



The Legal Aid Forum

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FAST TRACKING GENDER EQUALITY IN LAW IN RWANDA:

Comprehensive Legal Analysis of Gender Compliance under Rwandan Law

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**FAST TRACKING GENDER
EQUALITY IN LAW IN RWANDA**

ABBREVIATIONS AND ACRONYMS

ACHPR	: African Charter on Human and Peoples' Rights
CEDAW	: Convention on the Elimination of all forms of Discrimination against Women
CESTRAR	: Centrale des Syndicats des Travailleurs du Rwanda
CSOs	: Civil Society Organisations
DNA	: Deoxyribonucleic Acid
FFRP	: Forum des Femmes Rwandaises Parlementaires
FGDs	: Focus Group Discussions
GMO	: Gender Monitoring Office
HIV/AIDS	: Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome
ICCPR	: International Covenant on Civil and Political Rights
ILO	: International Labour Organisation
IPU	: Inter-Parliamentary Union
KIIs	: Key informant interviews
LAF	: Legal Aid Forum
LMLS	: Law on Matrimonial Regimes, Liberalities and Succession
MIGEPROF	: Ministry of Gender and Family Promotion
MINIJUST	: Ministry of Justice
MoH	: Ministry of Health
NAWOCO	: National Women's Council
NCHR	: National Commission for Human Rights
N°	: Number

NPPA	: National Public Prosecution Authority
O.G.	: Official Gazette
OL	: Organic Law
RBA	: Rwanda Bar Association
RCS	: Rwanda Correctional Service
RIB	: Rwanda Investigation Bureau
RLRC	: Rwanda Law Reform Commission
RWAMREC	: Rwanda Men’s Resource Center
RWN	: Rwanda Women’s Network
SDGs	: Sustainable Development Goals
STIs	: Sexually Transmitted Infections
TGI/GSBO	: Tribunal de Grande Instance de Gasabo
UN WOMEN	: United Nations Entity for Gender Equality and the Empowerment of Women
WEF	: World Economic Forum
WHO	: World Health Organization
WWW	: World Wide Web

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FOREWORD

Over the last 25 years, Rwanda has made remarkable progress in developing legal and policy frameworks that embody the principle of gender equality. In this regard, many laws have been either enacted or amended in an attempt to get rid of provisions that discriminate on the basis of gender. However, despite the impressive progress, some areas in the national legal framework can still be improved further in order to attain full gender equality under the law, which is in line with the recent multi-stakeholder strategy for accelerated action to achieve equality in law for women and girls by 2030.

The Legal Aid Forum (LAF) conducted a Comprehensive Legal Analysis of Gender Compliance in Rwandan Laws in order to evaluate the current status of compliance with gender standards, and is pleased to publish the findings. This analysis provides a comprehensive and up-to-date assessment of the status of gender compliance in Rwanda by reviewing laws in force to identify those that may discriminate explicitly (de jure) or implicitly (de facto) on the basis of gender.

The results show that Rwanda has made significant efforts to prevent gender-based discrimination and promote equality between men and women. Actions taken include the ratification of international treaties relating to gender equality and enacting a body of domestic law in order to implement Rwanda's international obligations on gender equality. This includes both general constitutional protections and legislation relevant to all areas of life, including labour and employment, politics, health and education. The analysis nonetheless found that despite these commendable efforts, some gaps still exist in the laws in force, as well as some practical barriers that hinder the full attainment of equality between women and men. The report also includes recommendations, and it is our sincere hope that once they are implemented, they will help Rwanda become fully compliant with its legal obligations nationally, regionally and internationally.

We would like to thank our key partners in this analysis, in particular the financial and technical support of UN WOMEN and the valuable input of FFRP. We respectfully thank key gender stakeholders from both public and private institutions who provided useful information that enriched the analysis. Last but not least, we are grateful to the analysis Steering Committee whose technical guidance made this work possible.

Me Andrews Kananga
Executive Director

EXECUTIVE SUMMARY

Rwanda is known as a leader in the promotion of gender equality, both globally and on the African continent. According to data released by the Inter-Parliamentary Union, as of February 1st 2019, Rwanda has the highest number of women parliamentarians in the world at 61.3%.¹ In 2018, Rwanda became the second African country to attain gender parity with at least 50% of Cabinet members being women. Further, in 2019, Rwanda was 9th out of 153 countries globally, and number one in Africa in terms of narrowing the gender gap².

Although Rwanda's progress toward gender equality is remarkable, based on the commitment of the Government to address remaining gaps in gender equality, informed by the recently launched initiative "Equality in law for women and girls by 2030: A multi-stakeholder strategy for accelerated action", it is important to continually examine and reflect on relevant laws and policies and to some extent practices, to ensure that the national legal framework is fully gender responsive. Civil Society Organizations (CSOs) also have an important role to play in conducting monitoring and analysis and in advocating for necessary changes to be implemented by policymakers and parliament. It is in this regard that LAF, with the financial support of UN WOMEN, conducted this analysis in order to assess and identify any remaining gender gaps to be addressed by relevant institutions so that Rwanda eliminates all gender discrimination in its laws.

This analysis is based on information gathered through a desk review of Rwandan laws and policies, international and regional conventions on gender, and existing reports and publications on gender matters. Qualitative data was also collected through interviews with key stakeholders, and through focus group discussions (FGDs) with key actors including representatives from government institutions, lawyers, representatives from CSOs and other relevant key gender stakeholders. The interviews enabled verification and cross-checking of findings, as well as identification of enforcement-related gaps where laws are not being enforced or where laws that are not themselves discriminatory are applied in a way that leads to gender discrimination.

As a starting point, the Government of Rwanda has made significant progress in developing a legal, policy, and institutional framework that supports and promotes gender equality. This protection and prohibition of gender-based discrimination is enshrined in the Constitution and in a series of international treaties which Rwanda has ratified.

¹ IPU, Women in National Parliaments, <http://archive.ipu.org/wmn-e/classif.htm>, last visited on 5th December 2019.
² Global Gender Gap Report (2019), p. 9. The report can be accessed on: http://www3.weforum.org/docs/WEF_GGGR_2020.pdf accessed on 5th December 2019.

Efforts have also been made to implement these international obligations, general constitutional provisions, and provisions of domestic law which prevent discrimination and promote equality in different areas of life, such as criminal law, labour law, the law on persons and family, the law on matrimonial regimes, liberalities and succession, the law on human trafficking, the organic law relating to Rwandan nationality, the law on maternity leave, the law on human reproductive health, the law governing elections, the law on state finances and property, and many other laws. Furthermore, institutions in charge of gender promotion have been put in place, mainly in the public sector, including the Ministry of Gender and Family Promotion (MIGEPROF), the Gender Monitoring Office (GMO), the National Women's Council, and the FFRP, and the work of these institutions is being complimented by a number of CSO initiatives.

This analysis shows that Rwanda has vigorously and impressively revised existing legislation and enacted new laws where required in a bid to promote gender equality. The findings also reveal, however, that a few areas of the law still need to be improved. The findings are grouped into four major categories: provisions of the law that might be repealed, provisions of the law that might be amended, gaps related to the implementation of existing laws that should be addressed, and policies and instruments that should be ratified.

1. Laws or provisions of laws to be repealed

After reviewing all relevant laws, the research shows that no particular laws or provisions of laws need total repeal. This is attributed to the fact that Rwanda has constantly reviewed its laws from a gender perspective to ensure that they do not discriminate on any grounds.

2. Laws or provisions of law for amendment

The analysis found a number of provisions that require amendment:

1. Article 56 of Law N°66/2018 of 30/08/2018 regulating labour in Rwanda, gives maternity leave of at least twelve consecutive weeks to a female employee who has given birth. Yet article 21 of Law N°17/2020 of 07/10/2020 establishing the general statutes governing public servants and article 2 of the Ministerial Order N° 03 of 13/7/2010 determining circumstantial leaves, give just four working days of circumstantial or incidental leave to a male employee whose spouse has given birth. The research shows the importance of male employees being given more

reasonable days of leave to care for their wives and children. The research also noted that the terminology used “Circumstantial or Incidental leave” for fathers, is not appropriate and needs to be changed to “parental leave”;

2. Article 9 of the labour code should be amended so that provisions on equal opportunity and non-discrimination apply to all stages of employment, including during the recruitment process;
3. Law N°66/2018 of 30/08/2018 regulating labour in Rwanda should be amended to include a clause that explicitly prohibits termination of a woman’s employment contract based on pregnancy or maternity conditions, and provide for sanctions for employers who do so;
4. Article 8 of the labour code should be amended to include punishment for sexual harassment committed by any other person, not only by a supervisor at one’s workplace, to align with the content of Article 149, para.2 of Law N°68/2018 of 30/08/2018 determining offences and penalties in general;
5. Law N°71/2018 of 31/08/2018 relating to the protection of the child should be amended to restore the previous provision where a criminal sentence for a pregnant woman or breast-feeding mother is left to the discretion of the judge, taking into account the best interests of the child;
6. Article 6 of Law N°27/2016 of 08/07/2016 governing matrimonial regimes, liberalities and succession should be amended to include joint management and disposal of shares of movable property given that this has been noted as a recurrent implementation gap on the basis of gender;
7. Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of the Rwanda Correctional Service (RCS) should be amended to provide pregnant women with an environment which is suitable to their condition, and respects their right to be treated with dignity.

3. Awareness and capacity building for implementation and enforcement

To improve and ameliorate gender gaps in enforcement of certain laws, the following steps are recommended:

1. Gender machinery institutions to conduct capacity building for RIB, RNP, and RCS officers to ensure better understanding of gender and implementation of relevant legal provisions;

2. MIFOTRA and GMO to monitor and evaluate gender discriminatory practices by private sector employers and to ensure that those which do discriminate face the appropriate sanctions;
3. Undertake a specific study to assess key cultural and practical barriers that hinder effective implementation of gender-related laws and policies, and launch public awareness campaigns on gender and rights, as well as related topics such as formalization of marriages and inheritance rights.

4. Ratification of ILO Conventions

Ratification of certain international instruments, primarily the following ILO Conventions, will also ensure Rwanda closes gender gaps in its laws and policies and in enforcement and implementation:

- Convention 156 on workers with family responsibilities;
- Convention 183 on Maternity Protection,
- Convention 189 on Domestic Workers,
- Convention 190 on Violence and Harassment,
- Convention 131 on Minimum Wage Fixing,
- Convention 156 on Workers with Family Responsibilities,
- P089- Protocol of 1990 to the Convention concerning Night Work of Women Employed in Industry.

1. GENERAL INTRODUCTION

1.1. Background

Rwanda has demonstrated its commitment to gender equality through ratification of relevant international instruments and putting in place a robust domestic legal and institutional framework to implement these obligations. Over the last 25 years, the government of Rwanda has enacted a significant body of laws to promote gender equality and eradicate all forms of gender-based discrimination, and has also amended or repealed many discriminatory laws.

At the highest level, the Constitution of Rwanda prohibits all forms of discrimination, including discrimination based on sex³, and requires a quota of at least 30% women in all decision-making organs.⁴ Rwanda has also put in place a number of laws with clear provisions outlawing gender-based discrimination and promoting gender equality in different areas of life. These include the Law Determining Offences and Penalties, the Labour Code, the Law on Persons and Family, the Land Law, the Law on Matrimonial Regimes, Liberalities and Succession, the Law on State Finances and the Property Law.

Rwanda is also known as a global leader in the attainment of many gender equality indicators. According to data released by the Inter-Parliamentary Union, as of February 1st 2019, Rwanda has the highest number of women parliamentarians in the world at 61.3%.⁵ In 2018, Rwanda became the second African Country to attain gender parity of 50% women in the Cabinet.⁶ Further, according to the 2020 World Economic Forum (WEF) Global Gender Gap Report, Rwanda was ranked 9th out of 153 countries globally, and number one in Africa, in terms of narrowing the gender gap⁷.

Despite these commendable efforts, a thorough scrutiny of relevant laws in force is needed to ascertain whether provisions may still exist that are either explicitly (de jure) or in practice (de facto) discriminatory on the basis of gender. It is also necessary to examine whether relevant international treaty provisions have been fully domesticated, and if the laws preventing gender discrimination and promoting equality are being complied with in practice. This is particularly important considering historical and cultural norms that have excluded women and girls with respect to, inter alia, politics, business, land ownership and succession.

³ The Constitution of the Republic of Rwanda of 2003, revised in 2015, in O.G. n°Special of 24/12/2015 (hereinafter referred to as the "Constitution"), Art.6.

⁴ *Ibid.*, Art.10.

⁵ See <http://archive.ipu.org/wmn-e/classif.htm>.

⁶ Rwanda unveils Gender-balanced cabinet with 50% women, Oct. 19, 2018, The Independent, <https://www.independent.co.uk/news/world/africa/rwanda-cabinet-women-gender-balance-government-africa-ethiopia-a8592461.html>.

⁷ World Economic Forum, Global Gender Gap Report, 2020, p. 9, available at http://www3.weforum.org/docs/WEF_GGGR_2020.pdf.

The identification of these legal gaps and their resolutions will facilitate the implementation of the initiative themed “Equality in law for women and girls by 2030: A multi-stakeholder strategy for accelerated action”, which was recently jointly issued by UN WOMEN, the African Union, the Commonwealth, the Inter-Parliamentary Union, Organisation Internationale de la Francophonie, and Secretaría General Ibero-Americana. This initiative aims to ensure the elimination of gender discrimination in six thematic areas, i.e. comprehensive reforms, women’s economic empowerment, minimum age of marriage provisions, nationality rights, discriminatory rape laws, and family and personal status laws.⁸

It is against this background that the Legal Aid Forum, with the support of UN WOMEN, has conducted this analysis to assess the compliance of the laws in force in Rwanda with gender principles and standards by reviewing these laws to identify any remaining discriminatory provisions and gaps in enforcement.

1.2. Significance of the study

Eliminating all barriers to gender equality and ensuring a robust legal framework that prevents discrimination and promotes gender equality is important for a number of reasons. In accordance with Sustainable Development Goal (SDG) 5, gender equality is not only a fundamental human right, but a necessary foundation for a peaceful, prosperous and sustainable world. Enabling women to reach their full potential has societal, economic and developmental benefits for the country as a whole. Having laws or legal provisions which discriminate against women or societal gender stereotypes which hinder the full realisation of gender equality is costly for individuals and for society, but also for the international standing of any country aiming to achieve sustainable development.

This analysis therefore focuses on Rwanda, viewed as a model in the promotion of gender equality in Africa and across the world. It will analyse potential or existing gaps in the laws in force and, to a limited extent, assess some challenges related to implementation or laws and cultural barriers related to the realization of full gender equality. The report also makes recommendations for necessary actions and any required amendments to laws.

⁸ UN Women, “Equality in law for women and girls by 2030: A multi-stakeholder strategy for accelerated action”, <https://www.unwomen.org/en/digital-library/publications/2019/03/equality-in-law-for-women-and-girls-by-2030>, last visited 5th December 2019.

1.3. Methodology

The methodology for this study consisted of first making an inventory of existing laws. Over 230 Rwandan laws were included for review.

The inventory enabled the research team to identify laws that have a bearing on gender equality as part of the literature review. Qualitative information on the experience of implementation of the relevant laws was collected through key informant interviews and focus group discussions.

1.3.1. Literature Review

The literature review entailed a comprehensive review of laws and ministerial orders in force, relevant case law from Rwandan courts, international treaties ratified by Rwanda and the domestication of those treaties in national laws, as well as a review of relevant documents and reports on gender equality.

1.3.2. Key Informant Interviews

Key informant interviews were conducted with selected officials using semi-structured interview techniques. Representatives from the following institutions were interviewed: MIGEPROF, MINIJUST, FFRP, NPPA, RLRC, GMO, NAWOCO, RIB, RCS, NCHR, RWAMREC and LAF.

1.3.3. Focus Group Discussions

FGDs were conducted to confront and crosscheck the findings. They were also organised to identify gaps and challenges in the implementation of gender related laws. Each FGD was composed of at least six participants. The participants were selected based on their involvement in the implementation of gender-related laws. The participants included senior employees and officials from government agencies and non-government organisations with a focus on gender equality.

2. RWANDA'S GLOBAL AND REGIONAL GENDER EQUALITY COMMITMENTS

Rwanda has ratified a number of international human rights instruments and global treaties such as the International Covenant on Civil and Political Rights⁹, the International Covenant on Social, Economic and Cultural Rights¹⁰, and regional treaties including the African Charter on Human and Peoples' Rights.¹¹ While these treaties protect the rights of all persons (men and women, adults and children), these protections must be guaranteed without discrimination, including discrimination on the basis of sex.¹² Rwanda has also ratified treaties which specifically protect the rights of women, such as the International Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)¹³, the Optional Protocol to CEDAW¹⁴, the Protocol to the African Charter on Human and Peoples Rights on the rights of Women in Africa (Maputo Protocol)¹⁵, the Convention on the Political Rights of Women¹⁶, the Convention on the Nationality of Married Women¹⁷, International Labour Organisation (ILO) Convention N°100 on Equal Remuneration¹⁸, and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.

In accordance with the Rwandan Constitution,¹⁹ international treaties ratified by Rwanda and published in the Official Gazette have the force of national law with a higher status than ordinary laws.²⁰ However, the Constitution and organic laws take precedence over international treaties ratified by Rwanda.²¹ While the international and regional treaties referenced in this section are therefore directly incorporated into Rwandan law, it is still necessary for the state to ensure that its domestic laws, policies, and practices comply with the rights contained in such conventions.

9 International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171 (entered into force on 23 March 1976) (hereinafter referred to as the "ICCPR").

10 The International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS 993 (entered into force on 3 January 1976).

11 African Charter on Human and Peoples' Rights, 1 June 1981, UNTS 1520 (entered into force on 21 October 1986) (hereinafter referred to as the "ACHPR").

12 For instance, the ICCPR provides as follows: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

13 Convention on the Elimination of all forms of Discrimination Against Women, 18 December 1979 (entered into force on 3 September 1981) (hereinafter referred to as the "CEDAW").

14 Optional Protocol to the Convention on the Elimination of Discrimination against Women, 6 October 1999 (entered into force on 22 December 2000).

15 The Protocol to the African Charter on Human and Peoples Rights on the rights of Women in Africa, 1 July 2003 (entered into force on November 25, 2005).

16 Convention on the Political Rights of Women, 31 March 1953 (entered into force 7 July 1954).

17 Convention on the Nationality of Married Women, 20 February 1957 (entered into force 11 August 1958).

18 ILO C100 - Equal Remuneration Convention, 1951 (No. 100), ratified on 2 December 1980.

19 Constitution, Article 168 ("upon publication in the Official Gazette, international treaties and agreements which have been duly ratified or approved have the force of law as national legislation in accordance with the hierarchy of laws provided for under the first paragraph of Article 95 of the Constitution").

20

21 Constitution, Article 95.

2.1. Overview of Rwanda's Global and Regional Commitments

2.1.1. Convention on the Elimination of all forms of Discrimination against Women and its Optional Protocol

Described as an international bill of rights for women, the International Convention on the Elimination of all forms of Discrimination against Women (CEDAW)²² and its Optional Protocol²³ provide a comprehensive framework to guide all rights-based action for gender equality. The treaty defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.²⁴ It imposes clear obligations on State Parties to condemn discrimination against women in all forms and to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.²⁵

By ratifying CEDAW, Rwanda agreed to take all appropriate measures, including through legislation, to ensure the full development and advancement of women for the purpose of guaranteeing their exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.²⁶ The Convention includes specific provisions related to politics (Article 7), representation of the Government at the international level (Article 8), education (Article 10), employment (Article 11), marriage (Article 16), and health, including family planning (Article 12) and particular problems faced by women in rural areas (Article 14). Article 4 of CEDAW provides for the use of temporary special measures aimed at accelerating de facto equality between men and women. While compliance with the Convention requires appropriate national legislation to prevent discrimination, State parties must also take practical steps to ensure that women actually enjoy equality in their daily lives.

By acceding to the Optional Protocol, Rwanda has also recognized the competence of the Committee on the Elimination of Discrimination against Women (the “Committee”) to receive and consider individual communications or complaints from individuals asserting that their rights under the Convention have been violated.²⁷

²² CEDAW was adopted on December 18, 1979 and entered into force after two years, on September 3, 1981. It was signed and ratified by Rwanda on May 1, 1980 and March 2, 1981 respectively. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en (last accessed October 12, 2019).

²³ The Optional Protocol to CEDAW was adopted on October 6, 1999 and entered into force on December 22, 2000. It was acceded to by Rwanda on December 15, 2008. See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&clang=en (last accessed on October 12, 2019).

²⁴ CEDAW, Article 1.

²⁵ CEDAW, Article 2.

²⁶ CEDAW, Article 3.

²⁷ Optional Protocol to CEDAW, Articles 1 and 2.

By doing so, Rwanda has increased the remedies available to victims of gender-based discrimination. In the concluding observations on the combined seventh to ninth periodic reports of Rwanda, the Committee also specifically commended Rwanda's efforts in undertaking legislative reforms aimed at promoting equality between men and eliminating discrimination against women.²⁸

2.1.2. Protocol to the African Charter on Human and Peoples' Rights on the V rights of Women in Africa (Maputo Protocol)

Under the Maputo Protocol²⁹, States Parties undertake to combat all forms of discrimination against women through appropriate legislative, institutional and other measures.³⁰ They also commit to addressing social and cultural patterns of conduct through public education, information, education, and communication strategies toward elimination of harmful practices based on the idea of the inferiority or the superiority of either of the sexes, or on stereotyped roles for women and men.³¹ Specific rights protected by the Protocol include the right to dignity³², the right to life, integrity and security of the person, including protection from all forms of violence³³, the right to protection against harmful practices³⁴, equal rights in marriage³⁵, equal rights in divorce, separation, and annulment of marriage,³⁶ access to justice and equality before the law³⁷, the right to participation in political and decision-making processes through increased and effective representation and participation of women at all levels of decision-making through affirmative actions³⁸, the right to peace³⁹, and the right to a special protection in armed conflict.⁴⁰

The Maputo Protocol emphasises economic and social welfare rights, including work and career advancement and other economic opportunities,⁴¹ the right to education and training⁴², the right to health, including reproductive health,⁴³ and the right to food security and adequate housing.⁴⁴ It also guarantees to all women "third generation" rights, such as the right to a healthy environment and to sustainable development.⁴⁵

28 Committee on the Elimination of Discrimination against Women, Concluding observations on the combined seventh to ninth periodic reports of Rwanda, CEDAW/C/RWA/CO/7-9, 2017.

29 The Maputo Protocol was adopted and entered into force on July 1, 2003 and November 25, 2005 respectively. It was ratified by Rwanda in 2004. See Presidential Order No 11/01 of 24th June 2004, O.G. NoSpecial of 24th June 2004.

30 Maputo Protocol, Article 1.

31 Maputo Protocol, Article 2.

32 Maputo Protocol, Article 3.

33 Maputo Protocol, Article 4.

34 Maputo Protocol, Article 5.

35 Maputo Protocol, Article 6.

36 Maputo Protocol, Article 7.

37 Maputo Protocol, Article 8.

38 Maputo Protocol, Article 9.

39 Maputo Protocol, Article 10.

40 Maputo Protocol, Article 11.

41 Maputo Protocol, Article 13.

42 Maputo Protocol, Article 12.

43 Maputo Protocol, Article 14.

44 Maputo Protocol, Articles 15 and 16.

45 Maputo Protocol, Articles 18 and 19.

The Maputo Protocol also includes special protection for the most vulnerable women in society, such as widows, elderly women, women with disabilities and women in distress.⁴⁶ States Parties are required to provide appropriate remedies to any woman whose rights or freedoms under the Protocol are violated. The adoption of the Maputo Protocol was a critical milestone in the protection of women's rights on the African continent, emphasising a specific commitment by African countries to promoting women's rights and ensuring their equal treatment with men.

2.1.3. Convention on the Political Rights of Women

The Convention on the Political Rights of Women⁴⁷ was the first convention to protect the equal status of women to exercise political rights. The rights therein were later incorporated into the CEDAW. Rwanda ratified the treaty in 2003⁴⁸, together with the enactment of its current Constitution. This demonstrated Rwanda's commitment to an increased participation of women in the country's political life at a critical moment in the development of its present-day democracy.

2.1.4. Convention on the Nationality of Married Women

The Convention on the Nationality of Married Women⁴⁹ seeks to end patriarchal practices relating to nationality by ensuring that women's nationality rights cannot be automatically affected by marriage, the dissolution of marriage, or the change of nationality of a woman's husband. The Convention also protects the right of a woman to obtain the nationality of her husband through privileged naturalization procedures subject to such limitations as may be imposed in the interests of national security or public policy.⁵⁰

2.1.5. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages was adopted in New York on 10 December 1962. It requires States Parties to guarantee protection against forced marriages⁵¹, and to legislate a minimum age of marriage⁵² and procedures for the registration of marriages. Rwanda ratified this convention on 26 September 2003. Under Rwandan law the minimum age of marriage is 21 years⁵³, among the highest in the world.

46 Maputo Protocol, Articles 20, 22, 23 and 24.

47 Adopted by the United Nations General Assembly in 1953 and entered into force on July 7, 1954. It was ratified by Rwanda in 2003.

48 Presidential Order No160/01 of 31st December, 2002, O.G. No12ter of 15/06/2003.

49 Adopted on February 20, 1957 and entered into force August 11, 1958 and acceded to by Rwanda on September 26, 2003.

50 Convention on the Nationality of Married Women, Articles 1, 2 and 3.

51 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Article 1.

52 Ibid., Article 2.

53 Law N°32/2016 of 28/08/2016 governing persons and family, Article 168.

2.1.6. ILO Conventions

Rwanda has ratified 34 ILO Conventions, many of which impact gender equality in the workplace. Convention 111 on Discrimination (Employment and Occupation), adopted in 1958, requires States Parties to “declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation with a view to eliminating any discrimination in respect thereof.”⁵⁴ Rwanda has also ratified ILO Convention 100 on Equal Remuneration, undertaking to promote and ensure the principle of equal remuneration for men and women workers for work of equal value. The adoption and ratification of this Convention is an important step in a country like Rwanda where the work undertaken by women is stereotypically thought not to be as valuable as that done by men.

However, Rwanda has not ratified some key ILO Conventions related to gender equality, namely Convention 156 on workers with family responsibilities, Convention 183 on Maternity Protection, Convention 189 on Domestic Workers, Convention 190 on Violence and Harassment, Convention 131 on Minimum Wage Fixing, Convention 156 on Workers with Family Responsibilities, and Protocol 89 to the Convention concerning Night Work of Women Employed in Industry. Accordingly, Rwanda should ratify these key ILO Conventions. In fact, most of the aspects addressed by these Conventions are already reflected in domestic laws, so adoption of these key Conventions is unlikely to require significant changes in Rwanda’s legal framework. This will be discussed further under the next section.

⁵⁴ ILO Convention 111 on Discrimination (Employment and Occupation) adopted in 1958, Article 2. Under ILO Convention 111, discrimination is defined as: a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers’ and workers’ organisations, where such exist, and with other appropriate bodies.

Summary of Rwanda's obligations under international and regional gender equality instruments

Thematic area	Summary of key obligations
General protection from discrimination	<p>CEDAW Articles 1, 2, 3, 4, and 5; Maputo Protocol Article 2</p> <p>The principle of equality between men and women in national constitutions; the prohibition of all forms of discrimination against women and ensuring sanctions are appropriate; protection of the rights of women on an equal basis with men, and ensuring this right through competent national tribunals; states must refrain from engaging in any act or practice of discrimination against women; implementation of appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women; repeal of all national penal provisions which constitute discrimination against women; modification of the social and cultural patterns of conduct to eliminate prejudices under custom and all other practices based on the idea of the inferiority or superiority of either of the sexes.</p>
Employment	<p>CEDAW Article 11; Maputo Protocol Article 13; ILO Conventions 100 and 111</p> <p>Protection from discrimination; equality of access to employment and choice of profession; equal pay and allowances; training opportunities, including vocational training and apprenticeships; maternity benefits; social security and social insurance; childcare; safety; protection from harassment; protection of women within the informal sector; recognition of unpaid care work; equality of taxation; protection from economic exploitation.</p>
Education	<p>CEDAW Article 10; Maputo Protocol Article 12</p> <p>Protection from discrimination; equal rights in the field of education; equality of conditions for career and vocational guidance; access to the same curricula, examinations, and teaching facilities; protection from sexual harassment in educational institutions; elimination of stereotypes that perpetuate discrimination; promotion of literacy among women; enrolment and retention of girls in schools; access to programs of continuing education; equal opportunities to benefit from scholarships and grants; access to educational information to ensure family wellbeing.</p>

Health and reproductive rights	<p>CEDAW, Article 12; Maputo Protocol Article 14</p> <p>Protection from discrimination; protection from harmful practices endangering women’s health; health services for victims of harmful practices; right to health; sexual and reproductive health rights; protection against STIs, including HIV/AIDS; family planning education; adequate, affordable and accessible health services; establishment and strengthening of maternal health services; healthy and sustainable environment; mental health.</p>
Violence against women	<p>Maputo Protocol Article 4</p> <p>Protection from all forms of violence; enactment and enforcement of laws to prohibit all forms of violence; services for victims of violence against women; elderly women; asylum seekers; refugees; returnees; internally displaced persons; harmful practices; rape; sexual exploitation; sexual abuse.</p>
Nationality	<p>CEDAW Article 9; Maputo Protocol Article 6, 3.1.4.; Convention on the Nationality of Married Women</p> <p>Protection from discrimination; right to change or retain nationality; equal rights between parents with respect to the nationality of children.</p>
Marriage, divorce and inheritance	<p>CEDAW Articles 11, 16; Maputo Protocol Article 6, 7, 20, 21</p> <p>Protection from discrimination; equality in marriage; protection of rights of women in marriage; consent; registration; acquisition and management of property; equal rights in separation, divorce, and annulment of marriage; equitable sharing of joint property; reciprocal rights towards children; equitable share in inheritance of husband’s property and parents’ properties; child marriage; widows’ rights.</p>
Access to justice	<p>Maputo Protocol, Article 8; CEDAW Article 15</p> <p>Protection from discrimination; equality before the law; equal protection and benefit of the law; access to judicial and legal services; legal aid; law enforcement; gender equality rights; equal representation in the judiciary and in law enforcement organs; reformation of discriminatory laws and practices.</p>
Political and public life	<p>CEDAW Articles 4, 7, 8</p> <p>Temporary special measures aimed at accelerating de facto equality between men and women; affirmative action; quota system; equal representation; appropriate measures to eliminate discrimination against women in political and public life; participation in formulation and implementation of government policy; equal terms with men; opportunity to represent their governments at the international level and to participate in the work of international organizations.</p>

Rural women	<p>CEDAW Article 14</p> <p>Recognition of particular problems faced by rural women; recognition of significant roles which rural women play in the economic survival of their families; access to adequate health care facilities including information, counselling and services in family planning; access to security benefits.</p>
Economic and social benefits	<p>CEDAW Article 13; Maputo Protocol Articles 13, 15, and 16</p> <p>Elimination of discrimination against women in other areas of economic and social life; right to family benefits; right to bank loans, mortgages and other forms of financial credit.</p>
Elderly women	<p>Maputo Protocol Article 22</p> <p>Protection of elderly women; specific measures commensurate with their physical, economic and social needs, employment and professional training; freedom from violence, sexual abuse, and discrimination based on age; the right to be treated with dignity.</p>
Trafficking in women and girls	<p>CEDAW Article 6</p> <p>Suppression of all forms of trafficking in women and exploitation of prostitution of women.</p>
Disability and distress	<p>CEDAW Article 12; Maputo Protocol Articles 23, 24</p> <p>Protection of women with disabilities; specific measures commensurate with their physical, economic and social needs to facilitate access to employment, professional and vocational training and participation in decision-making; freedom from violence, sexual abuse, discrimination based on disability; right to be treated with dignity; protection of poor women, women heads of families and women from marginalized populations; protection of pregnant and nursing women and women in detention.</p>
Armed conflict - peace	<p>Maputo Protocol Articles 10, 11</p> <p>Peaceful existence and the right to participate in the promotion and maintenance of peace; participation in programmes of education for peace and a culture of peace; significant reduction of military expenditures in favour of spending on social development in general and the promotion of women in particular; ensuring respect for the rules of international humanitarian law applicable in armed conflict which affect the population, particularly women; protection of asylum-seeking women, refugees, returnees and internally displaced persons against all forms of violence, rape and other forms of sexual exploitation; no child, especially girls under 18 years of age, to take a direct part in hostilities or to be recruited as a soldier.</p>

Environment, sustainable development, food security and housing

Maputo Protocol Articles 15, 16, 18, 19

Access to clean drinking water, sources of domestic fuel, land, and means of producing nutritious food; access to housing, acceptable living conditions in a healthy and sustainable environment; sustainable development; protection of indigenous knowledge systems.

Analysis of relevant international obligations shows that Rwanda has done a tremendous job in acceding to or ratifying international and regional treaties relevant to gender equality, including but not limited to the CEDAW, the Maputo Protocol, ILO Conventions 100 and 111, and the Convention on the Political Rights of Women. In combination, these conventions set the minimum standards that should be adopted by States Parties at the national level, including legislative measures. At the same time, while Rwanda is a monist state whereby ratified international treaties have direct application in domestic law, some of these conventions are not self-executing and therefore require enabling legislation. It is therefore equally necessary to analyse the current state of gender equality under Rwandan domestic law to ascertain whether Rwanda has appropriately implemented its obligations under these international and regional instruments. This analysis is undertaken in the next section.

3. GENDER EQUALITY UNDER RWANDAN LAW (DE JURE EQUALITY)

In order to comply with its international obligations and ensure gender equality, Rwanda has attempted to repeal, amend and introduce new legislation that promotes gender equality. This section reviews some legislation that Rwanda has enacted to eliminate discriminatory provisions in its laws, and analyses any underlying gaps therein.

3.1. Elimination of discrimination based on sex

The Constitution of the Republic of Rwanda of 2003, as revised in 2015, contains a number of provisions which protect against discrimination. These include:

- Article 2: provides for universal and equal suffrage for men and women;
- Article 10(4^o): provides for equality of all Rwandans and equality between men and women as a fundamental principle of the State of Rwanda. The same provision also guarantees that women must occupy at least 30% of positions in decision-making organs;
- Article 15: guarantees equality of all persons before the law and equal protection of the law;
- Article 16: outlaws discrimination of any kind and the promotion of discrimination, including discrimination based on sex;
- Article 17: protects the right to marry and found a family with full and free consent of each of the spouses, and for spouses to have equal rights and obligations at the time of marriage, during the marriage and in divorce.

As stated above, the Constitution gives all international conventions ratified by Rwanda and published in the Official Gazette direct force of law. While the Constitution lays down the general principle of equality between men and women and prohibits discrimination based on sex, various laws have also been put in place to provide specific protections and to ensure equality between men and women in all spheres of life.

3.2. Criminalisation of gender-based discrimination and violence

The law determining offenses and penalties in general⁵⁵ criminalises all forms of discrimination, including discrimination based on sex. In Article 163, discrimination is defined as an act which “causes division among persons or a group of people” or is “aimed at denying a person or a group of people their rights granted under the Rwandan law or international conventions ratified by Rwanda on the basis of race, ethnicity, origin, clan, family connection, colour of skin, sex, region, nationality, religion, political ideology, economic classes, culture, language, social status, physical or mental disability or physical appearance”. This law also criminalises sexual violence against a spouse (the victims of which are often women)⁵⁶, sexual harassment⁵⁷, and denial of the ability to practice family planning.⁵⁸

3.3. Equality in labour matters

Equality between men and women is guaranteed under the Labour Code⁵⁹, which imposes the obligation upon employers to give employees equal opportunities in the workplace. The Labour Code also prohibits discrimination based on sex and requires employers to pay employees an equal salary for work of equal value without discrimination of any kind, including on the basis of sex.⁶⁰ The Labour Code further prohibits sexual harassment in any form, and specifically prohibits the dismissal of an employee for having reported or testified of sexual harassment committed by his or her supervisor. The resignation of an employee due to sexual harassment is deemed to be sexual harassment.⁶¹

In the public sector, equality between men and women is not specifically addressed under Law N°017/2020 of 07/10/2020 establishing the general statutes governing public servants.⁶² However, it can be expected that the state as an employer would uphold the equality of men and women and would respect non-discrimination as set out under the Constitution. In fact, gender-related issues are dealt with in the Presidential Orders implementing this law. For example, Presidential Order N°65/01 of 04/03/2014 determining the modalities of imposing disciplinary sanctions to public servants, which ensures that sexual harassment and gender-based violence committed in the workplace are sanctioned by dismissal⁶³, without prejudice to a criminal action that may also be commenced against a dismissed civil servant for the commission of the harassment.

55 Law N°68/2018 of 30/08/2018 determining offences and penalties in general in O.G. NoSpecial of 27/09/2018 (hereinafter referred to as the “Law Determining Offenses and Penalties”).

56 The Law Determining Offenses and Penalties, Article 137.

57 The Law Determining Offenses and Penalties, Article 148.

58 The Law Determining Offenses and Penalties, Article 149.

59 Law N°66/2018 of 30/08/2018 regulating labour in Rwanda in O.G. No Special of 06/09/2018 (hereinafter referred to as the “Labour Code”).

60 Labour Code, Article 9.

61 Labour Code, Article 8.

62 Law N°017/2020 of 07/10/2020 establishing the general statutes governing public servants, O.G. n°Special of 08/10/2020.

63 Presidential Order No65/01 of 04/03/2014 determining modalities of imposing disciplinary sanctions to public servants, Article 14.

Article 19(3) of Presidential Order N°144/01 of 13/04/2017 determining modalities for recruitment, appointment and nomination of public servants states that “If two (2) candidates with disabilities obtain equal marks for the same vacant post, the experience is taken into consideration. If they have the same experience, preference should be given to a female”. Article 33(2) of the same Presidential Order stipulates that “If the two of [the candidates] have the same score, the one who has more experience in that position is given preference. If both have the same experience, the one who has more training is preferred. In case both have the same training, the one with the higher academic qualification is preferred. In case both have the same qualifications, a disabled person among them is given preference. If they are both handicapped, preference should be given to a female”.⁶⁴ These Presidential Orders support the intention of the government to consider gender in hiring and other workplace policies impacting civil servants.

3.4. Equality in family, inheritance and land matters

Rwanda has also adopted laws to ensure the equality of men and women in family, inheritance and land matters, namely the Law on Persons and Family⁶⁵, the Law on Matrimonial Regimes, Liberalities and Succession, and Law N°43/2013 of 16/06/2013 governing land in Rwanda (the Land Law).⁶⁶ The gender aspects of each of these laws will be discussed below.

The Law on Persons and Family ensures equality of both spouses by providing that spouses have the same rights and obligations, and owe each other mutual fidelity, help and assistance.⁶⁷ The same Law also provides for equality of both spouses regarding the management of the household.⁶⁸ The law also provides that parental authority is vested in the father and the mother of the child equally.⁶⁹ Furthermore, in a case where one of the spouses refers a matter related to parental authority to the Family Council, but one spouse is unsatisfied with the result, he or she can refer the matter to the competent court which decides with particular regard to the interest of the child.⁷⁰

The Law on Persons and Family has also recently undergone changes to ensure greater gender equality. Article 215(3) of the law, which originally provided that a widowed woman could not remarry before the expiration of a period of 300 days following the death of her husband was changed in a 2020 amendment.⁷¹

64 Presidential Order N°144/01 of 13/04/2017 determining modalities for recruitment, appointment and nomination of public servants, Articles 19 and 33.

65 Law N°32/2016 of 28/08/2016 governing persons and family in O.G. N°37 of 12/09/2016 (hereinafter referred to as “Law on Persons and Family”).

66 Law N°27/2016 of 08/07/2016 governing matrimonial regimes, liberalities and succession in O.G. N°31 of 01/08/2016 (hereinafter referred to as “LMLS”).

67 Law on Persons and Family, Article 206.

68 Law on Persons and Family, Article 209.

69 Law on Persons and Family, Article 319.

70 Law on Persons and Family, Article 319.

71 Law N°001/2020 of 02/02/2020, amending Law N°32/2016 of 28/08/2016 governing persons and family.

This law was clearly discriminatory because similar waiting periods were not applicable to men. The purpose of the waiting period was intended to avoid disputes over the paternity of a child that might issue from a recently dissolved marriage, yet this could be ascertained through a DNA test without compromising the equal right of women to re-marry. This has been amended under Article 16 of the 2020 amendment law, which states that “A widowed spouse has the right to remarry”. Article 243 has also been amended. This Article originally provided that, in the case of a divorce, a child under the age of six years must live with the mother unless the interests of the children are in danger. According to the amendment, the best interests of the child are the only benchmark in determining which parent should have custody of the child, with no legal preference based on the gender of the parent. This is an important amendment in ensuring gender equality in the law, and in child custody in particular.

The Law on Matrimonial Regimes, Liberalities and Succession (LMLS) also provides for equality of men and women in respect of management of family property and succession. It provides that spouses under the community of property regime manage together their property equally and have the same right to recover the property if it is taken and to act as a legal representative of the property. The law further stipulates that any property registered in one spouse’s name is part of the property belonging to both spouses under the community of property regime.⁷² Regarding equality in succession matters, the LMLS provides that legitimate children of the deceased succeed in equal proportion without any discrimination between male and female children.⁷³

Equality between men and women is also guaranteed under the Land Law. Article 4 of this law provides that all forms of discrimination, such as those based on sex or origin, in relation to access to land and the enjoyment of rights to real property shall be prohibited. The right to land for a man and a woman lawfully married shall depend on the matrimonial regime they opt for. Equal rights to land is critical in unlocking economic opportunities for both men and women, especially in countries like Rwanda where land is considered an important asset

3.5. Equality in decision-making

In Rwanda, equality of men and women in political life is dealt with in various laws. For instance, the Constitution guarantees equal participation of the sexes in government and public service. It provides that all Rwandans have the right to participate in the government of the country, either directly or through their freely chosen representatives, in accordance with the law. It further stipulates that all Rwandans have the right of equal access to public service in accordance with their

⁷² LMLS, Article 6.

⁷³ LMLS, Article 54.

competence and abilities.⁷⁴ In addition, the Constitution provides for affirmative action aimed to reverse the discrimination women have historically experienced by providing as one of the fundamental principles of Rwanda that women occupy at least thirty percent (30%) of positions in decision-making organs.⁷⁵

The constitutional principle of equal participation in political life is also reflected in various laws, such as the Law on Elections⁷⁶, which provides that any Rwandan (without discrimination) of at least eighteen years of age or who will have attained that age by election day is allowed to register to vote.⁷⁷ The Law on Political Organisations requires all political organizations to constantly reflect gender equality and complementarity, whether in the recruitment of members, leadership, and operations and activities.⁷⁸

3.6. Gender equality in education and health sectors

Gender equality in education is enshrined in the Constitution, which provides that every Rwandan has the right to education.⁷⁹ Equality of men and women is further provided for under the Law on Education⁸⁰, which sets out as one of its objectives the elimination of all grounds and obstacles that hinder the development of the education of girls and women, as well as of any other groups that need special attention.⁸¹ In April 2008, the girls' education policy and strategic plan were put in place by the Ministry of Education to ensure access, retention and performance of girls and women at all levels. This policy emphasizes girls' education in science and technology, and provides for affirmative action measures, such as lowering pass marks in national exams for female students.⁸²

In the health sector, equality between men and women is guaranteed, and the existing legal framework also recognises special conditions that are specific to women. For example, the Constitution guarantees the right to good health for all Rwandans without discrimination.⁸³ Gender equality is specifically reflected in the Reproductive Health Law⁸⁴, which provides that all persons have equal rights in relation to human reproductive health, and that no person should be denied such rights based on any form of discrimination.⁸⁵ The Reproductive Health Law also provides for special care for pregnant women and infants, reflecting the need for gender-specific approaches to ensure gender equality in the field of reproductive health.⁸⁶

74 Constitution, Article 27.

75 Constitution, Article 10.

76 Organic Law N°004/2018.OL of 21/06/2018 governing elections in O.G. N°26 of 25/06/2018 (hereinafter referred to as the "Law on Elections").

77 Law on Elections, Article 6.

78 Organic Law N°10/2013/OL of 11/07/2013 governing Political Organizations and Politicians in O.G. N°Special of 12/07/2013.

79 Constitution, Article 20.

80 Organic Law N° 20/2003 of 03/08/2003 Organising Education.

81 Law No36/2018 of 29/06/2018 determining the organization of education, O.G. N°39 of 24/09/2018, Article 4.

82 Ministry of Gender and Family Promotion, National Gender Policy (July 2010), at p.10.

83 Constitution, Article 21.

84 Law N°21/05/2016 of 20/05/2016 Relating to Human Reproductive Health, O.G. N 23 of 06/06/2016 (hereinafter referred to as the "Law on Reproductive Health").

85 Law on Reproductive Health, Article 5.

86 "A pregnant woman, a woman who has given birth and a new-born have the right to be cared for so as to ensure their well-being." See Law on Reproductive Health, Article 6.

3.7. Economic empowerment

Women's economic empowerment is part of achieving the 2030 Agenda for Sustainable Development under Goal 5 for achieving gender equality. The SDGs recognize that empowering women through various policy tools and agendas can further their contributions to economic growth. Women's economic empowerment includes women's ability to equally participate in all economic activities, including equal access to and control over productive resources, access to decent work, and participation in economic decision-making at different levels, from the household level up to national and international institutions.

In Rwanda, men and women are entitled to equal enjoyment of the goods of their country and their economic potential. Article 4 of Organic Law N°12/2013/OL of 12/09/2013 on State finances and property provides for gender equality as one of the fundamental principles underlying public finance management.⁸⁷ Article 32 of this law further provides that gender mainstreaming must be observed during the planning and budgeting exercise. In addition, several initiatives have been undertaken by the Government to support women's abilities to succeed and advance economically, notably by encouraging and facilitating them to have equal authority to make and act on strategic life decisions, access bank loans, and enjoy their rights to inheritance and administration and management of household property.

3.8. Eradication of patriarchal and discriminatory nationality provisions

Traditionally, Rwandan society is patriarchal, and this tradition could negatively affect the equality of men and women. However, legislative measures have been taken to eradicate patriarchal traditions in Rwanda, specifically in the acquisition of Rwandan nationality. For example, in a typical patriarchal society, a child cannot acquire the nationality of his or her mother. However, in the Rwandan Nationality Law, any child who has one Rwandan parent (mother or father) is Rwandan by nationality and ipso facto acquires Rwandan nationality.⁸⁸ This also applies in relation to acquisition of Rwandan nationality by marriage where any person married to a Rwandan can apply for and obtain Rwandan nationality, whether the spouse holding the Rwandan nationality is the husband or the wife.⁸⁹

The analysis undertaken in this section shows that Rwanda has made efforts with regard to ensuring the equality of men and women, not only in ratifying international treaties relating to gender equality, but also by putting in place a number domestic laws aimed at implementing Rwanda's international obligations pertaining to gender equality and eliminating all forms of gender-based discrimination.

⁸⁷ Organic Law N°12/2013/OL of 12/09/2013 on State finances and property, Article 4.

⁸⁸ Organic Law N°30/2008 of 25/07/2008 relating to Rwandan Nationality, Article 6.

⁸⁹ Rwandan Nationality Law, Article 11.

4. ANALYSIS AND KEY FINDINGS ON GENDER GAPS IN RWANDAN LAWS

Although substantial work has been done in Rwanda to reform legislation and policies in order to align them with gender equality principles and do away with discriminatory provisions and laws, it is important to scrutinize the current laws of Rwanda to ascertain whether any discriminatory provisions remain. This section will analyse gaps related to the implementation of gender-related laws and policies, as well as identifying key international conventions pertaining to gender that Rwanda has not yet ratified.

4.1. Areas of law with gaps related to gender

4.1.1. Parental leave

Article 56 of Law N°66/2018 of 30/08/2018 regulating labour in Rwanda gives maternity leave of at least twelve consecutive weeks to a female employee who has given birth. Yet article 21 of Law N°17/2020 of 07/10/2020 establishing the general statutes governing public servants and article 2 of the Ministerial Order N° 03 of 13/7/2010 determining circumstantial leaves, give just four working days of circumstantial or incidental leave to a male employee whose spouse has given birth. Many people interviewed for this research recommended that a male employee be given more reasonable time for paid paternity leave to support the mother and the infant, especially where the mother may become ill or have complications during delivery.⁹⁰ During an FGD held with lawyers, the participants recommended that the length of paternity leave should be increased to allow the father to support both the mother and child, should equal to at least half of the leave granted to female employees. Some participants in the FGD also recommended that maternity leave be increased to 6 months, which allows for more consistent breastfeeding until the child can begin to eat solid food. The ILO Maternity Protection Convention 2000 (N° 183), which is not ratified by Rwanda, recommends maternity leave of at least 14 weeks, and the WHO recommends a minimum of 26 weeks of paid maternity leave. On a related note, participants raised a concern that the terminology used in the law of “incidental or circumstantial leave” referring to paternity leave is not appropriate, and all types of leave related to the birth of a child can be changed to a more suitable term such as “parental leave”.

⁹⁰ One FGD participant gave an example of a father who was dismissed on the basis of taking additional days off work to care for his spouse, who had given birth and had complications during the delivery.

The suggestions made about enhancing the father’s leave at childbirth and calling the leave “parental leave” for both parents are supported by the fact that today, as gender stereotypes and attitudes shift, mothers and fathers share some household responsibilities more equally. In addition, progressive legislation as well as awareness raising on “paternity” as a social value and responsibility could enhance this shift. Enshrining a statutory right to paid parental leave for both parents in national legislation would signal the value that society puts on the care work undertaken by both women and men, and would help advance gender equality.

4.1.2. Equality of opportunity and non-discrimination in labor matters

The Labour Code is applicable to the treatment of employees only once a contract of employment is in place⁹¹, and thus does not address discrimination during the recruitment process. Referring to Law N°13/2009 of 27/05/2009 regulating labour in Rwanda⁹², the Committee of Experts on the Application of the ILO Conventions (particularly ILO Convention 111) recommended the amendment of the Labour Code in order to ensure that employers’ obligations to provide equal opportunities apply at all stages of employment, including during recruitment.⁹³ However, this recommendation was not considered in the new labour law of 2018. Information gathered from FGDs showed that some employers intentionally refused to hire pregnant women and breastfeeding mothers, arguing that this would negatively affect productivity. The CEDAW requires States Parties, as part of their measures to eliminate discrimination against women in employment, to prohibit and apply sanctions to the dismissal of a woman on the grounds of pregnancy or maternity leave⁹⁴. However, Rwandan labour law does not include a specific provision which explicitly prohibits such discrimination or imposes sanctions on employers for doing so. Accordingly, this is an area of Rwandan law that can be improved to ensure women’s equal opportunity and non-discrimination in employment.

4.1.3. Sexual harassment

Article 8 of the Labour Code prohibits sexual harassment committed by a supervisor against his or her subordinate. However, the scope of this provision unnecessarily narrows the application of the protections it grants by limiting the definition of punishable sexual harassment to that committed by a supervisor against his or her subordinate. Sexual harassment may be committed by peer staff or by any other person in the workplace who is not necessarily a supervisor. Therefore, the law should prohibit and sanction sexual harassment in the workplace committed by any other employee. This provision should be harmonized and aligned with Article 149 of

⁹¹ Labour Code, Article 2.

⁹² This was in force when the recommendations of the Committee of Experts were made.

⁹³ International Labor Office, Report of the Committee of Experts on the Application of Conventions and Recommendations (Geneva, 2017), at 422.

⁹⁴ CEDAW, Article 11.

Law N°68/2018 of 30/08/2018 determining offences and penalties in general, which criminalizes sexual harassment, no matter who commits it. The same provision states that where the offender is an employer, the punishment is doubled, but does not unnecessarily limit the scope of application or the definition to superiors only.

4.1.4. Management of family property

Article 6 of Law N°27/2016 of 08/07/2016 governing matrimonial regimes, liberalities and succession provides that the management of property comprising the powers of administration, enjoyment, disposal and sale subject to exceptions provided by the law is jointly exercised by both spouses. However, in most cases, this is only applied to immovable property, and husbands are rarely required to produce their wives' consent during the registration, disposal or sale of movable property, or even shares held in a company. This implementation gap shows an imbalance of power still exists in terms of management of movable property.

4.1.5. Women in prisons and correctional facilities

Law N° 71/2018 of 31/08/2018 relating to the protection of children provides that a pregnant woman or a mother under the jurisdiction of the prisons who has a child below the age of three years is to be detained in a special ward of the prison⁹⁵. However, this special protection is not reflected in Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of the Rwanda Correctional Service (RCS). Key informants interviewed on this topic were of the view that the incarceration of pregnant women and breastfeeding mothers does need special and separate provisions based on the biological differences of pregnancy and breastfeeding.⁹⁶ Key informants also concluded that improving the treatment of pregnant and breastfeeding women in prisons was needed in order to ensure compliance with article 24(b) of the Maputo Protocol, which protects the rights of pregnant or nursing women and women in detention by requiring them to be provided with an environment which is suitable to their condition and the right to be treated with dignity.

An interview conducted with RCS management showed that existing implementing measures are not adequately designed to accommodate pregnant or nursing mothers. For example, no separate feeding provisions for pregnant women and nursing mothers exist⁹⁷. Pregnant women and nursing mothers are fed according the same menu and on the same budget as the rest of prisoners, which can be inadequate for their caloric needs and can even cause a danger to their health as

⁹⁵ Law N°71/2018 of 31/08/2018 relating to the protection of the child, Article 21.

⁹⁶ Interview with FFRP on 25th October 2019.

⁹⁷ See Ministerial Order N°003/11 of 29/09/2011 determining quantity and quality of ration for an incarcerated person.

they require some special dietary restrictions to protect themselves and their children from illness and disease. RCS relies on external partners to support the needs of pregnant women and nursing mothers in prisons, which is not sustainable, nor does it adequately meet the government's obligations to provide appropriate care for these women when they are incarcerated. Participants in the FGDs conducted on the matter recommended that pregnant women be given special conditions and protections, especially with regard to improved nutrition and hygiene, and that the law should be amended to find them alternatives to imprisonment, in the best interests of the child.

4.2. Gaps related to implementation of laws and policies

Findings from the research revealed that, despite the fact that Rwanda made efforts to eliminate discriminatory provisions in its laws and policies, some gaps related to how gender related laws and policies are implemented still remain, and these gaps are essentially practical issues affecting equality between men and women that need to be addressed. Specific issues identified in this regard are related to gender stereotypes, mindsets and misunderstandings of gender, and lack of awareness of rights granted by the law, among other reasons.

4.2.1. Gender stereotypes and norms

While gender generally refers to whether a person is male or female, gender stereotypes are ideas about how people will act based on their gender. Despite the many roles men and women equally play in today's world, some people still employ stereotypes of how males and females 'should' act.⁹⁸ Harmful gender stereotypes and wrongful gender stereotyping is one of the root causes of discrimination, abuse and violence and can lead to violations of a wide array of human rights.⁹⁹ In relation to gender, norms are defined as an act of setting boundaries of what a girl or a boy should do.¹⁰⁰ In Rwanda, some people attribute certain roles to only men or only women, which leads to further discrimination. For example, women and girls may be expected to do domestic work instead of going to school or work, with the assumption that they will be economically dependent on men. In other instances, girls and women refrain from asking questionr voicing opinions and ideas in a male-dominated conference or setting.¹⁰¹ It was also reported that it can be considered abnormal for a woman to suggest that a man uses a condom during a sexual encounter.

98 "What are gender stereotypes?", Teaching Tolerance, <https://www.tolerance.org/classroom-resources/tolerance-lessons/what-are-gender-stereotypes>, last visited on 6th May 2020.

99 Ibid.

100 Social norms, gender norms and adolescent girls: a brief guide, Overseas Development Institute (2015), <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/9818.pdf>.

101 "2nd edition of the UN Women + FES Rwanda Gender Café. Theme: "Social Norms and Gender stereotypes: How can societies overcome them?", <https://www.fes-rwanda.org/e/2nd-edition-of-the-un-women-fes-rwanda-gender-cafe-theme-social-norms-and-gender-stereotypes-how-can-societies-overcome-them/>, last visited on 5th May 2020.

Harmful gender stereotypes, rigid constructions of femininity and masculinity, and stereotyped gender roles can be a root cause of gender-based violence against women. To eliminate gender-based violence against women, discriminatory gender norms and stereotypes must be transformed to promote non-violent, respectful, and equal gender relations between men and women. To achieve this transformation, the research leads to the following recommendations: including gender-responsive early childhood education and development, the integration of gender equality content into curricula at all levels of education including scientifically based and age-appropriate comprehensive sexuality education, promoting equal sharing of responsibilities in unpaid care and domestic work, including through parental leave policies and increased flexibility in working arrangements, and dismantling discriminatory stereotypes in sexual and reproductive health.

4.2.2. Resistance to behaviour change and poor understanding of the concept of gender¹⁰²

In Rwanda, misunderstanding of the concept of 'gender' by some members of the public, including both men and women, constitutes one of the important practical issues associated with the implementation of gender equality laws. To some men, gender equality is considered the promotion of women to the detriment of their counterpart. In addition, some men resist the concept of gender, and do not want to accommodate any special measures based on gender concerns. This can be made worse due to the fact that such an attitude can occur among both men and women. As result, social obstacles arise in the form of resistance to allowing daughters to inherit land from their parents, adherence to female inferiority, and the persistence of informal marriages in which wives remain unprotected by the law¹⁰³. In such circumstances, resistance to behaviour change and poor understanding of the concept of gender constitute an important cause of silence when gender-based violence happens, thus leading to impunity of various violations of rights. Prioritizing clarity around the concept of gender in public communications of the government, closing gaps in enforcement around female inheritance, and encouraging formalization of marriages either through awareness campaigns or financial assistance can all be important steps the government can take to improve the negative results of any misunderstandings of gender and related concepts.

¹⁰² Ministry of Gender and Family Promotion, National Gender Policy, Final Version, July 2010, <https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/94009/110188/F-1576743982/RWA-94009.pdf>, last visited 6th May 2020.

¹⁰³ Aparna Polavarapu, Procuring Meaningful Land Rights for the Women of Rwanda, 14 Yale Hum. Rts. & Dev. L.J. 105 (2011), available at <https://heinonline.org/HOL/LandingPage?handle=hein.journals/yhurdlv14&div=6&id=&page=>.

4.2.3. Lack of awareness of rights granted by the law

Since the Beijing Conference, attitudes and awareness of women's rights have improved, but significant gaps and barriers still remain in women's equal access to public and political life.¹⁰⁴ According to a study conducted by LAF in 2017, on average, only 4% of Rwandans rate their awareness of the law as being "high", while an overwhelming majority of them do not even know how they would rate their knowledge of the law (51%), or simply rate it as "low" (45%).¹⁰⁵ In general, this lack of awareness of the law among Rwandan citizens is reflected as well in limited awareness about gender equality principles and the availability of legal services, lack of awareness of the principles of rule of law related to gender, and lack of awareness of human rights related to gender, among other key gaps and misunderstandings.¹⁰⁶ This situation is likely to lead to inadequate compliance with gender-related laws, especially in instances of decision-making and inequality in the management of family property and inheritance matters. While Rwandan women do enjoy many legal protections, public awareness campaigns and improved legal aid focused on gender matters is critical in closing these gaps in implementation and in women attaining the full realization of their rights under the law.

4.3. ILO Conventions that Rwanda needs to ratify

Rwanda has not yet ratified nor fully domesticated a number of key ILO Conventions related to advancing gender equality. These include Convention 156 on workers with family responsibilities, Convention 183 on Maternity Protection, Convention 189 on Domestic Workers, Convention 190 on Violence and Harassment, Convention 131 on Minimum Wage Fixing, and Protocol 89 to the Convention concerning Night Work of Women Employed in Industry. The analysis notes that this is an important gender gap that must be bridged. Even where protections do already exist in national laws related to the subject matter and rights enshrined in many of these Conventions, ratifying the conventions is an important public statement of Rwanda's commitment to full gender equality in the law.

104 Women's Rights are Human Rights, <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>, last visited 7th May 2020.

105 LAF, ICT for Justice: Citizen's Feedback on Justice and legal aid services in Rwanda through ICT Platforms, Final Survey Report, April 2017.

106 Republic of Rwanda, JRLS Strategic Plan 2013-2018, available at https://minijust.gov.rw/fileadmin/Documents/JRLS_Documents/SSP_Il_2013-2018.pdf.

5. CONCLUSION AND RECOMMENDATIONS

Overall, the analysis shows Rwanda's robust efforts in reforming its legislation to make it free from any discrimination based on gender, at least on paper. Some of the actions taken in this regard include the ratification of international treaties relating to gender equality, and also enacting a body of domestic law to implement Rwanda's international obligations on gender equality. This includes both general constitutional protections and separate legislation relevant to all areas of life, including labour and employment, politics, health and education.

One other key observation from the analysis is the political will of the government of Rwanda to eliminating any and all provisions in law or policy that discriminate on the basis of gender. In fact, as this research was underway and had identified discriminatory provisions in the law governing persons and family, amending legislation was adopted to specifically remove gender discriminatory provisions and gaps.

Despite these commendable efforts of the Rwandan government, some gaps still exist in the laws in force, and some practical barriers that hinder the full attainment of equality between women and men are still in place. Accordingly, the following recommendations are made:

A. Amendments

1. Article 56 of Law N°66/2018 of 30/08/2018 regulating labour in Rwanda, gives maternity leave of at least twelve consecutive weeks to a female employee who has given birth. Yet article 21 of Law N°17/2020 of 07/10/2020 establishing the general statutes governing public servants and article 2 of the Ministerial Order N° 03 of 13/7/2010 determining circumstantial leaves, give just four working days of circumstantial or incidental leave to a male employee whose spouse has given birth. The research shows the importance of male employees being given more reasonable days of leave to care for their wives and children. The research also noted that the terminology used "Circumstantial or Incidental leave" for fathers, is not appropriate and needs to be changed to "parental leave"
2. Article 9 of the Labour Code should be amended so that provisions on equal opportunities and non-discrimination apply to all stages of employment, including during recruitment processes;

3. The Labour Code should explicitly prohibit termination of a woman's employment contract based on pregnancy or maternity conditions and provide sanctions for employers who violate this provision;
4. Article 8 of the Labour Code should be amended to include punishment of sexual harassment committed by any person, not only by a supervisor at the workplace, which would bring the Labour Code into alignment with the content of Article 149, al.2 of Law N°68/2018 of 30/08/2018 determining offences and penalties in general;
5. Law N°71/2018 of 31/08/2018 relating to the protection of the child should be amended to restore the previous provision where a criminal sentence for pregnant women and breastfeeding mothers is left to the discretion of the judge, taking into account the best interests of the child;
6. Article 6 of Law N°27/2016 of 08/07/2016 governing matrimonial regimes, liberalities and succession should be amended to include joint management and disposal of shares of movable property, which has been noted as a recurrent gender implementation gap;
7. Law N°34/2010 of 12/11/2010 on the establishment, functioning and organisation of the Rwanda Correctional Service (RCS) should be amended to provide pregnant women with an environment which is suitable to their condition and the right to be treated with dignity.

B. Awareness and capacity building for implementation and enforcement

1. Gender machinery institutions should conduct capacity building for RIB, RNP, RCS officers to ensure better understanding of gender and implementation of relevant legal provisions;
2. MIFOTRA and GMO to monitor and evaluate gender discriminatory practices by private sector employers and ensure those that do discriminate face the appropriate sanctions;
3. Undertake a specific study to assess key cultural and practical barriers that hinder effective implementation of gender related laws and policies, and launch public awareness campaigns on gender and rights, as well as related topics such as formalization of marriages and inheritance rights.

C. Ratification of ILO Conventions

1. Convention 156 on workers with family responsibilities;
2. Convention 183 on Maternity Protection;
3. Convention 189 on Domestic Workers;
4. Convention 190 on Violence and Harassment;
5. Convention 131 on Minimum Wage Fixing;
6. Convention 156 on Workers with Family Responsibilities;
7. Protocol 89 to the Convention concerning Night Work of Women Employed in Industry.

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16. Organic Law N°004/2018.OL. of 21/06/2018 governing elections, O.G. N°26 of 25/06/2018.
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7. ANNEXES

7.1. Concepts and terminologies

This study relies on a number of terms and concepts specific to gender equality, which are defined below.

7.2. Gender

Gender refers to the roles, behaviours, activities, and attributes that a given society at a particular time considers appropriate for men and women. In addition to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, gender also refers to the relations amongst women and those amongst men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes. They are context- and time-specific and changeable. Gender determines what is expected, allowed and valued in a woman or a man in a given context. In most societies, differences and inequalities between women and men exist in the responsibilities assigned, activities undertaken, access to and control over resources, and decision-making opportunities. Gender is part of the broader socio-cultural context, as are other important criteria for socio-cultural analysis including class, race, poverty level, ethnic group, sexual orientation, age, and the like¹⁰⁷.

7.3. Gender equality

UN Women defines gender equality as the equal rights, responsibilities and opportunities of women and men and girls and boys. Equality does not mean that women and men will become the same, but that women's and men's rights, responsibilities and opportunities will not depend on whether they are born male or female. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration, recognizing the diversity of different groups of women and men. Gender equality is not exclusively a women's issue, but should concern and fully engage men as well as women. Equality between women and men is seen both as a human rights issue and as a precondition for, and indicator of, sustainable people-centred development¹⁰⁸.

¹⁰⁷ <https://trainingcentre.unwomen.org/mod/glossary/> (accessed on 16/12/2019).

¹⁰⁸ <https://trainingcentre.unwomen.org/mod/glossary/> (accessed on 16/12/2019)

7.4. Gender equity

Gender equity can be understood as the process of being fair to men and women. It entails putting in place measures which seek to compensate for the historical and social disadvantages that prevent women and men from operating on a level playing field.¹⁰⁹ A typical example of a gender equity measure can be found under Article 10 of the Constitution of the Republic of Rwanda, which provides that women must occupy at least thirty percent of positions in state decision-making organs. Gender equity is therefore a means toward the result of gender equality. The World Conference on Women in 1995 (the “Beijing Conference”) and the Committee on the Elimination of Discrimination against Women¹¹⁰ focus on equality rather than equity and have called on states to do the same.

7.5. Gender mainstreaming

Gender mainstreaming is a strategy for implementing greater equality for women and girls in relation to men and boys. Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programs, in all areas and at all levels. It is a way to make women’s as well as men’s concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programs in all political, economic and societal spheres so that women and men benefit equally, and so that inequality is not perpetuated. The ultimate goal is to achieve gender equality.¹¹¹

7.6. Gender stereotyping

A gender stereotype is a generalised view or preconception about attributes or characteristics or the roles that are or ought to be possessed by or performed by women and men. A gender stereotype may be harmful when it limits women’s or men’s capacity to develop their personal abilities, pursue their professional careers or make choices about their lives.¹¹² Harmful stereotypes can be both hostile and negative (e.g., women are irrational) or seemingly benign (e.g., women are nurturing). For example, the fact that childcare responsibilities often fall exclusively on women is based on the latter stereotype.

¹⁰⁹ UNESCO’s Gender Mainstreaming Implementation Framework, portal.unesco.org/files/Definitions (accessed on 14/1/2020)

¹¹⁰ CEDAW General Recommendation 28 notes that: “States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention. The latter concept is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities”.

¹¹¹ <https://trainingcentre.unwomen.org/mod/glossary/>, last accessed 16/12/2019.

¹¹² OHCHR, Gender stereotyping, <https://www.ohchr.org/en/issues/women/wrgs/pages/genderstereotypes.aspx>, last accessed 27/11/2019.

Another example of the harmful effect of gender stereotyping is the failure to criminalize marital rape based on the societal perception of women as the sexual property of men, and the failure to effectively investigate, prosecute and sentence perpetrators of sexual violence against women based on, e.g., the stereotype that women should protect themselves from sexual violence by dressing and behaving modestly.¹¹³

7.7. Sex and gender

Historically, the terms “sex” and “gender” have been used interchangeably, but their uses are becoming increasingly distinct, and it is important to understand the differences between the two. “Sex” refers to the biological differences between males and females, such as the genitalia and genetic differences. Sometimes, a person’s genetically assigned sex does not correspond to their gender identity. These individuals might refer to themselves as transgender, non-binary, or gender-nonconforming. “Gender” as defined above refers to the roles, behaviours, activities, and attributes that a given society at a given time considers appropriate for men and women, or an individual’s concept of themselves, or gender identity.¹¹⁴Top of Form

7.8. Patriarchy

Patriarchy refers to a traditional form of organizing society which often lies at the root of gender inequality. According to this kind of social system, men, or what is considered masculine, is accorded more importance than women, or what is considered feminine. Traditionally, societies have been organized in such a way that property, residence, and descent, as well as decision-making regarding most areas of life, have been the domain of men. This is often based on appeals to biological reasoning (women are more naturally suited to be caregivers, for example) and continues to underlie many kinds of gender discrimination.¹¹⁵

7.9. Positive or affirmative action

In the context of gender equality, affirmative action is the practice or policy of favouring individuals belonging to groups known to have been discriminated against previously in the allocation of resources or employment. First used by the U.S. President John F. Kennedy, affirmative action seeks to reverse the disadvantageous past conditions of specific groups that had been discriminated against previously.

¹¹³ Ibid.

¹¹⁴ Idem.

¹¹⁵ <https://trainingcentre.unwomen.org/mod/glossary/> (accessed on 16/12/2019)

