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

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CHAPTER 6: CONCLUSION

The problem of limited access to old-age pension benefits in Rwanda led to the analysis of the legal basis of old-age pension provision to investigate the compatibility of Rwanda's national legislation on pensions with the ILO's social security standards, a topic which has received little attention in the past. In this regard, the study analysed old-age public pension schemes (mandatory for employed workers), governed by law No.05/2015 of 30/03/2015 and *Long-Term Savings Scheme* commonly known as '*EjoHeza*' which is a voluntary public pension and savings schemes governed by law No.29/2017 of 29/06/2017.

This study shows that the challenges for most developing countries in Africa with high unemployment rates and a growing informal economy, is a low pension coverage and inadequate benefits, which also affect equity and sustainability of pension schemes. Pension coverage is very low because existing pension schemes are contributory and generally protect workers in formal and regulated employment with regular and predictable incomes.

From the analysis of Rwanda's experience in pension provision, it appears that the existing mandatory contributory pension schemes for salaried workers face the challenge of low enforcement due to different types of evasion. In addition, most of the informal economy workers are not registered in pension schemes, as there is no legal obligation for unemployed people to adhere to pension schemes. The self-employed adhere to pension schemes on a voluntary basis and may face the challenge of financial capacity to register and to contribute to the existing voluntary pension schemes until they reach the statutory retirement age. Even those who are registered, (formal or informal workers) may fail to comply with the entitlement conditions for old-age benefit due to non-stable employment. As a consequence, a large portion of the population is left out of the social security and has no access to the basic income security in old age, considering that in Rwanda the provision of basic income security to all in old age is not anchored in any national legislation.

The analysis also considered the multivariable definition of adequacy of benefits to assess if old-age benefits provided under Rwanda's pension legislation are adequate. Traditionally, the assessment of the benefit was only limited to a measurement based on the replacement ratio (a proportion of income when in employment) and other aspects of adequacy were not considered. ILO Social Security (Minimum Standards) Convention, 1952 (No.102) focuses on the aspect of quantity (replacement rate) and the aspect of quality and

requires that benefit should be sufficient to maintain the family of the beneficiary in health and decency. They should be periodically reviewed following substantial changes in the general level of earnings and the costs of living.

However, in Rwanda, the lack of indexation mechanism, which is an important determinant of adequacy and the delay in pension benefits adjustment have affected the purchasing power of retirees overtime. Therefore, the main goal of this study has been that it provides a summary of the progress made by Rwanda in pension legislation in relation to the international social security standards, which are international legal norms setting the minimum standards level of social protection coverage and benefit to be achieved by each State. Even if Rwanda, like most other African countries, which are ILO member States, has not ratified ILO C102, it is the flagship Convention and it has a universal and legal character and has influence on national legislation.

Based on the comparative analysis, the study identified African countries with the best practices in pension coverage extension to all residents like Mauritius and referred to examples from other countries across the world. The study suggests strategies for the extension of old-age pension to all older people in Rwanda modelled on the ILO Two-dimensional approach (horizontal and vertical dimension) for the extension of social security. The study provides strategies towards effective legal and policy pension reform to meet the international obligations. It concludes that the need to extend old-age pension coverage through a combination of contributory and non-contributory pension schemes is most urgent with a view to apply international social security standards.

Three research questions were formulated and examined mainly in chapter 2 and chapter 3, and in chapter 4 dealing with the comparative study as well as in chapter 5. The following sections review key answers to the research questions.

6.1. Key answers to the research questions

The research problem has been specified by three research questions. Therefore, the key answers to the research questions will be discussed in this section.

6.1.1. The first research question

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

In answering the first research question, the study reviewed the international public law instruments in chapter 2, and observed the following:

A. Social security is not a charity, but a fundamental human right

The international human rights instruments particularly, the Universal Declaration of Human Rights, 1948 (article 22 and 25) and the International Covenant of Economic, Social and Cultural Rights (ICESCR, 1966) (article 9 and 11) and other human rights instruments recognize the right to social security for everyone. It includes the right to basic income security in old age and the State is required to recognize and to realize that right by all appropriate means, including legislative means.

B. Concretization of the right to social security by the ILO social security standards

While international human rights instruments only declared the existence of a right to social security, ILO Conventions and Recommendations adopted in the field of social security take a right-based approach to provide a universally agreed definition of social security. They also set minimum levels of protection to be ensured, the strategy for achieving such levels of protection and basic principles to comply with for the realization of the right to social security and building sustainable social protection systems. Notably, ILO C102 establishes nine branches of social security and determines the contingencies to be covered including old-age. The study realized that international social security standards have had a substantial influence on regional and national legislation as they provide guidance in the development of the social security system worldwide.

6.1.2. The second research question

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

In answering the second research question, in chapter 3, the study reviewed national legislation on pensions and investigates its compatibility with International Labour Organization social security standards with regard to the personal scope of coverage and the levels of benefits in the branch of old-age benefit.

A. Compatibility versus conformity

In the second research question, the study used the term compatibility rather than conformity because Rwanda has not ratified ILO C102. Ratification serves as an indicator of legal conformity as it allows the incorporation of international Conventions into national

legislation and enables ILO supervision and direct technical assistance. Non-conformity of national legislation is an obstacle to ratification of ILO standards. Compatibility of pension systems with ILO social security standards may exist even when a country has not ratified the Convention. While emphasizing on the importance of ratification, the ILO recognizes that the Conventions' impact and that of ILO C102 most particular, should not be measured in terms of number of ratification only, given that ILO has other means of action. For example, the study observed that Rwanda has set up pension schemes modelled on ILO Social Security (Minimum Standards) Convention, 1952 (No.102) and has benefited different types of technical assistance from the ILO. In accordance with the article 10 of ILO Constitution, upon request, ILO provides technical assistance to Member states, as another means of action to achieve its mandate.

The study explored the positive effects of the application of international standards on the national legislation. However, the analysis found out that the minimum standard levels of personal scope of coverage is not achieved. In addition, special legal provisions that are necessary to establish predictable and enforceable rights to benefits are lacking, especially in the domain of non-contributory benefits, which should guarantee at least basic income security to all elderly.

Despite that ILO C102 is not legally-binding to Rwanda, the study observed that while Member States can choose whether or not to ratify Convention, in accordance with the article 19 of ILO Constitution, Rwanda as a member state has a reporting duty. As requested by the ILO Governing Body, ILO Member states have to report at regular intervals, to the ILO Director General on measures they have taken to give effect to the provisions of certain Conventions or Recommendations. They may be requested also to indicate in their report any obstacles which have prevent or delay the ratification of a particular Convention. It must be point out that low level of coverage and inadequate benefits are among obstacles to ratification. Therefore, it is important to consider the crucial role of the ILO and to apply its social security standards to establish comprehensive social security systems providing old-age pension protection to all. The Declaration of Philadelphia which is part of the ILO Constitution specified 'the solemn obligation of the ILO to further among the nations of the world programmes which will achieve among others, the extension of social security

measures to provide a basic income to all in need of such protection and comprehensive medical care...

1. Incompatibility with regard to the minimum levels of personal scope of old-age pension coverage

The answer to the second research question is that the old-age public pension systems in Rwanda are not compatible with the ILO social security standards with regard to the minimum levels of personal scope of coverage. From the analysis, it appears that the Rwandan pension system was established with reference to the ILO C102 and the National Social Security Policy 2009 refers to the definition of social security provided by ILO C102 and to the contingencies covered.

However, the standard minimum level of coverage is not attained, given that coverage by contributory social insurance programmes is mostly restricted to formal workers. Coverage of the informal economy workers by voluntary pension schemes is not sufficient, while they represent considerable portions of the labour force. ILO R202 focuses on the principle of universality of protection based on social solidarity and requires that social security extension strategies should apply to persons both in the formal and informal economy...

2. Compatibility with regard to the levels of benefits provided under the 2015 Pension law

With regard to the benefits, the 2015 Pension law provides the required level of the benefit but the adequacy of the benefit is not effective due to the delay in adjusting the pension benefits and the lack of indexation mechanisms to maintain the value of the pension benefits at a sufficient level to maintain the family of the beneficiary in health and decency, as required by the international social security standards. The study mentioned the example of pension benefits of people who retired in 2002, adjusted after fifteen (15) years.

3. Incompatibility with regard to the minimum levels of personal scope of old-age pension coverage and with the duration of benefits provided by *Long-Term Savings Scheme*

A comparative analysis in chapter 4 helped to get knowledge of the social security legislation in Rwanda, Kenya and Mauritius and identified the legal approaches used in these countries to extend old-age pension coverage to unprotected population. For Rwanda, the

study analysed Law No.29/2017 of 29/06/2017 establishing *Long-Term Savings Scheme* and determining its organization, aims at extending the pension coverage to informal economy workers in comparison with the similar scheme established in Kenya in 2011 under the name *Mbao Pension Plan* covering informal sector workers. These schemes have the same characteristics of complementary schemes which are accessible and affordable. The study also explored the Mauritius *Basic Retirement Pension Scheme* and observed that it is unique and serves as a good example of universal pension. The study also referred to some examples of best practices from other countries across the world for a large audience as well.

Despite that Rwanda's *Long-Term Savings Scheme* is the only pension scheme which many people can easily access and can afford, low old-age pension coverage persists since the voluntary nature of that scheme implies the absence of legal obligation to adhere to it. This character makes the enforcement process difficult to achieve universal coverage envisaged by the international social security standards, notably ILO Social Protection Floors Recommendation, 2012 (No.202). In addition, while ILO C102 (art. 28) requires periodical payments of pension benefits for the duration of the contingency, Rwanda's *Long-Term Savings Scheme* allows the withdrawal of part of the savings before the retirement and the use of savings as a loan security. Therefore, the scheme looks more like a saving plan rather than a pension plan. Particularly, under the *Long-Term Savings Scheme*, the provision of periodical pension benefits is limited to the period of twenty (20) years and requires total savings of at least four million (4,000,000Rwf).

6.1.3. The third research question

The third research question is formulated as follows: *How can the existing legal framework and policies of pensions in Rwanda be improved to comply with the international social security standards?*

Chapter five of the study identified legal and administrative barriers to the effective application of the national legislation and implementation of policies on old-age pension provision. Therefore, the study proposed strategies to strengthen existing pension schemes (mandatory and voluntary) and innovative legal mechanisms, such as combination of contributory and non-contributory pension provision to achieve universal coverage.

The following section provides concrete suggestions to improve the legal, policy and administrative framework in old-age pension provision towards achieving the level of protection envisaged by the international social security standards.

6.2. Concrete suggestions for legislative and policy reform for Rwanda

A successful coverage extension of pension rights to all the population needs to have a well-designed legal and policy framework and a stable structure on which schemes are based; a well-defined income which determines the contribution base and benefits level. The implementation of legislation and policies also depends on the administrative institutional capacity to ensure delivery of services and the preservation of pension rights. Therefore, in the context of a changing world, it is important to consider the dynamic aspect of the social security in general and of pension systems in particular with a view to find innovative approaches to meet specific needs and to cope with the current realities towards compliance with international social security standards.

The effective approaches to the compliance of the national legislation with the international social security standards should address the availability of quality employment opportunity, the adequate coordination of labour market policies, especially active labour market policy and wage policies with the social security policy as well as the guarantee of basic income security to all in need.

6.2.1. Consideration of universality, progressiveness, Pluralism and outcome focus for extending pension coverage to all

The realization of pension rights requires to consider the element of universality that corresponds to the concept of a rights-based approach linked to the recognition of the right to social security for everyone. The aspect of progressiveness must also be taken into account, as a country should not stop at the ground floor of setting basic income security in the context of universality. It is necessary for a country to move toward higher levels of social security to cover as many people as possible when economic development permits. Based on the principle that there is no single model of social security, setting basic income security guarantee to all in need in old age can be implemented in different ways, which implies the element of pluralism.

A. Mandatory pension schemes

This study suggests the regular review of regulatory and policy frameworks and practices to identify legal and administrative barriers to coverage and key areas that need reform. In this regard, a diagnostic of non-compliance is necessary to address related operational challenges, namely error, evasion and fraud in order to put in place prevention, detection and deterrence mechanisms. Therefore, it is important to strengthen enforcement and inspection mechanisms in order to maximize registration and collection of contribution and compliance.

The study suggests the increase of contribution rate in pension scheme to ensure sustainability of pension schemes and regular adjustment of pension benefits. It is also necessary to put in place legal and policy frameworks facilitating the portability of the pension benefits for migrant workers.

B. Voluntary pension schemes

Effective pension coverage of the informal economy workers (generally subjected to voluntary pension schemes) is necessary through formalization of informal employment using a sector-based approach rather than a general approach. The study suggests to analyse the risks the informal economy workers face and the different factors contributing to their vulnerability and to assess if mandatory affiliation can be realized to bring them under pension legislation. In this regard, priority-setting, time frame and sequence of actions are necessary for the progressive achievement of the objectives.

6.2.2. Investing in social security and involving stakeholders

Investing in universal social protection for the full realization of the rights to social security for everyone, through a combination of contributory and non-contributory pension schemes is necessary to achieve the Sustainable Development Goals. The study also suggests ensuring regular monitoring of the implementation of national social protection strategies in line with ILO R202.

The study also suggests raising awareness through effective communication and education on social security rights and obligations in order to increase pension coverage and the tripartite participation of workers' and employers' representatives and other relevant stakeholders through effective social dialogue.

6.2.3. Area for future research

This study introduces Rwanda's Pension legislation to a wide audience by assessing its compatibility with the international social security standards with regard to the provision of access to old-age pension benefits. By doing so, the study contributes to the debate about how to extend coverage of old-age pension to all older people. Therefore, the study serves as a key reference for practitioners, academics and the general public. Hopefully, the practices and recommendations put forward in chapter 7 of this study will help countries, especially Rwanda, to progress towards achieving a universal pension coverage and meeting sustainable development goals (SDG) by 2030 to achieve the right to social security for everyone.

The study leaves space for further research, which will continue to assess the design of a legislation guaranteeing basic income security to all elderly people, for example how basic income (benefit package) will be determined and which payment mechanism, through which institution universal non-contributory pension schemes will be managed, the entitlement conditions and financial resources. In brief, to introduce a Universal non-contributory pension, a basic minimum level of administrative and financial capacity as well as political will is required.

Further research will continue to assess whether the required minimum standards of pension protection are achieved in line with the ILO Social Security (Minimum Standards) Convention, 1952 (No. 102) and the Invalidity, Old-Age and Survivor's Benefits Convention, 1967 (No.128), which is the most advanced norm setting high level of protection and its accompanying Recommendation No. 131. In order to encourage countries not to only remain on the minimum level of protection, but to achieve high level and to guarantee basic income security to all in need, further research will have to assess the application of ILO Social Protection Floors Recommendation, 2012 (No.202). It is relevant to mention that moving towards a comprehensive social security implies not only achieving the minimum level of coverage, or covering all population, but also ensuring benefit adequacy.

Future study is also needed to analyse how private pensions managed by private insurance companies can be developed to complement basic pension provided by public institutions. In addition, in order to continue to enforce fundamental human rights to social security, the present study leaves space to future research on the design of a new pension

legislation or the adaptation of the existing legislation and policies to new forms of work. Due to the transformation of the labour market in a rapidly changing world there will be new forms of work that are not protected by existing laws, while there will also be other workers who will lose their jobs due to digitalization. Therefore, future researchers have to think about a jobless future because technologies create jobs as well as they destroy them/others types of jobs: jobs created are not the same as those disappearing and higher skilled jobs are created which means that some workers with low skills will lose their jobs which may decrease pension coverage. It must be pointed out that in theory, the process of building capabilities in line with new technologies should be continuous overtime, with practically all active people making adjustments on the way they work. So, for most of active people in the long-term, being without job at all should be only temporary, as the creation of salaries and taxes and pension liabilities should continue in one way or another.

6.2.4. Added value

Apart from the relevance of answering research questions, which have been analytically described and justified in the introductory chapter, this doctoral thesis added value to the academic and policy debates about how to guarantee pension rights in law and in practice to all older people in Rwanda. The study consists of the first formal comprehensive academic legal analysis of national pension legislation in connection with the international social security standards in a specific developing country of Africa.

Despite the progress made over the past decades in elaborating a basic legal framework for the regulation of pension systems, the challenge of low access to old-age pension benefits in Rwanda undermines the full realization of the right to social security, guaranteed by international human rights instruments and international social security standards. Therefore, this study sets up a comprehensive pension reform agenda for Rwanda to strengthen the existing contributory pension schemes and to introduce new pension schemes such as universal non-contributory pension scheme in order to achieve universal coverage. The idea of adopting legislation governing universal non-contributory tax-financed pension scheme is new to Rwanda's pension system. The study refers to the principle of universality of coverage based on social solidarity envisaged by the ILO Social Protection Floors Recommendation, 2012 (No.202) and shows positive effects of the application of international standards on the national legislation.

The experience of Rwanda in achieving universal health coverage, which is mandatory for all residents and financed by domestic resources, builds the confidence that it is also possible to implement universal pension coverage in Rwanda. This study addresses the need to reform *Long-Term Savings Scheme* and to make it mandatory for self-employed with contributory capacity and workers in organized groups and to provide pension benefits for the duration of the contingency (old age).

Thus, the study forms a useful basis for discussion and further research, given that the methodology used, findings, analysis, strategies, conclusions and recommendations, both enrich and supplement the findings of the latest international, regional and national social security research.