



# **RWANDA CIVIL SOCIETY PLATFORM**

## **Making the Workplace More Gender Responsive: Filling the gaps and overcoming implementation challenges**



## Policy Brief.

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#### **I. Introduction.**

RCSP is composed of 11 national Umbrella CSOs with 1478 member organizations. RCSP serves to enhance capacity for CSOs to contribute to the well-being of the population by acting as a framework for dialogue, context analysis, exchange of information, lobbying and evidence based advocacy on national, regional and international issues on behalf of all members of Rwandan Civil society and citizens of Rwanda at large. Its mission is to empower, represent, coordinate and defend public interests and interest of its members at national, regional and international levels for development, effectiveness and sustainability.

In line with its mission, RCSP wishes to carry out advocacy initiatives on the recent findings from the comprehensive legal analysis of gender compliance under the Rwandan Law by Legal Aid Forum titled” Gender Compliance Report”. The ultimate objective is to develop a policy brief that analyses the possible implications of three key laws in line with Rwanda international and national commitments to gender equality. The focus of this brief revolves around the law no 66/2018 of 30/08/2018 regulating labour in Rwanda, the law no 17/2020 of 07/10/2020 establishing the general statutes governing public servants and finally, the law no 68/2018 of 30/08/2018 determining offences and penalties in Rwanda.

The policy brief draws on findings from the fast tracking gender equality in law in Rwanda published by Legal Aid Forum (LAF) in collaboration with UN Women-Rwanda office<sup>1</sup>. In this regard, the present policy brief highlights some gaps, concerns and implications of the aforementioned laws on women in workplace . The policy brief also suggests some key recommendations for consideration by relevant stakeholders.

#### **II. Appreciation of Rwanda’s Achievements in Gender Equality.**

Rwanda has demonstrated its commitment to gender equality through ratification of almost all relevant international instruments and putting in place a significant legal, policy and institutional framework to implement these obligations. Over the last 25 years, the government of Rwanda has promulgated various laws to promote gender equality and eradicate all forms of gender based discrimination, and has also amended and/or repealed many discriminatory laws. The supreme law of the land, the

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<sup>1</sup> LAF, Fast tracking gender equality in law in Rwanda: Comprehensive legal analysis of gender compliance under Rwandan Law, Kigali, Rwanda, 2021, 45 Pages.

constitution prohibits all forms of discrimination including discrimination on sex<sup>2</sup>. It has set a quota of at least 30 per cent women in all decision-making organs<sup>3</sup>. Furthermore, Rwanda has adopted, repealed or amended laws that were discriminatory against women with the ultimate aim to promote gender equality in different sectors. These included but not limited to the enactment of GBV Law, the Labour Law, the Land Law, the Law on Persons and Family, the Law on Matrimonial Regimes, Liberalities and Succession, the Law on State Finances and the Property Law.

Beside that, Rwanda has ratified a number of international human rights instruments such as the ICCPR<sup>4</sup>, the ICESR<sup>5</sup> and regional treaties such as the ACHPR<sup>6</sup>. Generally speaking, these treaties and instruments protect men and women from an universal perspective in upholding the rights provided under these instruments are guaranteed without discrimination based on sex, colour, identity and religion and/or social status or condition. Rwanda has also ratified other instruments that specifically protect the rights of women, such as the CEDAW<sup>7</sup>, the Optional Protocol to CEDAW<sup>8</sup>, the Maputo Protocol<sup>9</sup> and International Labour Organization (ILO) Convention no 100 on Equal Remuneration<sup>10</sup>.

Rwanda has also demonstrated shown its commitments towards gender equality in narrowing gender gaps in a number of sectors as demonstrated by key gender equality indicators. Rwanda has the highest number of women parliamentarians in the world at 61.3%<sup>11</sup>. In 2018, Rwanda also has the second African Country to attain gender parity of 50% women in the Cabinet<sup>12</sup> where in the very recent reshuffle, women represent 52% of the cabinet.

Furthermore, Rwanda scores well on the WEF<sup>13</sup> Global Gender Gap Report where it was ranked 9<sup>th</sup> out 153 countries globally, and number one in Africa, in terms of

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<sup>2</sup> Art 6, The Constitution of the Republic of Rwanda of 2003, revised in 2015, in O.G, no special of 24/12/2015(hereinafter referred to as “the Constitution”).

<sup>3</sup> Constitution, Article 10.

<sup>4</sup> The International Covenant on Civil and Political Rights, 19 December 1966, 999 UNTS 171(entered into force on 23 March 1976) referred as ICCPR.

<sup>5</sup> The International Covenant on Economic, Social and Cultural Rights, 16 December 1966, UNTS 993(entered into force on 3 January 1976).

<sup>6</sup> African Charter on Human and People’s Rights, 1 June 1981, UNTS 1520(entered into force on 21 October 1986).

<sup>7</sup> Convention on the Elimination of all forms of Discrimination Against Women, 18 December 1979(entered into force on 3 September 1981).

<sup>8</sup> Optional Protocol to the Convention on the Elimination Against Women, 6 October 1999(entered into force on 22 December 2000).

<sup>9</sup> The Protocol to the African Charter on Human and People’s Rights on the rights of Women in Africa, 1 July 2003(entered into force on 22 December 2000).

<sup>10</sup> ILO C100-Equal Remuneration Convention, 1951(No 100), ratified on 2 December 1980.

<sup>11</sup> See Inter-Parliamentary Union website, <https://data.ipu.org> Consulted on 8<sup>th</sup>, July, 2021..

<sup>12</sup> See [www.globalcitizen.org/en/content/women-make-up-52-the-cabinet-in-rwanda-heres-wh](http://www.globalcitizen.org/en/content/women-make-up-52-the-cabinet-in-rwanda-heres-wh)

<sup>13</sup> World Economic Forum

narrowing the gender gap<sup>14</sup>. However, achieving fully gender equality is a tremendous journey where countries continue to improve. In terms of law and policy framework, it is always important to look back and ascertain whether or not some of the progressive norms, laws and provisions require further amendment or repeal or if there is any suggestion for an effective implementation of those progressive norms, what kind of barriers that still hinder the full realisation of gender equality.

### **III. Gaps and challenges in legal framework.**

This section will briefly outline some persisting gaps related to the implementation of gender-related laws and policies, as well as identifying remaining key treaties that should be ratified by Rwanda in order to advance gender equality.

#### **A. Parental Leave.**

According to findings from the gender compliance report, article 56 of Law no 30/08/2018 regulating labour in Rwanda gives maternity leave of at least twelve consecutive weeks to a female employee who has given birth while the article 21 of Law no 17/2020 of 07/10/2020 establishing the general statutes governing public servants and article 2 of the Ministerial Order no 3 of 13/07/2010 determining circumstantial leaves, gives just four working days of circumstantial or incidental leave to a male employee whose spouse has given birth. The discrepancy in treatment of male and female parents affects the ability of a male parent to support the mother and the infant, especially in cases where the mother may fall sick or have post partum complications including post partum stress related status.

The parental leave should at least be equivalent to half of the leave permitted to the mother. When it comes to funded project based work, employers are urged to develop gender responsive budgeting so that takes into account the possibility of any maternity and parental leave so that a buffer fund is availed to pay any replacement that can arise. There is no other negotiable alternative for a mandatory parental leave as prescribed by the labour law.

Although Rwanda has not yet ratified the ILO Maternity Protection Convention 2000(No183), it is noteworthy that this Convention recommends maternity leave of at least 14 consecutive weeks and the WHO recommends a minimum of 26 weeks of paid maternity leave. It would be a big step ahead if Rwandan authorities ratify the aforementioned Convention which sets a minimum threshold for best standard practices in fostering effective maternity in the best interest of the child.

This would be consistent with the early child development policy as early parental care is a key factor for a successful childhood development. Terminology should change to reflect the equal role played by both parents. Incidental and circumstantial leave would change to parental leave which a shared responsibility between the father and the mother.

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<sup>14</sup> World Economic Forum, Global Gender Gap Report, 2020, P.9

## **B. Sexual Harassment.**

In the same line, article 8 of the Labour Code prohibits sexual harassment committed by a supervisor against his or her subordinate. The scope narrows its application of the protections provided by the provision to wrongdoings of supervisors, leaving out the illegitimate and illegal deeds by peer staff or by any other person in the workplace who is not necessarily a supervisor.

It is true the relationship between an employee and his/her supervisor is an asymmetric power relationship which gives rise to a number of power abuse and it is also well recognized that supervisors have the responsibility to create an enabling environment free of harassment and bullying but colleagues and other staff should have an obligation to abide by anti-harassment safeguarding measures put in place the organization. Therefore, the law should be amended to extend the protection given to potential victims in prohibiting and sanctioning sexual harassment committed in the workplace, regardless of who commits it.

The proposal would be harmonized with the provision 149 of Law no 68/2018 of 30/08/2018 determining offences and penalties in general, which criminalizes sexual harassment, irrespective of who commits it. The provision states that where the offender is an employer, the punishment is doubled, but does not necessarily limit its scope of application or the definition to superiors only.

One clear advantage of the legal consistency and coherence may compel to managers and other leaders to put in place an enabling environment free of harassment and bullying with clear policies and regulations to which everyone upon signature of contract abides by, as part of his contractual obligations, knowing that any attempted harassment may lead not only to a breach of his/her contractual obligations but also can lead to criminal liability once well proved.

During the consultative workshop convened by RCSP, it was suggested that safeguarding mechanisms are designed and popularized in workplace so that workers and employees are aware of the determination of employers to promote and implement a workplace free of sexual harassment. Focal points should be established so that safe reporting can be initiated and corrections brought about in due course (Warning, temporary suspension, and in extreme and grave cases, definitive dismissal).

## **C. Equality of opportunity and non-discrimination in labor matters.**

Rwanda has promulgated a very progressive labour law but the Labour Code is applicable to the treatment of employees only once a contract is awarded to an employee<sup>15</sup>. The anti-discrimination does not address any discrimination occurring during the recruitment process. Although the Committee of Experts on the Application of the ILO Conventions particularly ILO Convention 111 recommended

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<sup>15</sup> Labor Code, Article 2.

an amendment of the Labour Code in order to ensure employers have an obligation to guarantee non-discrimination policy and practice at all stages of employment, the new Labour Code, although progressive in some respects, has not included such proposal in the new Labour Code..

Affirmative action as recommended by international and national standards and practice should be promoted across government sectors and encouraged in private and civil society sectors. It should be noted that affirmative action is a temporary measure to mitigate the risks associated with systemic invisible discrimination where members of any underprivileged groups face systemic and institutional barriers including stereotypes, stigma, assigned gender roles which, in turn, influence (Consciously or unconsciously) the behaviour of recruiters and hiring agencies.

On another related note, the CEDAW requires States Parties, as part of their policies and practices to prohibit and apply sanctions to the dismissal of a woman on the grounds of pregnancy or maternity leave. Rwandan Law does not specifically address this area of potential discrimination according to interviews and FGD field reports from LAF where some knowledgeable actors have mentioned that dismissal based on pregnancy and maternity often happen.

#### **D. ILO Conventions that Rwanda needs to ratify.**

Rwanda has ratified 34 ILO Conventions which, in many respects, 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 all appropriate measures 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.

Rwanda has also ratified ILO Convention 100 on Equal Remuneration, with the aim 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 social roles and a traditional division of labour lead to undervalue work undertaken by women. The Convention is also important in the sense sectors predominantly occupied by women are generally not well paid jobs and some tend to be more seasonal than regular.

However, Rwanda has not yet 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 on Minimum Wage Fixing and Protocol 89 to the Convention concerning Night Work of Women Employed in Industry. Although some of the obligations contained in these Conventions are already provided in national laws, it would be a great public statement and message

that Rwanda is determined to uphold principles and norms governing gender equality in workplace.

### **E. Implementation gaps in applying laws and policies.**

The Gender Compliance report has revealed that, although Rwanda has made tremendous efforts remove discriminatory provisions in its laws and policies, women still face barriers in accessing their protected rights. These barriers that hinder them to access and enjoy equality rights are related to social norms, stereotypes and a general lack of awareness about what is gender equality.

The communities at large suffer a general limited legal literacy to ascertain rights towards duty bearers. In the area of service delivery, those in charge of fulfilling gender equality have misunderstandings stemming from stereotypes on how women and men should act, access rights enshrined in different laws and enjoy them without barriers. Some service delivery space are not gender user friendly because of stereotypes emanating from a longstanding patriarchal culture embedded in prevalent social behaviour.

When it comes to informal sector dominated by female employees and characterized by poor salaries, often without written contract and the general low education prevalent in the sector, women and young girls are vulnerable to violations of their labour rights at minimum and in most cases, they often face exploitation and explicit abuse from the employers. The power asymmetry is huge so that in this case, women just give up their fundamental rights.

These harmful gender stereotypes and patriarchal constructions of social norms are a root cause embedded in incidences still prevalent in Rwandan society of gender based violence at workplace. Although intensive campaigns on gender in communities undertaken by various stakeholders and the political will of decision makers are highly commendable, we still witness resistance of behaviour change in communities towards gender progressive laws(example given is the equality in succession and inheritance, some male members of families resist in letting women enjoying their right to property left by their deceased parents) as highlighted by different accounts from government experts and NGO alike. This situation may explain the low level of reporting by potential victims of Gender based violence including in the workplace. Without an enabling safe environment for reporting, many incidents of sexual harassment may go unnoticed and not given adequate remedies.

Finally, a general limited legal literacy in communities hampers awareness about gender rights for right holders(Women) and duty bearers. The lack of awareness of available accessible legal services that are gender user friendly limit women to access and enjoy their gender equality rights. This situation leads to inadequate general compliance with gender related laws, especially in instances of decision making related to gender issues including in the workplace. Thus, large scale intensive public

campaigns and accessible legal services are key in closing this gap in implementing progressive gender equality laws.

#### **IV. Suggested Recommendations.**

Overall, this policy brief shows Rwanda's strong commitment in reforming discriminatory laws at two levels: it has ratified a number of gender promotion Conventions and Treaties, on one hand but has also enacted a critical mass of gender responsive laws in line with its international obligations on gender equality, on the other hand. All these efforts have been underpinned by a strong political will and a transformational leadership. Despite these significant steps towards gender equality, the gender assessment shows some critical areas where policy interventions are required to advance the full realization of women's rights. This policy brief recommends some critical areas for improvement. The following key recommendations are suggested by the concerned Civil Society for urgent action:

**To Ministry of labour and Public service and its Public service Commission** on one hand that has the overall responsibility to initiate any amendment to public service law and **Rwanda Law reform commission** at the Ministry of Justice as the technical regulatory arm for any law revision proposal, on the other hand for the following suggested amendments to four key provisions of the law governing labour in Rwanda and the general Statutes governing public servants with its subsequent ministerial orders:

- The article 21 of the Law no 17/2020 of 7/10/2020 establishing the general statutes governing public servants and the Ministerial Order No 3 determining circumstantial leaves, should be aligned to article 56 of the Labour Code and give the male employee whose spouse has given birth a reasonable parental leave(estimated to half the maternity leave for her spouse) to take care of the mother and in some cases of the new born child. As stated above, the article 56 gives maternity leave of at least twelve consecutive weeks to a female employee who has given birth.
- 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.
- The Labour Code should explicitly prohibit termination of a woman's employment contract based on pregnancy or maternity conditions and provide sanctions to employers who violate this provision.
- 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 so that provisions of the labour Code are harmonized and aligned with article 149, al 2 of the Penal Code.



**To Ministry for Gender and Family Promotion including Gender Monitoring Office:**

- Gender machinery Institutions should sensitize and design appropriate capacity building interventions for RIB, RNP and Labour Inspectorate departments for increased legal literacy through the gender lens to foster gender equality in the application of relevant law provisions as they pertain to gender equality promotion in practice.
- Design and conduct large scale public campaigns about gender equality and improve provision of free legal services for women facing inequality to make the progressive laws a living reality for women.
- In case of a parental leave is granted by the proposed amendment to general statutes, it is suggested a well packaged campaign is designed and launched towards male spouses to use the awarded leave for shared parental responsibility and mutual assistance as recognized by family law and other related laws.
- A specific rights based awareness campaign towards informal female workers and employers from private sector federation should be designed and launched to increase the legal literacy about their labour rights.

**To Ministry of foreign Affairs in collaboration with Ministry in charge of Labour:**

Civil Society Organisations recommend the Ministry in charge of Labour to engage the Ministry of foreign Affairs, the parliament and Prime Minister office to initiate ratification processes for the following conventions which are of paramount importance in achieving full gender equality at work place.

- A number of ILO Conventions should be ratified with specific focus on 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 finally, Protocol 89 on the Convention concerning Night Work of Women Employed in Industry.

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**Rwanda Civil Society Platform (RCSP)**

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