

GREAT LAKES INITIATIVE FOR HUMAN RIGHTS AND DEVELOPMENT (GLIHD)

ALTERNATIVE REPORT ON RWANDA'S APPLICATION OF SELECTED ILO CONVENTIONS:

- I. C017-Workmen's Compensation (Accidents) Convention, 1925**
- II. C026-Minimum Wage-Fixing Machinery Convention, 1928**
- III. C094-Labour Clauses (Public contracts) Convention, 1949**
- IV. C100-Equal Remuneration Convention, 1951**
- V. C111-Discrimination (Employment and occupation) Convention, 1958**
- VI. C123-Minimum Age (Underground Work) Convention, 1965**

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LIST OF ABBREVIATIONS

CFC -Civil Service Commission

EAC - East African Community

EDPRS - Economic Development and Poverty Reduction Strategy

EICV - Integrated Household living Conditions Survey

GoR - Government of Rwanda

ICT -Information Communication Technology

ILO-International Labour Organisation

ITUC -International Trade Union Confederation

MDGs -Millennium Development Goals

MIFOTRA-Ministry of Public Service and Labour

MINECOFIN - Ministry of Finance and Economic Planning

NGO-Non-Governmental Organisation

NISR - National Institute of Statistics of Rwanda

No-Number

OSH - Occupational Safety and Health

RSSB - Rwanda Social Security Board

WHO –World Health Organisation

Chapter One: Introduction

Introduction

The preamble of the ILO Constitution provides that 'the protection of the worker against sickness, disease and injury arising out of employment' is a fundamental element of social justice.¹ This right to decent, safe and healthy working conditions and environment was reaffirmed in the 1944 Declaration of Philadelphia and in the ILO Declaration on Social Justice for a Fair Globalization.² Today, right to social justice has created specific binding obligations on ILO member states to ensure that workers are protected against occupational injuries and disease at the place of work.³

Also, ILO member states that ratify a certain convention are expected to apply its provisions in every possible way. The application of provisions has to conform to the dictates of the convention or at the very least, such conventions should influence the laws and regulations of that member state.⁴

Similarly, pursuant to the decisions of the International Labour conference taken in the 86th session of November 1998, it was declared that:

'[A]ll ILO members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the

¹ International Labour Organization constitution adopted at Philadelphia on 10 May 1944.

² ILO Declaration on Social Justice for a Fair Globalization adopted by the International Labour Conference at its Ninety-seventh Session, Geneva, 10 June 2008.

³ILO, Right to Social Justice, available at <http://www.ilo.org/public/english/protection/safework/standard.htm#cr>, accessed on 24 March 2018.)

⁴*Ibid.*

*principles concerning the fundamental rights which are the subject of those Conventions'*⁵

In addition, member states also have procedural obligations in respect of Conventions and Recommendations - namely, to report upon request to the Governing Body on the measures taken or envisaged to give effect to the provisions of such Conventions/Recommendations.⁶

It can therefore be safely argued that, though no specific substantive obligations may be imposed on non-ratifying states of a convention,⁷ states still have to live by certain guidelines of action so as to meet the minimum expectations of every ILO member state.

Since 1962 when Rwanda became an ILO member, it has so far ratified thirty four (34) conventions of which eight (8) are fundamental.⁸

It is against this back-drop that this study seeks to examine whether Rwanda has applied the selected ratified conventions. It also highlights the existing gaps in implementation and status of implementation where government commits to put in place implementation mechanisms.

The International labour standards and fundamental principles and rights at work as enshrined in the various ratified conventions act as goals and

⁵ ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its 86th Session, Geneva, 1998 at 7.

⁶ILO, Right to Social Justice, (note 3). See also, International Labour Office, *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*, Consultation Paper /International Labour Office, Social Security Department - Geneva: ILO, 2008 at 5.

⁷ILO, Right to Social Justice, (note 3).

⁸ These include: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); and Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

benchmarks for social justice and fairness in the world of work and help foster more balanced economic and social development for ILO member states.

Also, the aim of ratified and non-ratified Conventions is to put in place: freedom of association; collective bargaining mechanisms; minimum wages; working time and other working conditions; ensuring social security protection; access to training; occupational safety and health protection; elimination of all forms of discrimination in the labour market, particularly between men and women; fight against child labour; compensation in case of occupational accidents or diseases; compensation in case of insolvency and protection of workers claims; maternity protection and benefits, parental protection and finally promotion of social dialogue at workplace.

For purposes of this study, our scope of coverage is only limited to Rwanda's application of the following six (6) selected ILO conventions:

- i. C017: Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
- ii. C026: Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
- iii. C094: Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
- iv. C 100: Equal Remuneration Convention, 1951 (No. 100).
- v. C111: Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- vi. C123: Minimum Age (Underground Work) Convention, 1965 (No. 123).

Objectives of the Study

The main objective of this study is to examine whether Rwanda has applied the selected ratified conventions. It also highlights the existing implementation gaps and status of implementation where government commits to put in place implementation mechanisms. Recommendations on effective implementation of the ratified and related other conventions are given.

The study is based on the following specific objectives:

- 2.1 Conduct an analysis on the present related policies and laws to determine whether they are inline (domesticate) the selected conventions;
- 2.2 Examine whether or not Rwanda has applied the selected conventions and the implementation gaps that come with such implementation;
- 2.3 Examine whether the Government of Rwanda's reponse to the comments raised by ILO regarding the application of the above mentioned selected conventions is inline with some of the realities on ground; and lastly
- 2.4 Come up with tangible recommendations that may help in the proper implementation of the selected conventions.

The report is organized in three chapters as follows:

- i. The general introduction,
- ii. Rwanda's application of the selected ILO conventions. This further highlights the implementation gaps. The status of implementation of each of the respective conventions is also highlighted in passing, and
- iii. Recommendations.

Delimitation of the study

This study examines whether Rwanda has applied the selected ratified conventions as indicated in the introduction and endeavours to highlight the existing implementation gaps and status of implementation where government commits to put in place implementation mechanisms. It does not examine the application of other ratified and non-ratified ILO conventions/recommendations irrespective of their importance and relevance to Rwanda.

Chapter Two: Rwanda's application of selected ILO Conventions.

Introduction:

This chapter discusses at length the implementation gaps and status of implementation for each of the respective selected conventions ratified by Rwanda. It examines whether the GoR's implementation of each of the respective conventions meets the requirements of the ILO. It also delves into the improvement areas inline with the requirements of the ILO and/or the respective ratified conventions. A proposal on what may be done for the GoR to be more compliant is given where in our opinion the GoR's response is gaged to be unsatisfactory.

Rwanda became an ILO member state slightly after its independence in 1962. Since then, it has so far ratified thirty four (34) conventions, eight (8) of which are fundamental. However, due to changes in work dynamics driven by technological advances and the need for social justice, there is always need to ensure that the ratified conventions are not only domesticated but also effectively applied through the state's various legal instruments. It is against this back-drop that this chapter seeks to examine how Rwanda has applied the various selected ILO conventions it has so far ratified.

The Constitution of Republic of Rwanda provides the right to work, freedom to choose employment, right to just and favourable conditions of work, and social protection for the vulnerable. The six (6) selected ILO conventions ratified by Rwanda whose implementation we examine include:

- i. C026: Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)
- ii. C017: Workmen's Compensation (Accidents) Convention, 1925 (No. 17)
- iii. C094: Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
- iv. C 100: Equal Remuneration Convention, 1951(No. 100)

- v. C111: Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
- vi. C123: Minimum Age (Underground Work) Convention, 1965 (No. 123).

Also, as a matter of principle, ILO member states that ratify a certain convention have to ensure the application of its provisions. The application of those provisions has to conform to the dictates of the convention or such conventions have to influence the laws and regulations of that member state.

Similarly, pursuant to the decisions of the International Labour conference taken in the 86th session of November 1998, it was declared that:

All ILO members, even if they have not ratified the Conventions in question, have an obligation, arising from the very fact of membership in the Organisation, to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.⁹

In addition, member states also have procedural obligations in respect of Conventions and Recommendations - namely, to report upon request to the Governing Body on the measures taken or envisaged to give effect to the provisions of such Conventions/Recommendations.¹⁰

Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)

Foremost, on the application of Convention no. 26 on Minimum Wage-Fixing Machinery, 1928 (No. 26), the Committee of Experts on the Application of Conventions and Recommendations (hereinafter CEACR) in 2014 emphasized the need for the Government of Rwanda (hereinafter GoR) in consultation with employers' and workers' organizations to fast-track the process of determining new minimum wage rates aimed at ensuring a suitable standard of living for the

⁹ ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference at its 86th Session, Geneva, 1998 at 7.

¹⁰ ILO, Right to Social Justice (note 3). See also, Setting social security standards in a global society (note 6) at 5.

workers concerned. It also requested the GoR to transmit a copy of the ministerial order fixing the minimum guaranteed wages per professional category once it has been adopted, as well as a copy of the scientific study on minimum wage fixing as soon as it is completed.¹¹

In its response, the GoR noted that a study fixing the minimum wage had been finalised and approved in 2015 by the competent authorities and that during this process, it had consulted with employers', workers' organizations and other stakeholders.

The GoR further noted that inline with the recommendations of the study establishing the minimum wage, it is still carrying out consultations to establish a minimum wage and that this is coupled with reviews/amendment of the current labour law and its implementing orders to make enforcement of the minimum wage possible. It concludes by committing to communicate these legal instruments to the CEACR once they are adopted.

Much as the efforts of the GoR in establishing a minimum wage and amending the existing legal instruments to make enforcement a reality may be lauded, it should be emphasized that since 1980, the Minimum wage in Rwanda has been inadequately enforced. There has been a cronic lack of a proper mechanism of updating or adjusting the minimum wage periodically to match the ever rising cost of living of people and inflation in the country.¹²

¹¹ Report of the Committee of Experts on the application of Conventions and Recommendations, 2014, available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:3133527 [accessed on 23rd March 2018.]

¹² Republic of Rwanda, Ministry Public service and Labour, a Study on the Establishment and Determination of the Minimum Guarantee Wage (MGW/SMIG) per Categories of Work by Sectors, November 2015 at 13.

In light of the global jobs pact, adopted by the ILO in June 2009 which emphasises the importance of minimum wages in the context of the global economic crisis and the recovery, the GoR should also consider strengthening social dialogue, collective bargaining and statutory or negotiated minimum wages that reflect the reality on ground in terms of the cost of living of people in the country. Infact, trade union leaders we spoke to underscored the need for minimum wage levels to be compared with estimates of average wages and labour productivity so as to know their distribution patterns. The above thinking is inline with article 23(3) of the Universal Declaration of Human Rights.¹³

Workmen's Compensation (Accidents) Convention, 1925 (No. 17).

Secondly, on the application of Convention No.17 on Workmen's Compensation (Accidents), 1925, the CEACR highlighted the need for the existing social security legislation to guarantee coverage for apprentices, casual and temporary workers against the risk of employment injury. In its previous comments, the Committee had noted the Government's commitment to extend social security coverage to all including coverage of employment accidents in the formal sector. The GoR also informed the Committee of an on-going legal reform of the organic law establishing an employment injury benefits branch administered by Rwanda Social Security Board (RSSB), the enactment of a ministerial order detailing the terms of social security coverage of all categories of people with an employment contract; the adoption of law No. 45/2010 of 14 December 2010 establishing the Rwandan Social Security Board and the current reform of the pension system, the enactment of a new pension law; and the existence of a Bill on occupational risks.

¹³ Article 23(3) of the UDHR stipulates that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection."

As indicated by the GoR, the existing legal framework¹⁴ caters for the extension of social security coverage to all employees in Rwanda irrespective of the nature, type and validity of their contracts or remuneration.

In fact, article 2(2) of Law No. 06/2003 of 22/03/2003 modifying and complementing the Decree Law of 22 August, 1974 on the organization of social security gives an extensive explanation of salaried workers who are covered under Rwanda's social security regime - viz occasional or temporary workers, professional and in-service trainees, apprentices, those placed in youth training, re-adaptation and re-education centers.¹⁵

An analysis of the above proves that to a large extent there is indeed some form of extension of social security coverage (including employment injury) to all categories of salaried employees irrespective of the nature, type and validity of their contracts or remuneration.

The opinion of some employees in the formal sector that were consulted is that much as the existing social security regime guarantees protection against work related injury and illnesses, the compensation that is normally given is way too low to afford the victim the basic needs of life (decent living) let alone the fact that such coverage scantily covers the informal sector employees. To give context to the above, let us delve a bit into the occupational risks branch managed by Rwandan Social Security Board (RSSB).

The branch of occupational risks (work related accidents and diseases) is the second largest branch managed by Rwanda Social Security Board (RSSB). Under

¹⁴ See art. 2(1) (a) of Law No. 06/2003 of 22/03/2003 modifying and complementing the Decree Law of 22 August, 1974 concerning the organization of social security that extends social security coverage to all workers in Rwanda whether in the Public or Private sector; notwithstanding the nature, type and validity of their contracts or remuneration.

¹⁵ See art. 2(2) (a) of Law No. 06/2003 of 22/03/2003 modifying and complementing the Decree Law of 22 August, 1974 concerning the organization of social security.

Rwandan law,¹⁶ this branch protects households against the risk of income loss due to work-related accidents or illnesses.¹⁷ Unlike the pensions' branch which covers both the formal and informal sectors, this branch exclusively covers the formal sector employees.¹⁸ Coverage is extensive and includes all work related accidents/diseases irrespective of the cause and extent of one's exposure to the hazardous working conditions.¹⁹ Compensation under this branch depends on the level and permanence of the injury suffered in case of an occupational accident/disease.

In 2007 for instance, occupational hazards related benefits totalling Rwf 215,999,138 (US\$ 313,042) were paid to 2,036 beneficiaries.²⁰ This implies that on average, every beneficiary got 106,090 Rwf (US\$ 154) per year, 8,841Rwf (US\$ 13) per month and Rwf 295 (US\$ 0.43) per day. This amount is also far below the minimum threshold fixed by the government.²¹ People with such earnings by government standards are categorised as the vulnerable falling below the poverty line.²² People in this category are assisted by the community through the *ubudehe*²³programme.

¹⁶Article 1 of law no. 06/2003 of 22/03/2003 modifying and complementing decree law of August 1974 concerning the organisation of social security in Rwanda (current social security law) enumerates the social contingencies covered and their respective branches.

¹⁷ Republic of Rwanda, Ministry of Finance and Economic Planning, *National social security policy*, February 2009 at 13.

¹⁸ Art 3 of law no. 06/2003 of 22/03/2003 (note 14).

¹⁹ *Ibid.*, art 13(1).

²⁰ Social security fund of Rwanda, social security statistical bulletin for the first semester 2007 at 10.

²¹ The minimum salary threshold is Rwf 104, 000(US\$120) but by all standards, every citizen is required to live on at least one dollar per day. The government has so far fixed a per capita income of US \$900 by the year 2020.

²² Republic of Rwanda, Economic Development and Poverty Reduction Strategy (EDPRS) 2008-2012, September 2007 at 27.

²³ *Ubudehe* is a government programme where people come together and offer assistance mostly in form of manual labour to those who are incapable or in extreme poverty. The major aim of *Ubudehe* is to uplift the community's poor from extreme poverty.

Given the nature of employment contracts especially in the informal sector²⁴ coupled with unemployment levels, there is still need for the GoR to strive and extend social security coverage to the informal sector. This would be complemented by giving meaningful compensation to those who get employment related injuries.

In the report submitted to the ILO in February 2018, the GoR states that “the revision of occupational hazards law and its specific ministerial orders is on-going” and commits to communicate to the ILO once the respective ministerial order is enacted.²⁵

The ILO perspective is that member states are called upon to regularly update their laws and lists of occupational diseases. Pursuant to article 13(b)(4) of law no. 06/2003 of 22/03/2003 on the organisation of social security, where necessary, the list of diseases may be updated to include ‘new diseases due to new technology in production and progress in medical research on occupational diseases’.²⁶ Despite these efforts geared towards modifying and complementing the 1974 decree law on social security, reference is still made to the list of occupational diseases enacted in 1980.²⁷ Our view is that the current list of occupational diseases should at least meet the stipulations of Recommendation no. 194 on the List of Occupational Diseases, 2002.²⁸

²⁴ Most of the employers in the informal sector are hesitant to assume responsibility as employers. This is largely due to the fact that most of them are too reluctant to assume any responsibilities (payment of taxes and social security contributions, etc) that come with the contract of employment.

²⁵ Republic of Rwanda, Ministry of Public Service and Labour, report on the application of ratified conventions- 2017, Kigali, February, 2018 at 12.

²⁶ Law no. 06/2003 of 22/03/2003 (note 14).

²⁷ Ministerial order no. 623/06 enumerating the list of professional diseases, 1980 official Gazette, p 573.

²⁸ S2(a) of Recommendation no. 194 on the List of Occupational Diseases, 2002 stipulates that a national list of occupational diseases for purposes of prevention, recording, notification and compensation should comprise, at the least, the diseases enumerated in Schedule I of the Employment Injury Benefits Convention, 1964, as amended in 1980.

Worth emphasizing is that, the lack of an updated list of diseases by Rwanda also violates the requirement of ILO recommendation on the List of Occupational diseases, 2002 which requires states to always update the national lists of occupational diseases after consultation with the governing body of ILO.²⁹ The list should also comprise to the extent possible, other diseases contained in the list of occupational diseases as annexed in the above mentioned recommendation.

Under the same recommendation,³⁰ the list of diseases of a particular state (where appropriate and depending on national conditions and practice), should comprise to the extent possible, a section entitled 'suspected occupational diseases'.³¹ Though article 13(c) of law no. 06/2003 of 22/03/2003 on the organization of social security, provides room for acceptance of other diseases whose 'functional or anatomic manifestation' does not appear on the pre-existent list of occupational diseases,³² there ought to be a section of suspected occupational diseases to guide and help in establishing occupational diseases with ease. This section would also be a point of reference for further research into other probable occupational diseases so as to come up with proper preventive measures.

The CEACR also highlighted fact that it had not yet received Rwanda's report on the application of Convention no.17 on Workmen's Compensation.³³It therefore re-iterated the need for the government to take all the possible measures to

²⁹Recommendation no.194, List of Occupational Diseases, 2002, adopted by the general conference of ILO, 90th session, Geneva, June, 2002. S4(1) of this Recommendation stipulates, that the national list of occupational diseases should be reviewed and updated with due regard to the most up-to-date list established by the governing body of the ILO.

³⁰ S4(1) of Recommendation no.194 of 2002, (note 29).

³¹ S2(c). of Recommendation no.194 of 2002, (note 29).

³²This is in line with the requirements of Recommendation no.194 of 2002 (note 29). However, such a disease is subject to the approval of a government doctor elected by Rwanda Social Security Board (RSSB).

³³Ratified by Rwanda on 18 September 1962, available at <http://www.ilo.org/ilolex/english/newratframeE.htm>, accessed on 26 March 2018.

ensure the extension of protection against employment injury to apprentices, casual workers and temporary workers.³⁴ Rwanda's failure to insure workmen, casual workers and apprentices is in violation of articles one and two of Convention no.17 on Workmen's Compensation, 1925.³⁵

Labour Clauses (Public Contracts) Convention, 1949 (No. 94).

On the application of Convention no. 94 on Labour Clauses (Public Contracts) 1949, the CEACR noted that as at the date of the 107th international Labour Conference (ILC) session (2018), Rwanda's report on the application of the above mentioned convention had not been received. This is a contravention of article 22 of the ILO constitution.³⁶ As noted by the Committee, failure by the concerned governments has been a serious hindrance to the work of the Committee on the application of standards.³⁷

This forced the CEACR to repeat the same recommendation it has been making for the last 30 years.³⁸ In line with art. 1(1) and 2(1) of the convention, the Committee reiterated the need for the GoR to insert in all public contracts to which the Convention applies labour clauses ensuring that the workers concerned benefit from wages, hours of work and other conditions of labour

³⁴ILO, report of the committee of experts on the application of conventions and recommendations: Individual observation concerning workmen's compensation (Accidents) convention, 1925, (no.17), Rwanda, adopted in 2016 published at the 106th ILC session 2017 at 1.

³⁵Arts 1 and 2 Convention no.17 on Workmen's Compensation respectively require all ratifying states to ensure that there is compensation to both apprentices and casual workers or their dependants in case of work injury.

³⁶Art. 22 of ILO constitution stipulates that, every member state should annually report to the international labour office the measures it has taken to implement the provisions of the respective conventions which it ratified.

³⁷ILO, report of the committee of experts on the application of conventions and recommendations,(articles 19,22, and 35 of ILO constitution), international labour office, Geneva, 2017 at 14. Reports on the ratified conventions are due 1 June and 1 September of each year respectively.

³⁸ Report of the Committee of Experts on the application of Conventions and Recommendations, 2017, available on:

http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:3337644 , [accessed on 23rd March 2018.]

which are not less favourable than those established for work of the same character in the same area by collective agreement, arbitration award or national laws or regulations.

In response to the above, the GoR highlights the need for it to address the concerns of the Committee that are inline with the stipulations of the Convention. It therefore indicated that the labour clauses ensuring workers concerned benefit from wages, hours of work and other conditions of labour will be catered for in the ongoing amendment/review of both laws regulating labour in Rwanda and that regulating public procurement.³⁹

It is imperative to note that there is indeed a serious need for the GoR to take all the necessary measures to fully apply the Convention in law and practice. Since the Convention does not necessarily require the adoption of new legislation, the GoR may consider alternative ways of applying the stipulations of the convention such as use of administrative instructions or circulars and documenting information on measures taken to ensure compliance with the labour clauses contained in contracts concluded by public authorities, as required by the Convention, including information on adequate inspection and effective sanctions.

Also, most of the Private sector players interviewed regarding the application of this convention highlighted the need for the GoR to be fully compliant with the stipulations of the convention. This may be realised by considering the inclusion in the new draft public procurement law fair labour condition to the benefit of public tenderers. They infact stressed the need for the determination of the terms of the labour clauses to be included in public contracts and the need to have these clauses widely disseminated by among others:

³⁹ Republic of Rwanda, Ministry of Public Service and Labour, report on the application of ratified conventions- 2017, Kigali, February, 2018 at 9.

- i. advertising specifications or otherwise so that tenderers are aware of the terms of those clauses;
- ii. the posting of notices in conspicuous places to ensure that workers are informed of the conditions of work applicable to them;
- iii. the imposition of adequate sanctions against violations by foreexample withholding contracts or payments due, for failure to apply the provisions of labour clauses.

Convention no. 100 on equal remuneration, 1951(No. 100).

The application of Convention no. 100 on equal remuneration, 1951. On this Convention, the CEACR drew the attention of the government to the need for it to domesticate articles 1(b) and 2 of the Convention on equal remuneration for work of equal value⁴⁰ despite its indication that there is no discrimination between men and women with regard to remuneration in practice. It highlighted that article 1(9) of the law regulating labour only referred to “similar work”⁴¹ and that this was too narrow to fully implement the principle of the Convention.

It also noted that Rwanda's law regulating labour did not contain any substantial provisions prescribing equal remuneration for men and women for work of equal value and that the Constitution only refers to “the right to equal wage for equal work.”⁴² The Committee urged the government to take the necessary steps to amend law no. 13/2009 of 27th May 2009 regulating labour, including articles 1(9) and 12, so as to give full legislative effect to the principle of equal remuneration for men and women for work of equal value.

Reacting to the concerns of the CEACR regarding the application of Convention no. 100 on equal remuneration, 1951, the GoR indicated that it had taken note of the comments raised by the Committee and promised to cater for them in the on-

⁴⁰ Articles 1 and 2 of the Equal Remuneration Convention, 1951 (No. 100) – Rwanda.

⁴¹ See art. 1(9) of law n° 13/2009 of 27/05/2009 regulating labour in Rwanda.

⁴² Art. 30 of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

going amendment of the law regulating labour, including articles 1(9) and 12, so as to give full legislative effect to the principle of equal remuneration for men and women for work of equal value.

In light of the above, Mr. Alexander Twahirwa an employee of the Ministry of Public Service Labour in charge of labour administration, seems to confirm the government's position. He avers that there is indeed no discrimination of any form in both private and public institutions. Employees are paid basing on the value they bring to the employer and the nature of employment contract they have signed. In concluding those contracts, consideration is not given to sex, gender or age but rather the out put and value the employee makes to the employer.⁴³ He further notes that the labour inspectors at District levels also help in ensuring that the provisions of the law regulating labour and its implementing orders are respected and the rights of workers observed.

Similarly, Miss Barbara Mutoni, the human resources business partner at Bralirwa Plc-which is the largest employer in Rwanda, also confirms that their company gives equal remuneration to all employees for work of equal value. She avers that they have one standard template (contract) for all new joiners in the company in that respect. Their employment template indiscriminately refers to a standard pay scale for all employees in the same category and doing work of equal value to the company.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

The application of Convention no.111 on discrimination (Employment and Occupation), 1958. Noting the requirements of article 1 of the Convention on protection against discrimination in employment and the fact that article 12 of

⁴³ Interview with Mr. Twahirwa Alexander, the Director of labour administration at the Ministry of Public service and Labour.

the law regulating labour falls short of properly articulating such non discriminations due to linguistic differences between the French and English versions, the Committee once again requested the government to take the necessary steps to align both versions of section 12 so that they explicitly prohibit any direct or indirect discrimination during recruitment, in employment and occupation in accordance with article 1(3) of the Convention especially with regard to access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

The Committee however commended the government for having adopted law no. 59/2008 of 10th September 2008 on the prevention and punishment of gender-based violence and the inclusion in law no. 13/2009 regulating labour provisions prohibiting “gender-based violence” in employment and direct or indirect moral harassment at work.

It further noted that indeed a combination of these legislative provisions covered the two essential elements of sexual harassment at work as set out in its 2002 general observation.

It further invited the government to consider taking the necessary measures to adopt a clear and precise definition of sexual harassment in the workplace and ensure that this definition not only covers both quid pro-quo and hostile working environment on sexual harassment but also that the revision of the new law regulating labour in Rwanda reflects this proposed amendment.

The Committee concluded by requesting the GoR to provide further information on any measures taken to prevent and eliminate sexual harassment in the workplace (educational programmes, campaigns to raise awareness of appeal mechanisms, and so on).

Convention no.123 on minimum age (Underground Work), 1965 (No. 123).

Inline with the various concerns raised by the CEACR regarding the application of convention no.123 on minimum age (Underground Work) Convention, 1965, the following concerns were raised:

- i. The need to continue respecting the minimum age for admission to employment or work in underground mines.
- ii. The need for stringent penalties to be applied to persons who engage children under the minimum age for admission to work in mines and quarries and appropriate inspection services inline with article 4 (1) and (2) of the Convention.
- iii. The need for member states to keep and maintain proper records of employment to be availed to labour inspectors and workers' representatives in line with the stipulations of article 4(4) and (5).

As is indicated in the report by the CEACR presented to the 103rd session of the international labour conference in 2014,⁴⁴the Committee was happy with the way the GoR had implemented almost all the recommendations that it had raised in the previous years.⁴⁵

Regarding the need for the GoR to enforce the respect of minimum age for admission to employment or work in underground mines, the GoR informed the Committee of the on-going review of the labour law and its application orders, especially Ministerial order n^o10 of 28/07/2010 determining the modalities of declaration of enterprise workers and nature of employers' register. This revision

⁴⁴ Report of the Committee of Experts on the application of Conventions and Recommendations, 2017, available on: Available at http://www.ilo.org/dyn/normlex/en/f?p=1000:13101:0::NO:13101:P13101_COMMENT_ID:3129169 [accessed on 23rd March 2018.]

⁴⁵ The CEACR had raised similar comments in 2012 and 2008 respectively before they were almost entirely addressed in 2014.

will help cater for the inclusion of workers aged between 18 and 20 years to be included in the employers' registers.⁴⁶

Chapter Three: Recommendations

This chapter discusses the recommendations regarding the ratified and other related conventions - which if applied would help Rwanda be fully compliant with the requirements of the ILO ratified conventions. It highlights some of the areas that need improvement on the level of existing laws, regulations and policies. It finally posits that Rwanda may need to adopt those recommendations for it to fully meet the expectations of the ILO member states.

Need to indicate the manner in which victims of discrimination in employment and occupation can assert their rights.

There is need for the government to indicate the manner in which, in practice, public service employees who may be victims of discrimination in employment and occupation can assert their right to non-discrimination on the basis of these provisions, indicating the applicable procedure and specifying whether it has been used in practice.

Since the government avers that there is a special appeal procedure against acts of discrimination referred to the Civil Service Commission (CFC), more information should be provided on the number of appeals, grounds of discrimination cited, outcome of cases, compensation and penalties.

There is also need for the promotion of equality of opportunity and treatment between boys and girls and access to education and training. Even though the government was lauded by the Committee for its tireless efforts geared towards combating horizontal (by sector) and vertical (by job level) occupational gender segregation and the positive results obtained in terms of school attendance by children from poor families, especially girls, based on the

⁴⁶ Republic of Rwanda, Ministry of Public Service and Labour, report on the application of ratified conventions- 2017, Kigali, February, 2018 at 28.

nine years of free school and the measures taken to build adequate sanitary facilities in schools in order to avoid lateness, absenteeism and students dropping out of school, there is still need for information on the measures taken to encourage the access of girls to education and to diversify and extend the trainings available to girls and boys.

Need for equality of opportunity and treatment for men and women in employment and occupation

On equality of opportunity and treatment for men and women in employment and occupation, there is need for the Government to provide information on equality in employment and occupation undertaken by institutions responsible for gender issues. More information should also be provided on the results obtained following the implementation of the strategic plan for the employment of women and the gender strategy for agriculture with a view to promoting gender equality in employment and occupation, particularly through the creation of sustainable and income-generating jobs for women and men.

On the measures to promote equal access for the *Batwa* people to education, training and employment, there is need for the government to combat the serious poverty faced by *Batwa* who are “historically marginalized groups” and to improve their living conditions by:

- (i) developing more initiatives and activities to prevent and combat the stigmatization and stereotypes of which these populations, including the *Batwa*, are victims;
- (ii) encouraging and ensure their integration into the labour market on an equal footing with the other sectors of the Rwandan population by improving their access to education and vocational training;
- (iii) taking the necessary measures to give the *Batwa* people access to land and resources to enable them practice their traditional occupations.

On vertical occupational gender segregation in the public service, there is need for the government to furnish reports on the measures taken, in the framework of the national gender policy or in any other context, to promote equality of opportunity for men and women and access by women to higher category posts in the public service, in particular management positions and positions with career prospects.

Insufficient penalties provided for by the current labour law

Our analysis of the general penalties provided for by the current law regulating labour in Rwanda reveals that they are not only inefficient (because they are less severe) but also do not cater for proportionality and gravity of the offence(s) that may be committed.⁴⁷ Such penalties are considered too lenient and less of a deterrent especially in a country like Rwanda with a large informal sector where employees are mostly exploited due to poverty and their desperate need for work.

The need to strengthen labour inspection at district levels

To ensure the effective implementation of the ratified conventions, there is need to strengthen labour inspection at district levels. Currently, the national system of labour administration has been affected by the policy of decentralization of labour administration services to the districts. This decentralisation of labour inspection makes coordination of all the activities of labour administration at both District and Ministerial level difficult which has rendered the whole coordination process inefficient. This is coupled with a chronic shortage of the requisite resources to enable districts perform their responsibility

⁴⁷Art 169 of the law regulating labour in Rwanda provides for an imprisonment term not exceeding two months and/or a fine ranging from Rwf 50,000 to Rwf 300,000 (approximately \$58-\$346).

of service delivery. This situation is exacerbated by the general lack of capacity of staff in the districts regarding their technical competence and insufficient numbers to carry out inspections.

Related to the above is that, given the unlikely reversal of the government's decentralization policy, the Ministry of public service and labour should strengthen its active role of coordination, policy setting and provision of technical support and guidance to the districts in order to improve the delivery of labour administration services at the local level. We recommend the modification of the law regulating labour in Rwanda so that it provides sufficient scope within which the Ministry can be able to influence delivery of services in the districts in order to respect what is provided in the ratified conventions.

Also, some of the labour inspectors we spoke to indicated that labour issues are not often given a priority by District authorities. There are few labour inspectors in the districts who are not often assigned duties beyond their scope as labour inspectors; and yet there are limited resources. As a result and despite the existence of a legal framework for labour inspection, the labour inspection system is not working well. The Ministry has no supervisory power over district labour inspectors and the labour inspectors are not able to produce reports on the regular achievements, trends and challenges of labour administration and labour inspection in the country. In our opinion, this situation needs to be addressed urgently by the Rwanda because delivery of services by the Directorate of Labour and employment has been compromised. In addition, there has been numerous comments by ILO's Committee of Experts urging Rwanda to rectify the situation, but to date there has hardly been noticeable progress.

Additionally, the current law regulating in Rwanda does not recognise the labour inspectors' right of entry to working premises at 'any hour of the day or night' in which the government has always promised execution of the

recommendation through enactment in the new law regulating labour.⁴⁸ This recommendation of the committee is in line with the requirements of the convention on labour inspection (C81), 1947.⁴⁹

Despite the government's commitment to execute the committee's recommendation through necessary enactments in the new law regulating labour, a close analysis of the code reveals that, the government did not execute the recommendation as promised. The labour inspector's entry to the working premises is still limited to only working hours.⁵⁰ This is a violation of one of the requirements of article 12(1) (a) of Convention no.81 on Labour Inspection as noted above. It can therefore be argued that, the labour inspector's entry limitation to only working hours highly hampers his/her ability to carry out quality control of firms/institutions whose operations may be violating the rights of workers. There is therefore need to amend the current law regulating labour in Rwanda to cater for this vital requirement as per the ratified conventions.

Need to raise awareness of labour inspectors on the labour new laws and regulations.

A large number of conventions, new laws and ministerial orders in the field of labour and employment have been recently ratified/adopted while others are in the process of being enacted. This implies additional responsibilities on the Ministry, and particularly the labour inspection function, to apply the new laws and international labour standards. Yet there is already a general lack of

⁴⁸ILO, report of the Committee of experts on the application of conventions and recommendations (note 37) at 2.

⁴⁹Art 12(1)(a) of the Labour Inspection Convention, 1947(C81) allows labour inspectors with the required credentials to freely enter without previous notice at any hour of the day or night any work place liable to inspection.

⁵⁰Art 158(1) of the law regulating labour in Rwanda stipulates that, upon presentation of documentary evidence, he may 'enter during the working hours whether at night or during the day, any firm of his area of inspection'.

sufficient awareness on the part of labour inspectors and other stakeholders on the content and application of the law.

The Ministry and the Department of Labour administration in particular, should develop a realistic and achievable plans to raise awareness on the new legislation among labour inspectors and other different stakeholders, particularly on the means to enforce these laws for better compliance with the requirements of the ratified conventions/new laws.

Need for adequate measures to enforce decisions or rulings taken by labour inspectors within the labour law in Rwanda

Despite having adequate legislation largely in compliance with international labour standards including the those that relate to conventions ratified by Rwanda, there are inadequate measures to enforce decisions or rulings taken by labour inspectors within the law labour in Rwanda or provisions for sanctions to compel compliance with the law regulating labour in Rwanda.

The Ministry of public service and labour should therefore consider strengthening the level of sanctions so as to be reasonably dissuasive. At the same time, it is important to consider effective legal mechanisms to ensure that such fines are in fact paid by employers when imposed.

Need for the establishment of new judicial organs to complement the existing ones.

Many of the respondents we spoke stressed the fact that many of the employees have often been desuaded from clamouring for their rights by lengthy and sometimes expensive legal processes/litigations. There is therefore need for the new labour law to provide for the establishment of new judicial organs such as a labour disputes arbitrator, labour mediators and advisors in addition to the existing organs. These organs once established would help strengthen the existing out-of court settlement of disputes- something that would reduce on the

number of cases going to court. For these organs to be efficient, complainants need to be compelled to go through these organs before proceeding to court.

Coverage of apprentices, casual and temporary workers against the risk of employment injury.

On the application of article 2, 12 and 17 of the convention to guarantee coverage of apprentices, casual and temporary workers against the risk of employment injury, the government is not yet compliant with this requirement since neither the new pension act, 2015⁵¹ nor the current Ministerial Order determining and establishing the modalities and functioning of occupational health and safety committees⁵² caters for this.

In fact, article 92 of the new pension act 2015 stipulates that *“the decree law of 22nd August 1974 on the organization of social security in Rwanda as amended to date shall remain in force for occupational hazards while a specific relevant law is not published”*.

Our analysis of the above mentioned decree law reveals that apprentices, casual and temporary workers are not covered against the risk of employment injury. Our recommendation therefore is that the government should consider the domestication of this vital part of the Convention under the new specific law on occupational hazards to be promulgated in the near future as alleged by the state.

The need for statistics to substantiate the absence of a gender pay gap

On the assessment of the gender pay gap, the governments should furnish analyzed reports showing statistical information gathered assessing pay levels for men and women and the gender pay gap with respect to the sectors for which gender indicators have been drawn up. The same report should also capture information on how far the government has gone with setting up mechanisms to

⁵¹ Law n° 05/2015 of 30/03/2015 governing the organization of pension schemes.

⁵² Ministerial Order N°01/Mifotra/15 of 15/01/2015 determining and establishing the modalities and functioning of occupational health and safety committees.

guard against the minimum wages being biased based on gender thus fully implementing the principle of work of equal value as highlighted in the draft Ministerial Order determining minimum wage which as the government states was approved through tripartite consultations.

Since collective agreements are instrumental in reducing the gender pay gap and in line with the Convention, there is need for the government to report on the steps it has taken or envisaged to encourage the social partners to: (i) include in collective agreements a clause providing for equal remuneration for men and women for work of equal value; and (ii) undertake an objective evaluation of jobs and avoid the use of gender stereotypes or gender bias when fixing wages. Once the above is done, government should provide extracts of collective agreements containing clauses providing for equal remuneration for men and women for work of equal value.

It should also provide reports on enforcement activities of the labour inspectorate with respect to the principle of equal pay for men and women for work of equal value. Such reports should also contain specific information on the number and nature of infringements reported and copies of court or other decisions relevant to the application of the Convention.

Conclusion

Basing on our thorough analysis of the existing policies, laws and regulations and administrative structures that would help in the effective implementation of the ratified conventions coupled with the need for Rwanda to meet the requirements of the ILO as a member state, a little more effort still needs to be put by the GoR to continue being compliant. Much as the good will and efforts of the government towards meeting the requirements of the ratified conventions may not be over emphasized, a little more effort is still needed to remain

compliant and to cater for the few more concerns of the CEACR as highlighted in this report.

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