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

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## **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/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 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

<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 prevented or delayed 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/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312247](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312247)> 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> Gijsbert 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://isls.org/wp-content/uploads/2014/12/Servais\\_2014\\_Asian\\_Conf.pdf](https://isls.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

<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.

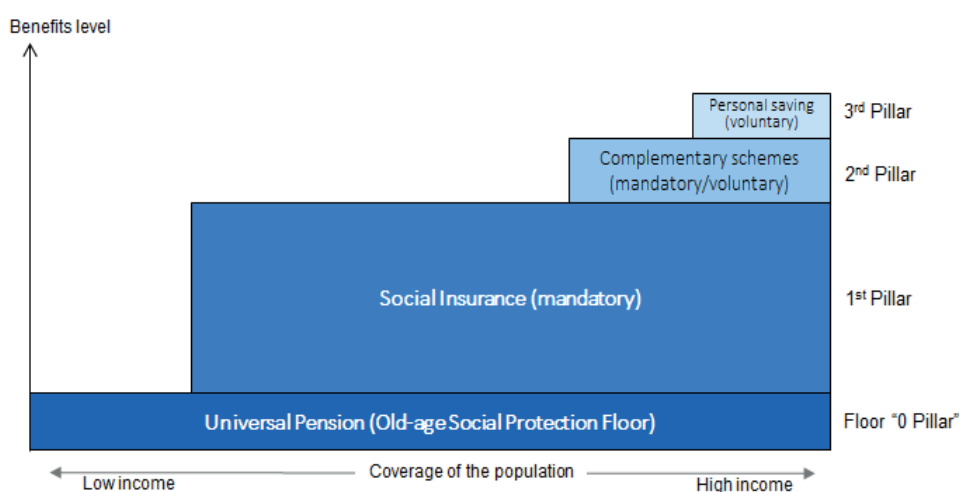
<sup>100</sup> AISS, 'Le point sur la réforme des pensions' (2000) *Revue Internationale de la Sécurité Sociale* 53 (1), p.7.

<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.

<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/?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 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.