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

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# 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://ww1.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 (NSTI 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\\_Trsansformation\\_-NST1.pdf](http://www.minecofin.gov.rw/fileadmin/National_Strategy_For_Trsansformation_-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=We26kJ2FFskC&oj=find&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.

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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.