook sommige werknemers met een formeel dienstverband onbeschermd blijven.

Wat de hoogte van de ouderdomsuitkeringen betreft, voldoet de Rwandese pensioenwetgeving aan de minimumnormen van de ILO. De uitkeringen zijn echter niet toereikend. Dit komt door de lage salarissen die worden beïnvloed door een kloof in de vaststelling van het minimumloon. Ook ontbeekt een automatisch indexeringsmechanisme om verslechtering van de waarde van uitkeringen in de loop der tijd te voorkomen.

Ook is onderzoek gedaan naar de vrijwillige publieke pensioenregeling, die is vastgelegd in wet nr. 29/2017 van 29 juni 2017 tot vaststelling van een langetermijnsparregeling. Deze wet heeft tot doel de pensioendekking uit te breiden naar de informele sector. De langetermijnsparregeling die bekend staat als *EjoHeza* (een betere toekomst) is een volledig gefinancierd publiek pensioen met vaste premies (defined-contribution). Het ontwerp en de uitvoering van deze regeling worden in hoofdstuk 4 geanalyseerd door middel van een vergelijking met Kenia en Mauritius. De tweedimensionale benadering voor de uitbreiding van sociale zekerheid weerspiegelt de principes uit de ILO Conventie 102 en Aanbeveling 202. Er is ook onderzoek verricht naar voorbeelden uit andere landen.

In de studie is gewezen op het probleem van het gebrek aan een handhavingsmechanisme voor een vrijwillige pensioenregeling, zoals de *langetermijnsparregeling*, en de verstrekking van uitkeringen over een periode van 20 jaar. Daarom stelt de studie een wettelijke verplichting voor van de *langetermijnsparregeling* voor zelfstandigen die een premie kunnen betalen en voor werknemers in georganiseerde groepen. De studie suggereert ook de regeling aan te passen aan de ILO Conventie 102, die eist dat alle pensioenuitkeringen periodiek in geld moeten worden uitbetaald voor de duur van het risico.

Ondanks de vooruitgang die is geboekt bij de hervormingen, blijkt uit de studie dat de bestaande pensioenregelingen over het algemeen beperkt zijn tot de minderheid van de bevolking die in staat is om de premie te betalen. De studie constateerde ook dat er een wet ontbeekt die de basisinkomenszekerheid garandeert aan de ouderen in Rwanda. Daarom wordt in deze studie een combinatie van verschillende benaderingen voorgesteld: Premie-en niet-premiegebonden regelingen, een effectieve strategie om universele pensioendekking en adequate uitkeringen te realiseren die duurzaam is. Voor pensioenhervorming zijn sociale aanvaardbaarheid, financiële levensvatbaarheid, politieke haalbaarheid, verenigbaarheid met de economische realiteit en de arbeidsmarkt, transparant beheer en administratie voor de gebruikers essentiële vereisten.

De studie suggereert verder dat bij de implementatie van maatregelen rekening moet worden gehouden met veranderende werkpatronen. Het is belangrijk om 'decent work' te bevorderen door de overgang van informele naar formele economie te vergemakkelijken en informalisering van de formele economie te voorkomen. De voorgestelde juridische en beleidsstrategieën dragen er toe bij dat de dekking op een hoger niveau wordt gebracht, geïnspireerd door internationale socialezekerheidsnormen.

Versterking van de internationale en regionale samenwerking is noodzakelijk om te profiteren van internationale technische bijstand en het delen van ervaringen. Dit geldt met name voor internationale organisaties zoals de ILO en de ISSA, aangezien zij een leidende rol spelen in de ontwikkeling van de sociale zekerheid. Het is ook noodzakelijk de regionale samenwerking te versterken. Dit vergemakkelijkt de arbeidsmobiliteit en de export van socialezekerheidsuitkeringen op basis van wederkerige overeenkomsten die het recht op socialezekerheid voor migrerende werknemers garanderen.

Deze studie vormt een nuttige basis voor discussie en verder onderzoek, aangezien het belang is aangetoond van het toepassen van internationale socialezekerheidsnormen in nationale wetgeving om in 2030 universele pensioendekking en duurzame ontwikkelingsdoelstelling (SDG's) te bereiken. Er worden aanbevelingen geformuleerd voor verschillende belanghebbenden om hier een actieve rol te spelen. Dat zijn de ILO, de regering van Rwanda, socialezekerheidsinstellingen, werkgevers en vakbonden, het maatschappelijk middenveld en de gemeenschap, en ook wetenschappers.

Ouderdom pensioenen zijn belangrijke instrumenten om iedereen een basisinkomenszekerheid te bieden en duurzame ontwikkelingsdoelen te bereiken. De staat

moet verantwoordelijk blijven voor de pensioenregelingen, aangezien de bevoegdheid van de staat om het openbare socialezekerheidsstelsel te regelen, gebaseerd kan worden op de beginselen die zijn verankerd in ILO-conventie 102 uit 1952 (art. 71-72).

De studie suggereert dat toekomstig onderzoek moet beoordelen of de vereiste minimumnormen worden bereikt in verplichte premiepensioenregelingen. Hetzelfde geldt voor de beoordeling van wetgeving die de basisinkomenszekerheid voor alle ouderen garandeert. De manier waarop het minimum- of basisinkomen zal worden bepaald, alsmede het betalingsmechanisme waarmee universele, niet op premie- of bijdragebetaling berustende pensioenregelingen van instellingen zullen worden beheerd zijn belangrijk.

Toekomstige studies zijn ook nodig om te analyseren hoe particuliere pensioenen die door particuliere verzekeringsmaatschappijen worden beheerd, kunnen worden ontwikkeld als aanvulling op het basispensioen dat door publieke instellingen wordt verstrekt. Om de fundamentele mensenrechten op de sociale zekerheid te waarborgen, is deze studie een stap in de richting van een nieuwe pensioenwetgeving en de aanpassing van de bestaande wetgeving en beleid aan nieuwe vormen van werk.

## CURRICULUM VITAE

Odette NYIRAMUZIMA studied Law and obtained her LLM (2010) degree from the National University of Rwanda (NUR), currently University of Rwanda (UR). She also studied gender studies and obtained a Master degree of Social Sciences in Gender and Development (2012) from Kigali Institute of Education (KIE), Rwanda, currently College of Arts and Social Sciences (CASS), University of Rwanda (UR).

Since 1995, Odette has been working for a public institution (Rwanda Social Security Board (RSSB)) managing a social security system at the national level in Rwanda. She has occupied different posts respectively in Contributions Section, and in charge of the public sector affiliates; she has been in charge of Communication, Information and Documentation Bureau. She has published different articles on labour and social security rights; she has been RSSB District Branch Manager and currently works in RSSB Research and Development Unit.

In June 2017, she was admitted as an external PhD candidate at the Department of Labour and Social Security Law, Institute of Public Law of Leiden Law School, The Netherlands, supervised by Prof. dr. Barend Barentsen and Prof.dr. Nick Huls. The title of her research is: *Legal Analysis of Access to Old-Age Public Pension benefits in Rwanda: Challenges and Trends*.

Odette participated in different international conferences on social security development such as The World Social Security Forum (2019) under the theme 'Protecting people in a changing world', organized by the International Social Security Association (ISSA) and hosted by the public social security institutions of Belgium. The forum was the largest and most important international event for social security involving decision-makers and researchers. She benefited from exchanging thoughts and opinions with experts in social security and the Forum provided unparalleled source of exclusive networking for ISSA member organizations and researchers.

Odette also participated in the Official launch of the Regional Strategy for Accelerating Social Protection in Africa, which took place online from 16-17 November 2021, organized by the ITC/ILO. This high-level event was an opportunity to her to be granted unlimited access to a dedicated knowledge-sharing platform on the extension of social protection in Africa.<sup>344</sup>

### **Disclaimer:**

The views expressed in this study are solely those of the author.

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<sup>344</sup> ITC/ILO, 'Social Protection: Africa's hope for achieving the Sustainable Development Goals', Launch of the Regional Strategy for Accelerating Social Protection in Africa, 16-17 November 2021 <<https://www.itcilo.org/events/social-protection-africas-hope-achieving-sustainable-development-goals>>.

## APPENDICES

This study has three appendices: Below is Appendix I, which is the letter addressed to the Legal Representative of The Rwandan Association of the Retired (A.R.R) to allow discussion with members of the Association and facilitate the selection of those who are a valid source of information and to contact them. Appendix II is related to ten open-ended questions formulated from the research questions to guide the Focus Group Discussion while Appendix III deals with the Focus group discussions process and findings.

### ***APPENDIX I : LETTER FOR FACILITATION TO CONDUCT FOCUS GROUP DISCUSSION***

**NYIRAMUZIMA Odette**

PhD Law Candidate at Leiden Law School

Netherlands

Tel 0788652791

Email: [odettemuzima@yahoo.fr](mailto:odettemuzima@yahoo.fr)

September 3<sup>rd</sup>, 2019

**The Legal Representative of The Rwandan Association of the Retired (A.R.R)**

**KIGALI-RWANDA**

**Dear Sir,**

**Re: Request for facilitation to conduct Focus group discussion with a group of 8 retired members of A.R.R**

This is to inform you that I am a PhD Law Candidate at Leiden Law School in The Netherlands. My research topic is *“Legal Analysis of access to old-age public pension benefits in Rwanda: Challenges and Trends”* under Supervision of Prof.dr. Barend Barentsen. Focus group Discussion is one of the data collection techniques I have chosen. Therefore, I request your cooperation to conduct Focus group Discussion with a group of eight retired who are valid source of information related to pension benefits. The FGD will be held on September 7<sup>th</sup>, 2019 at Centre Saint Paul Kigali, from 9:00-12:00am.

Sincerely yours,



Odette Nyiramuzima

PhD Law candidate



## APPENDIX II: GUIDING QUESTIONS FOR FOCUS GROUP DISCUSSION

### PhD Research topic: LEGAL ANALYSIS OF ACCESS TO OLD-AGE PUBLIC PENSION BENEFITS IN RWANDA: CHALLENGES AND TRENDS

Leiden Law School (The Netherlands)

By Nyiramuzima Odette

Questions discussed with informants members of The Rwandan Association of the Retired (A.R.R) during focus group discussion held on September 7<sup>th</sup>, 2019 at Centre Saint Paul, Kigali-Rwanda. *(Ibibazo biganirwaho n'abanyamuryango b'Ishyirahamwe nyarwanda ryabari mu kiruhuko cy'izabukuru mu kiganiro n'itsinda ryabo cyo ku itariki ya 7 Nzeli 2019 kuri Centre Saint Paul, Kigali-Rwanda).*

- What benefits do you get from membership, is it relevant to be member of A.R.R, what advocacy does the Association provide to its members? *(Kuba umunyamuryango wa A.R.R bibamariye iki, ese hari ubuvugizi A.R.R ibakorera bujyanye na Pansion)?*
- In your opinion, what is the reason behind the limited coverage of old-age public pension in Rwanda?  
*(Ese mutekerezako ari izihe mpamvu zituma mu Rwanda hari umubare muto wabari mu bwiteganyirize bwa Pansiyo y'izabukuru butangwa na Leta)?*
- Do you find old-age public pension systems in Rwanda compatible with International Labour Organization standards?  
*(Ese musanga u Rwanda rwubahiriza amahame n'ibipimo by'ubwiteganyirize bwa Pansiyo y'izabukuru bishyirwaho n'Umuryango Mpuzamahanga wita ku Murimo (ILO)?*
- How can the existing legal framework and policies be improved to effectively extend old-age public pension coverage to the excluded population? *(Ese nigute amategeko na politiki by'ubwiteganyirize byanzwe kugirango ubwiteganyirize bwa pansiyi y'izabukuru butangwa na Leta bugere kubantu bose)?*
- Do you think that the ILO standards protect women on retirement at the same level as men?  
*(Ese musanga ibipimo ngenderwaho by'ubwiteganyirize bishyirwaho n'Umuryango Mpuzamahanga wita ku Murimo (ILO) birengera abagore kimwe n'abagabo kurugero rumwe)?*
- What are the problems or barriers for women to have access to old-age pension benefits? *(Nibihe bibazo cyangwa imbogamizi abagore bahura nazo zituma batabona pansiyi y'izabukuru?)*
- What are the social security old-age pension policies and practices in place that you know? *(Nizihe politiki ziriho muzi zerekeranye noguteza imbere ubwiteganyirize bwa pansiyi y'izabukuru?)*
- What are your opinions on the improvement of the old-age pension system in Rwanda? *(Murasanga ari icyi cyakorwa kugirango ubwiteganyirize bwa pansiyi y'izabukuru burusheho gutera imbere)?*
- In your opinion, what are the strategies to extend the pension coverage to workers in the informal economy? *Ese mubona ari izihe ngamba zafatwa kugirango abakora imirimo iciriritse nabo bajye mu bwiteganyirize bwa pansiyi?*
- Is it reasonable for the State to leave the management of the pension schemes to private insurance companies to develop pension schemes and merely support voluntary systems? *(Ese ko ibigo byigenga nabyo bifite uburenganzira bwo gucunga za pansiyi, murasanga Leta yabyegurira gucunga pansiyi yizabukuru kugirango abantu kugiti cyabo biteganyirize muri ibyo bigo)?*

## ***APPENDIX III : FOCUS GROUP DISCUSSION FINDINGS***

### **1. Focus group discussion process and findings**

Different sources and methodology are used in this thesis to analyse from legal perspective challenges related to low application of international social security minimum standards in national legislation with regard to old-age pension coverage and benefits adequacy. In this regard, primary sources (field research) through Focus Group discussion is one of the techniques used to gather information. This technique provided opportunity for participants and the facilitator to exchange information related to the topic. The following sections introduce the relevance of Focus Group discussion, the design and the process of Focus Group Discussion, the analysis and the reporting of findings.

#### **1.1. Introduction**

In this study, the choice of focus group discussion was motivated by the fact that data related to the topic could be collected among a small group of people (who are a valid source of information) in a short time. Focus group discussion is advantageous because it is a cost-effective technique. Therefore, to gather data on the access to old-age pension with the focus on the two components coverage extension and benefits adequacy, the focus group discussion was conducted among a small group of ten people who responded to the invitation. The focus group discussion helped to obtain maximum participation for all focus group members about their perceptions of coverage gaps and adequacy in old-age public pension. Despite that focus group discussion helped to gather a large amount of information over a relatively short period of time, Focus group discussion has some limitations.

#### **1.2. Focus Group Discussion design**

The design of Focus Group Discussion is an important step to decide whether focus groups are appropriate for the research. In this regard, the choice of this technique was discussed with the supervisor at the beginning of the research project. Therefore, ten questions to guide the discussions were elaborated, based on research questions of the thesis. This helped to verify the hypothesis of the research and to link the theory to the practice in order to evaluate the law in book and law in action.

##### **1.2.1. Elaboration of guiding questions, selection of target group and logistics**

The design of Focus Group Discussion started with the elaboration of questions (see appendix II) and the selection of participants. Therefore, ten focus group guiding questions were designed based on the research problem and research questions and were written in two languages, English and Kinyarwanda. The information to be gathered and the general questions to be answered were designed based on research questions. Therefore, ten “open-ended” questions were elaborated to provide a wide variety and depth of responses and to help stimulate discussion or exchange of ideas (See appendix 1). Questions were clearly stated to avoid confusion and to avoid influencing the responses of participants. At the beginning of the sessions the guiding questions were read to the participants.

The research targeted members of the Rwandan Association of the Retired (A.R.R.) composed of retired people who worked in public and private sector during their active lives. They are a valid source of information as most of them had been managers of institutions or companies during their active lives and currently have responsibilities in the Association. They coordinate A.R.R. activities at district level and participate in different national programs in the community as they are considered opinion leaders. In addition, they advocate for decent pension and in their General Assembly they formulate recommendations to the national institution managing public pension systems. Their Association is a well-organized Non-Profit making Organization created in 2006. It was legally recognized by the Ministerial Order No.50/11 of 9/04/2008 granting legal status to Rwandan Association of the Retired (A.R.R.) and approving its legal representatives. The main objectives of

A.R.R. are mainly to defend the rights of its members and to promote their welfare. Among the mission of A.R.R., the advocacy for its members for a decent pension which is in line with ILO principles is included.

A.R.R. operates under decentralization structure and has representation in all 30 districts of the country. To contact participants, on September 3<sup>th</sup>, 2019, an official letter explaining the purpose of the research was addressed to the President of the Rwandan Association of the Retired (A.R.R.). The letter was supported by the recommendation letter from the research supervisor. The legal representative of A.R.R. responded positively by providing a list of all coordinators of the A.R.R. in three districts of Kigali City (Gasabo, Kicukiro and Nyarugenge). The legal representative of the Association helped to make a good selection of participants to the Focus Group Discussion by mentioning the names of those who are active and who are a valid source of information. Each invited participant was contacted by phone to confirm his/her availability and two days before the discussion, each invited participant was contacted again to remind him/her to attend the FGDs on specified time.

To avoid that the selected number of participants would not be attained, twelve persons were contacted so that in case some would be absent, the required standard number of participants to the FGD would attend the discussion. This prediction happened as some participants were not able to attend FGD and presented their interest and apology with the reason that they had to participate in social activities, especially marriage ceremonies, as it was a Saturday (the day on which marriage takes place in Rwanda in general). In total, a number of ten participants (four (4) men and six (6) women) were able to attend the Focus Group discussion held in Kigali City, Centre Saint Paul on September 7<sup>th</sup>, 2019 from 9:00 to 12:00 am. Focus Group discussion was held in a comfortable environment with circle seating creating appropriate atmosphere.

To ensure the success of the Focus Group Discussions, appropriate logistics were available. These included a conference room and tea break, pen, papers for note taking, copies of focus group guiding questions, plus transport facilitation. The discussion was adapted to the category of people (older) so that they were treated with respect, and to the facilitator who responded to their requirements by respecting their choice. For example they expressed their preference of using note taking rather than using tape recording.

### **1.2.2. Population, Sampling strategies and sample size**

During the selection of participants, the study used purposive sampling which is suitable for a group of people, with particular characteristics. The researcher samples on the basis of wanting to interview people who are relevant to the research questions. Therefore, the study targeted people aged 60 years and above (men and women) who are pensioners who have worked both in public and private sector. The recruited participants include men and women who are a valid source of information considering their background and their responsibilities in the Association and all participants in the study live close to Kigali City.

### **1.2.3. Ethical procedures**

At the beginning of Focus Group Discussion, the facilitator welcomed the participants and introduced the assistant and her responsibility of taking notes. The facilitator took the opportunity to introduce herself explaining the purpose of the research and emphasized on how their participation would be useful for them and for the community by advocating for access to decent pension.

Participants were asked for verbal consent to use audio and to take notes of the discussion. However, participants expressed their idea of not using the tape recorder but accepted the procedure of taking notes. One of the participants was selected to take notes throughout the discussion and was asked to capture as much as possible with attention on the key phrases. After agreement by all, participants were given guiding questions and were encouraged to give their opinions or idea on the topic. They were assured that there were no right or wrong answers to questions and that all opinions were

valuable. Only one person spoke at a time and the facilitator exercised neutrality as much as possible. Facilitator read guiding questions and asked the participants to provide their perceptions respecting the way the questions are organized from 1 to 10 to facilitate the analysis and report.

To assure confidentiality and anonymity, codes were provided to participants who answered the questions and initials of their names were used in place of participants' full names. Participants were assured that the information they provided would be treated as confidential. The minutes of their arguments were read at the end of the session to be sure that all answers to the questions were noted well and participants were informed that their recommendations would be taken into consideration in this thesis.

#### **1.2.4. Analysis and reporting**

After gathering participants' perceptions, the transcripts were read immediately and several views were identified and organized in accordance with each guiding question and initial names of the speakers were placed before the quotations. This process facilitated the presentation of the results of field research by summarizing findings from Focus group discussion and linking them to the research problem, the research objectives and research questions.

Focus-group interviews generated a huge amount of data quickly, that had to be reduced in order to maintain the data which are necessary to provide evidence to the relevance of the research problem. In this regard, the analysis of the data was done in a systematic way: considering that some guiding questions may have a common idea and that participants provided huge information and may share the same idea, the main views of participants were grouped in themes and the data were linked to the research question and to the other scholars' findings. This helped to summarize the different responses to the guiding questions used in the Focus Group Discussions which were also elaborated and grouped according to the research questions and the structure of the chapters of the thesis.

Direct quotations from participants are mentioned and analysed and then a conclusion is drawn as follows:

##### **The first guiding question: Quotation, analysis and conclusion**

What benefits do you get from being a member, is it relevant to be member of the Rwandan Association of the Retired (A.R.R.)? What advocacy does the Association make for the members? (Kuba umunyamuryango wa A.R.R. bibamariye iki, ese hari ubuvugizi A.R.R. ibakorera bujyanye na Pansion)?

*KGP said: 'You may already know the objectives of our Association, for us we benefit from being members as the Association makes advocacy and helps the retired to avoid isolation and allows them to socialize with others. Most of the members are those who receive low pension, we address our needs through the Association and we provide mutual support through tontines organized in small groups in our respective villages. We need to be represented in social security management. Decent pension and access to basic income security in old age should be guaranteed. The government, the employers and the employees are represented in the Board of Directors of Rwanda Social Security Board, but the retired workers are left out of the social security representation.'*

The first question provides general information on the advantages of membership in the Rwandan Association of the Retired (A.R.R.). No specific theme is associated with this question and no various views were provided for this first question. The majority of participants shared the same views with KGP and the mission of the Association is indicated in the Constitution of the Association. However, the response to the question is informative as it generates the idea of isolation and vulnerability of old persons and the lack of income security for those who have not worked to be able to contribute to social security for their retirement. Participants also indicate the issue related to the inadequate benefits for some pensioners whose salaries were low during their active life. Their initiative to complement their retirement benefits through tontines reflects the need for the social security institution to provide adequate pension benefits periodically adjusted, following substantial changes in general levels of earnings and or cost living.

Different scholars highlight the importance of a national legislation that would give effect to the right to pension in order to ensure income security to all in need in old age. The International Labour Organization (ILO) indicates that pension for older persons is a key element in Sustainable Development Goals SDG 1.3 which calls for the implementation of a national social protection system for all including floors with special attention to the poor and the vulnerable.

From the perceptions of the participants, some key points are noted: retiring with dignity is important and the respect of periodical adjustment of pension benefits in accordance with article 16 of Rwanda's Pension Law is necessary. Addressing old persons concerns is important to avoid a generation conflict, poverty and isolation of old persons.

Tripartite participation of the Government, the representative organizations of employers and workers as well as consultation with other relevant and representative organizations of the concerned persons in social security management is important to ensure that their needs are well addressed and it is in line with the ILO tripartite principle. From the analysis of the composition of the Board of Directors of Rwanda Social Security Board (RSSB), it appears that pensioners are not represented. Therefore, the active role of partners in social security governance through social dialogue is required to ensure efficiency and transparency in the management of schemes. Particularly, the strength of the retired Association was evidenced by their advocacy for the increase of pension benefits realized in April 2018 after a long period as the previous increase of pension benefits was done in 2002.

#### **Reasons behind the limited Old-age pension coverage: Quotations from FGD, analysis and conclusion**

This theme refers to the guiding question No. 2 linked to research question No. 1.

Participant MP answered: *'To have access to pension benefits you must have employment and comply with qualifying period of contribution. There is a big number of people working in informal sector not covered in pension schemes. Ignorance is a challenge because even if there is a possibility for self-employed people to contribute to voluntary insurance available in public pension schemes, most of people think that social security is only the privilege of civil servants. There is progress in establishing Long-Term Savings Scheme 'EjoHeza', but still there are older persons who are over pensionable age and who have no capacity to contribute.'*

Participant MC said: *'There are some employers who do not declare their workers, considering that they are casual and have no written contract. The social security institution should provide strong penalties and educate the public on employers' obligations and employees' rights.'*

The right to social security, including the right to pension, is recognized by international social security standards and the international human rights instruments. Therefore, the national legislation must give effect to that right. From the views of the participants, the relationship between employment and access to social security benefits including old-age pension is emphasised, and it supports the different scholars' perceptions on the strong link between employment, decent life and poverty alleviation which are among the objectives of social security. Therefore, access to decent work is a strategy to earn income and to regularly contribute to social security schemes for future retirement benefits.

The analysis of participants' views on pension benefits entitlement conditions helps to respond to research question No.2 requesting to find out how can the existing legal framework and policies on pensions in Rwanda be improved to comply with the international social security standards. Therefore, the study finds out the legal reasons behind the limited coverage of old-age public pension in Rwanda. It appears that the limitation of contributory pension schemes to those who have contributory capacity and employment contract, the high incidence of informal economy, noncompliance by employers (evasion of contributions), the ignorance (legal illiteracy) of employees and the public about their social security rights are mentioned as the main challenges to access old-age pension benefits. The perceptions of the participants (where they mention the importance of having formal employment to be registered in social security) reflect the need to achieve high

coverage through the transition from the informal to the formal economy as indicated in ILO Recommendation, 2015 (No. 204).

Pensions are not only a right for salaried workers who contributed to the social security System but also a fundamental human right recognized for every human being, even those who have not contributed. Therefore, there is a need to put in place a legal framework establishing non-contributory pension systems in combination with existing contributory pension schemes to extend a legal and effective coverage to all old persons in need.

### **Compatibility of Rwanda's legislation on old-age pension with the ILO Standards**

Reference to guiding question No.3 linked to the research question No.2, quotations from participants, analysis and conclusion are provided as follows:

MD said: *'Our main interest is to advocate for decent pension linking benefits to the market price in order to maintain our family in health and decency. As for those who receive a pension, the delay of pension adjustment has impact on their living conditions. Most of the pensioners earned a low salary during their active life. The issue of the non-updated minimum wage impacts on minimum pension setting.'*

The perceptions of participants helped to respond to research question No 2 related to the compatibility and compliance of Rwanda's pension legislation with the ILO Social Security Minimum standards. The participants know the ILO principle of periodical adjustment of pension benefits and mentioned the challenge of delay in adjusting pension benefits as the recent adjustment was done in 2018 while the previous one was done in 2002. They also mentioned the problem of setting the minimum pension based on the inexistence of updated minimum wage which influences low pension benefits.

The effective application of the legislation is necessary and the establishment of a legal framework setting a minimum wage is important to ensure that pension benefits are calculated based on the updated salaries and that they respect the labour legislation. Participants had the same consensus that the formula of pension benefits calculation under Rwanda's pension legislation meets the requirement of ILO C102 but the problem lies in the delay of pension benefit adjustment and the absence of indexation of benefits to the cost of living; salaries base on which contributions are calculated during the active life and inadequate minimum pension influenced by the low level of minimum wage.

### **The effectiveness of existing old-age pension legal framework and policies**

The analysis refers to guiding question No.4, No.7, No. 8 and No.9 and to the research question No.3:

Participant KJC said: *'We know that there is a possibility to adhere to voluntary pension schemes such as the Long-Term Savings Scheme / EjoHeza. But for those who are already old, they will miss the opportunity to fulfil certain requirements like the minimum savings for regular pension benefits. For me I think that reducing the unemployment rate among young people will be a good solution, because you can have a commitment / the willingness to contribute but if you don't have a stable work it is difficult to continue to contribute. Also for those who are working, Rwanda Social Security Board should enforce compliance as Rwanda Revenue Authority does, it has strong penalties.'*

From the views of participants, the existing legal framework and policies can be improved to effectively extend the old-age public pension coverage to the excluded population by supporting employment policies, reducing the unemployment rate and putting in place strong social security enforcement mechanisms.

### **ILO principle of equal treatment with regard to pension**

This theme is linked to guiding questions No. 5 and 6

Participant KC said: *'Women and Men now have the same rights. During our time, it was not the case. Due to social norms, few women were educated and employed. They were supposed to stay home performing household responsibilities and for maternity reason, while men were expected to be*

*in public sphere as breadwinners. It was not easy to have employment which guarantees social security rights. Most of the women receive survivors' pension rather than Old age pension". Today, the problem regarding access to pension is that most of the women live in rural areas and perform non recognized and non-paid work for example in household and in agriculture'.*

From the perceptions of the participant, the pension legislation recognizes equal rights between men and women. However, gender gaps are visible in the labour market because women are a majority in informal sector and perform household work not recognized and not remunerated to guarantee social security right including pension. Gender disparities are visible in accessing pension where women are a majority to receive survivors' pension rather than receiving old-age pension. This is the consequence of their lower education and employment access in past time. The Participant mentioned the case of women working in household who may be domestic workers and women working in agriculture. The statement of the participant reaffirms that the gender division of labour creates disparities between men and women during their working life as to wages, career and work conditions, which bring about disparities in social security contributions and consequently in future retirement benefits.

The analysis of the participant's view reflects the idea of gender dimensions of social protection programmes indicating indirect discrimination evidenced by the situation where women and men face different constraints and barriers that can limit access to pension rights, social and economic opportunities for women and girls. In this regard, it is important to identify barriers to the effective application of the legislation and to its adaptation to the specific category of workers.

### **The principle of the General responsibility of the State in pension scheme management**

This theme refers to guiding question No.10

Participant NC said: '*Pension schemes must remain under the State control and guarantee because if they are privatized they will have a profit making aspect and private companies may not respect the period of payment or may use our contributions for other purpose.*'

From the view of the participant, the State guarantees regular payment of pension benefits and supervises the good governance of social security systems, including pensions.

*The general responsibility of the Governments* for the due provision of benefits is defined in article Art.71 (3) of ILO Convention, 1952 (No.102). The Convention requires proper functioning of the social security system (Art. 72 (2) of C. 102), which includes the provision of an appropriate legal framework of the social security system and a rule of law guarantee of the sustainability of the social security system (e.g. through regular actuarial valuations), and adequacy of contributions and benefits.

### **Conclusion**

Findings from the Focus Group Discussion revealed the advantage of using FGDs with the participants who are organized and are a valid source of information. This was evidenced by the fact that participants managed to respond to all the guiding questions. The analysis of the participants' views reaffirms the strong link between employment and social security legal framework and policies with regard to old-age pension coverage.

Findings revealed disparities between legal coverage and effective coverage and some obstacles to the effective application of the legislation in compliance with international human rights instruments and the ILO Social Security Minimum Standards. These are the high incidences of the informal economy, gender gaps in labour market, legal illiteracy, evasion of contribution, lack of legislation guaranteeing basic income security for all in old age, etc. Therefore, the access to old-age pension benefits for all is possible if there is a combination of different pension schemes of both contributory and non-contributory nature. According to the participants' views, the financing of the existing voluntary pension insurance is a challenge, especially for the older and disabled persons who are no longer active or cannot work as well as other categories of workers with low financial capacity to regularly contribute to pension schemes.

The participants introduced the idea of the representation of the retired persons in the social security governance with reference to the ILO Principle of tripartism and social dialogue, stipulating that only active employees are represented in the governance of the social security through their associations or trade unions representatives. Clearly, the tripartite aspect of the social security governance refers to the representation of the government, the employers and employees in the Board of Directors of social security institutions. Therefore, from the analysis of the participants' views, it appears that workers representatives in the Board of Directors of social security institutions should extend their advocacy to retired workers. ILO R202 recognizes the tripartite participation with representative organizations of employers and workers, as well as consultation with other relevant and representative organizations of the concerned persons.



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Odette Nyiramuzima's dissertation is a Legal analysis of access to Old-age public pension benefits in Rwanda: Challenges and Trends. Based on the approaches adopted by the ILO, the study's objective was the assessment of Rwandan pension legislation and its compatibility with international social security standards.

As part of the findings, the study identifies gaps in national pension legislation with regard to coverage and benefit adequacy in the social security branch of Old-age benefit and finds out the usefulness of adopted International Labour Organization (ILO) conventions. Due to their universal and legal character, ILO standards have power and influence in ratifying-states and in non-ratifying ILO Member states, respectively. Like many developing countries of Africa with low level of ratification of ILO C102, Rwanda has made progress in elaborating a basic legal framework for the regulation of national pension systems, since 1962, inspired by the principles laid down by ILO Social Security (Minimum Standards) Convention, 1952 (No.102).

However, from the assessment, the right to social security, including basic income security in old-age is not realized for many elderly people. The study finds out the reasons behind low pension coverage and inadequate benefits. Based on lessons from international experience and a comparative study between Rwanda, Kenya and Mauritius pension systems, the study suggests a combination of different approaches such as contributory and non-contributory pension schemes, supported by progressive formalization of the informal activities, as an effective strategy to achieve universal pension coverage and adequate benefits. The proposed strategy is in connection with the minima of ILO C102 and C128 (coverage and benefit levels) and the principles of ILO Social Protection Floors Recommendation, 2012 (No.202) which focuses on universal coverage. The provisions of these standards are reflected in the ILO two-dimensional approach for the extension of social security (*Horizontal dimension* and *Vertical dimension*). These findings were reached by using doctrinal legal approach and comparative legal approach complimented by a study of ILO social security standards and reports, International Social Security Association (ISSA) publication, Rwanda's pension legislation (Law No.05/2015 of 30/03/2015 governing the organization of pension schemes in Rwanda for mandatory pension schemes and Law No.29/2017 of 29/06/2017 governing the Long-Term Savings Scheme in Rwanda), and policies and Focus Group Discussion.

Odette's study, one of the very few on this subject and area, forms a useful basis for discussion and further research on pension rights enforcement, as it shows the feasibility of extending old-age pension coverage and providing more adequate benefits to all older people in a developing country context.