Evolution of Labour Law and Industrial Relations in Rwanda since 1967

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Abstract

The evolution of working relations in Rwanda is quite recent and might not seem important to know, but knowledge of the past will help shape the future of labour law and labour relations.

Labour relations in Rwanda are a result of a variety of factors, such as colonial rule, labour markets, technological development, international relations and Social and demographic trends.

The Belgian colonial administration has changed the working relations between a worker and his master by introducing laws shaped to control the indigenous labour force. The objective of these laws was not to protect local employees, but rather Belgian workers and other expatriates working for the colonial administration in order to avoid all forms of industrial conflict so as to ensure industrial peace.

Labour relations in Rwanda have continued to be regulated by the Labour Code of Belgian Congo until 1967, when Rwanda enacted its own Labour Code to provide for better working and living standards to workers.

This article explores the evolution of labour relations in the successive reforms of the labour legislation in Rwanda from the Labour Code of 28th February 1967 to Law n° 66/2018 of 30/08/2018 regulating labour in Rwanda. It will highlight the salient workers' rights as evolved throughout different reforms of the Rwandan labour legislation. It demonstrates that the development of working relations has not always been linear. While individual labour relations have improved steadily, collective labour relations have resisted to change, making employees' organisations weak and employment disputes settlement less effective.

This article seeks to help Rwandan lawmakers learn from the past in order to shape the future and create a stronger labour legislation which creates effective balance in rights and obligations between the employer and the employee in all industries.

Key words: Labour law, labour relations, employment contract, working conditions, collective labour relations, International Labour Organization.

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Introduction

Labour relations, also known as industrial relations, refers to the system in which employers, employees and, directly or indirectly, the government interact to set the ground rules for the governance of working relationships.[1] These working relationships are most of the time crafted into a set of texts dubbed labour code or labour law.

Labour law as a set of rules meant to provide a framework for labour relations and collective bargaining in order to establish an appropriate balance in the rights, interests, and obligations between employers and employees, is relatively new in Rwanda.

Before the colonisation period,[2] labour relations in Rwanda were based on traditional institutions generally known as *ubuhake*[3] and *guca incuro*[4] that had created unequal relationship between the patron and the client or the master and the servant. Danielle de Lame[5] describes the inequality of relationships in the institution of *ubuhake* as a "clientship contract" and not a normal contract of service.

> One type of clientship contract, a long-term agreement between two men of unequal status, sealed by the handing over of an animal and involving protection in exchange for services. In this convention, the person of higher standing gives a cow and protection in exchange for services whose nature depends on the rank and abilities of the inferior and how much he succeeds in obtaining.

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[1] See Anne Trebilcock, *Labour Relations and Human Resources Management: an Overview*, http://www.ilocis.org/documents/chpt21e.htm, accessed on 26th November 2019.

[2] The colonial period starts in 1910, following an agreement, between Germans, King Leopold II of Belgium and the British, which handed control of Rwanda and Burundi (then Ruanda-Urundi) to the Germans. In 1916, during World War I, the Belgians gained control of Rwanda and Burundi until the independence of Rwanda on the 1st July 1962 (see University of Pennsylvania, East Africa Living Encyclopedia, available at https://www.africa.upenn.edu/NEH/rwhistory.htm, accessed on 21st November 2019).

[3] A client-patron contract consisting of putting one's activity at the service of a master for an undetermined period in return of a cow as remuneration. The client (*umugaragu*) is subordinated to a patron (*shebuja*) giving him agricultural products and personal service in exchange for the use of land and cattle see University of Pennsylvania, East Africa Living Encyclopedia, available at https://www.africa.upenn.edu/NEH/rwhistory.htm, accessed on 21st November 2019.

[4] A form of "work for food" by which the worker performed agricultural activities in exchange for food instead of money (See F.X. Kalinda, *Labour Law and Labour Relations in Rwanda*, Rozenberg Publishers, Amsterdam, 2015, p. 15; See also H. Musahara, (ed.), *Inclusive Growth and Development Issues in Eastern and Southern Africa*, OSSREA, 2016, p. 207)

[5] See D. de Lame, *Transformations and Ruptures in Rural Rwanda* (translated from French by Helen Arnold), University of Wisconsin Press, 2005, pp. 376-377.

The system of *ubuhake* was later abolished by King Mutara III Rudahigwa on the 1st April 1954[6] to put an end to the injustice of this institution[7] while *uburetwa* and *guca inshuro* persisted.

Uburetwa, a system of forced labour, whereby labour was carried out for the benefit of the colonial administration, was introduced by the Belgian colonial administration. According to this system all males regarded as adults were forced to do work of public interest without any remuneration. The duration of work was two days a week at the beginning of the system and was later reduced to one day a week until it was abolished by the *Constitution of Gitarama* in 1961.[8]

The right to a remuneration as the counterpart of the worker's activity was partially protected in Rwanda during the last days of the colonial period during which the Labour Code of Belgian Congo (*Code du Travail du Congo Belge*) could be applied to workers carrying out their professional activity in Rwanda in the interests of the colonial administration. Like in other regions of Africa, colonial rulers used labour laws to control the indigenous labour force[9], and not to protect their social rights. Therefore, the Labour Code of Belgian Congo was not brought to Rwanda to protect local employees, but rather Belgian workers and other expatriates working for the colonial administration.[10]

Labour relations in Rwanda continued to be regulated by the Labour Code of Belgian Congo until 1967, five years after the independence of Rwanda.

This article explores the evolution of labour relations in the successive reforms of the labour legislation in Rwanda from the Labour Code of 28th February 1967 to Law n° 66/2018 of 30/08/2018 regulating labour in Rwanda. It highlights the salient workers' rights as evolved throughout the different reforms of the Rwandan labour legislation.

Section I discusses the strengths and weaknesses of the Labour Code of 1967 which constitutes the first post-independence labour legislation, but also depicts the restrictions of collective labour

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[6] See Bulletin Officiel du Centre Administratif Indigène du Pays, 1954, n° 1, p. 3. For more information on the Institution of *Ubuhake,* see Filip Reintjens, *Pouvoir et droit au Rwanda : Droit public et évolution politique 1916-1973*, Musée Royal de l'Afrique Centrale, Tervulen, Belgique, 1985, pp. 198-209.

[7] The King might have abolished the ubuhake under the pressure of the colonial administration. For more comments see Luc de Heusch, "Rwanda, Responsibilities for a Genocide", https://www.jstor.org/stable/2783105?read-now=1&seq=1#metadata_info_tab_contents, accessed on 25th November 2019.

[8] The Constitution of Gitarama is the very first written Constitution which abolished the monarchy and proclaimed that Rwanda is a Republic; See Filip Reintjens, *op. cit.*, pp. 134-135 and p. 339.

[9] See Tzehainesh Teklè , (ed.), *Labour Law and Worker Protection in Developing Countries*, Hart Publishing, Oxford, 2010, p. 177.

[10] See F.X. Kalinda, *op. cit*., p. 16.

relations. It highlights the progress registered in the protection of individual and collectives labour relations. Section II on the Labour Code of 30/12/2001 comments on the reform of the Labour Code of 1967 with an emphasis on the areas of progress and decline in labour relations and working conditions. Section III on the Law of 27/5/2009 regulating labour in Rwanda explains the rationale of the quick revision of the Labour Code of 30/12/2001 following the adoption of the National Employment Policy, 2007 and the need to facilitate the development of the private sector in Rwanda as one of the pillars of the vision 2020. Section IV which introduces the Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda seeks to fill the gaps remaining in the relationship between employers and employees and to align the Rwandan Labour legislation to International Conventions formulated by International Labour Organization (ILO) and ratified by the Republic of Rwanda; the Common Market Protocol of East African Community and the Northern Corridor Integrated Initiative Project on Free Movement of Workers in Partner States. Section V considers the role of labours courts in shaping the development of labour laws.

1. The Labour Code of 1967

The first labour legislation in Rwanda was enacted on 28/2/1967,[11] five years after the independence. This law commonly known as the Labour Code was shaped by the Belgian colonial past. It maintained the labour law system imposed in all Belgian colonies which protected individual labour relations, but imposed tight restrictions on collective labours relations. However, the scope of application of the Labour Code was limited as it excluded agricultural and domestic workers.

1.1. Protection of individual labour relations

The post-independence labour code of Rwanda largely protects the individual relationships between employers and employees. These relationships are created through a contract of employment characterised by three basic elements:

- activity of the employee carried out for the benefit of the employee;
- a remuneration as a counterpart of the activity;

[11] See Loi du 27 février 1967 portant Code du Travail, J.O. 1967, p. 107.

- acceptance (express or implied) by the employee to be subject to the direction and control of the employee.[12]

The employment contract is formed by the reciprocal consent between two parties (the worker and the employer) for a determined period (fixed-term contract)[13] of time or for undetermined duration (open-ended contract)[14], but in any case, it cannot be concluded for a life time[15].

The Labour Code sets up a procedure to legally terminate an individual labour contract. Since an employment contract has a temporary character, either party can terminate the contract through dismissal or resignation depending on who initiates the termination. If the termination of the contract is imputed to the employer, this constitutes a dismissal while the end of the contract by the employee is qualified as a resignation.

The labour code provides for two types of dismissal, a dismissal for personal reasons and a dismissal for economic reasons. The former is a dismissal triggered by the misconduct of the employee or for other reasons that are attributable to him[16] whilst the latter is a result of economic difficulties or technological transfers with the aim of protecting the competitiveness of the enterprise.[17]

Although the labour code protects the individual relationships between employers and employees as previously mentioned, other conditions of works suffered from many flaws with regards to the protection of women and children[18], as well as health and safety of employees at the workplace.

1.2. Protection of women and children

Women and children deserve a special protection as they constitute a group of people who suffer more discrimination at workplace. The labour code contains some provisions in favour of these groups, but also has some flaws.

Protection of children

[12] See article art. 18.
[13] See art. 26.
[14] See art. 35
[15] See art. 22.
[16] See Soh-yeong Kim, "The Legal Regulation of Wrongful Dismissal in Korea", 25 *Comp. Labor Law & Pol'Y Journal*, 537 (2004).
[17] M. Despax, & J. Rojot, *Labour Law and Industrial Relations in France,* Kluwer Law and Taxation Publishers, 1987, p. 109.
[18] Women and children are considered as vulnerable persons along with elderly and disabled persons.

The labour code contains provisions restricting the employment of children but it doesn't provide any definition of a child. However, it is prohibited to employ a child in any company, even as apprentice, if his/her age is lower than that of the end of compulsory education[19] or higher than that of the legal majority[20], except with the express authorization of the Director General of Labour.[21]

Therefore, a contract of employment or apprenticeship entered into by a young person of the above age category of age is unenforceable against them.[22] However, a child aged between sixteen and eighteen may be employed under an apprenticeship contract, but a person below 18 years cannot be employed for a night work in any industrial premises.[23]

Protection of women

The Labour Code treats women as incapable people just like children in as far as night work is concerned. Like children, women cannot be employed during the night in any industrial premise, with exception to those who provide health services in those premises.[24] This provision has always been considered discriminatory as it denies women the opportunity to access jobs in companies where the work is carried out 24 hours a day.

However, the labour code protects the rights of pregnant or breastfeeding women. A pregnant woman is entitled to a prenatal leave prescribed by a recognised medical doctor. Upon deliverer, breastfeeding woman is entitled to twelve consecutives weeks of maternity leave. During the maternity leave, she is entitled to 2/3 of her salary.[25]

1.3. Restriction of collective labour relations

Collective labour relations are concerned with the collective relationship related to work conditions between employees (through their representatives) and their employers. Collective labour relations include such subjects as:

- trade unions and employers' professional organisations;

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[19] That was approximately 14 years.
[20] The legal majority to sign an employment contract was 18 years.
[21] See art. 61.
[22] See Elizabeth A Slade, *Tolley's Employment Handbook*, 15th Ed., Butterworths LexisNexis, 2001, p. 21.
[23] See art. 120.
[24] See art. 120.
[25] See art. 128.

- collective bargaining, and
- industrial disputes.

Although labour relations involve mainly interactions between employers and employees, three actors have been identified as parties to the labour relations system: the State, employers and workers' representatives.

The State intervenes in shaping the labour legislation. The State promotes orderly industrial relations by providing the necessary legislative framework, including minimum levels of worker's protection and offering parties information, advice and dispute settlement services.[26] The State is also a key player in the "social dialogue"[27] whereby "social partners"[28] play a significant role in shaping government policy on a wide range of labour issues in a bid to maintain social peace at workplace.

Employers are the providers of work, and as such, they are at the forefront of economic development. In organising themselves, they pursue several aims: economic, social and professional altogether.[29]

Employers' organisations pursue the defence and promotion of economic interests of their members through collective bargaining and lobbying government to adopt policies that are friendly to their interests. In a bid to promote and maintain social peace, employers' organisations negotiate conditions of work on social matters and industrial relations, such as wages, health and safety at workplace, human resource development, etc.

Like employers' organisations, workers' representatives or trade-unions basically pursue the defence and promotion of legitimate interests of their members.

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[26] See Anne Trebilcock, *op. cit.*, http://www.ilocis.org/documents/chpt21e.htm

[27] The ILO defines the term "social dialogue" as 'all types of negotiation, consultation or information sharing among representatives of governments, employers and workers, or between those of employers and workers, on issues of common interest relating to economic and social policy'. See ILO, *The impact of social dialogue and collective bargaining on working conditions in SMEs: A literature Review*, Geneva: ILO, 2018, p. 4.

[28] "Social partners" refer to the tripartite engagement between representatives of governments, employers and workers, to conduct a social dialogue.

[29] See Anne Trebilcock, *op. cit*., http://www.ilocis.org/documents/chpt21e.htm

As representatives of workers, trade unions are empowered to engage with employers' organisations and negotiate on behalf of employees' conditions of work on social matters and industrial relations.

Like in most labour laws of African post-independence era, the Labour Code of 1967 recognises the freedom of association[30] which includes the right to join any workers 'organisation or employers 'organisations, the right to form trade unions for the promotion and defence of workers' interests. But when it comes to settling industrial disputes, the Labour Code puts in place a long and discouraging procedure aimed at making it impossible to conduct any legal strike.[31]

Much as the Labour code recognises the right to organise, the trade union movement and the advent of employers' organisations are very recent in Rwanda. The absence of political pluralism had also hindered the emergence of trade union pluralism in Rwanda until 1991 when a new constitution recognising political parties was enacted. The first workers' trade union organisation was *Centrale Syndicale des Travailleurs du Rwanda* (CESTRAR), a workers' trade union confederation created in1985 following the ratification of the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). However, CESTRAR would wait until 1992 to get its legal personality.[32]

With regard to collective bargaining, and although the labour legislation contains provisions on collective bargaining since I967, no collective bargaining has taken place so far. This situation can be partly explained by the absence of strong social partners capable of negotiating collective agreements as well as the lack of trade union pluralism which prevailed in Rwanda until 1992. The political crisis that culminated into the 1994 Genocide against Tutsi impacted negatively on the freedom of trade unions to enter into collective bargaining.

Not only the few existing trade unions lost their members during this tragic period, but also the private sector was still too weak to validly defend employers' professional interests. The State being the main employer, a well-balanced social dialogue could not be engaged. The sole

[30] Art. 5-17.
[31] See art. 172-177.
[32] See CESTRAR, Historical Background, http://www.cestrar.rw/, accessed on 23 November 2019.

employer's professional organisation was created in 1999 but was not independent as its president was appointed by the Government.[33]

In general, the Labour Code of 1967 can be hailed as a turning point in the protection of employees for its merit to put in place a framework for labour relations between employers and employees with minimum protection of individual and collective rights of the employees.
However, despite its many amendments as the Government ratified varied key ILO conventions, it is deplorable that the code did not protect the rights of persons living with disabilities who have continuously suffered discrimination at workplace. Also, many provisions of the code provide for ministerial orders for their implementation, but most of them have never been implemented, especially with regard to health and safety at workplace.

2. The Labour Code of 30/12/2001

Rwanda initiated a reform of its labour code in 2001 which sanctioned the withdrawal of the State from commercial and industrial activities and the empowerment of social partners[34]. The reform of the labour code which started in 1997 was aligned to the country's Vision 2020. The latter was a development strategy that aimed to transform Rwanda into a middle-income country by 2020 with the private sector as the engine of growth, job creation and industrialisation[35]. A private sector-led development was one of the pillars of Vision 2020 with the privatization policy as one of its enablers.

Also, following the ratification of the ILO Convention No. 100 concerning equal remuneration for men and women workers for work of equal value, the Convention on the Elimination of all Forms of Discrimination against Women of 18 December 1979, the Labour Code of 1967 was repealed and replaced by Law nº 51/2001 of 30/12/2001 establishing the Labour Code.[36]

Although this new labour code marks a significant progress in labour relations and working conditions, it calls into question certain rights acquired by workers through the Labour Code of 28/2/1967, such as the transfer of ongoing employment contracts in case of transfer of the

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[33] See F.X. Kalinda, *op. cit.,* p. 80.
[34] See Rwanda Employment Policy, 2007, p. 26.
[35] See MINECOFIN, Rwanda Vision 2020, July 2000, pp. 10-11.
[36] See *O.G.* n°5 of 1/3/2002, p. 70.

enterprise as well as the development of industrial relations. This new labour code was also accused of being a hindrance to the development of the private sector and the creation of jobs.

2.1. Progress in labour relations and working conditions

Significant progress in labour relations can be noted with regard to protection of women against discrimination. While the old labour code treated women as incapacitated in the same way as children with regard to night work, the new labour code has corrected this injustice. Under the old labour code women and children were generally prohibited from performing night work in any commercial or industrial enterprise. Law nº 51/2001 of 30/12/2001 establishing the Labour Code has removed this discrimination against women. In this relation, the new law allows women to perform night work in any commercial or industrial enterprise in the same way as men, with the exception of pregnant or breastfeeding women whose night working conditions are determined by an order of the Minister of Labour.[37]

With regard to equal salary between men and women, Article 84 of the new labour code provides that for equal working conditions, professional qualification and cost effectiveness, the salary is equal for all employees regulated by this law whatever be their origin, sex or age. However, this provision has been found insufficient to eliminate discrimination against women at workplace. The principle of equal pay set out in Article 84 above does not necessarily reflect the principle of equal remuneration for work of equal value. The right to equal remuneration for women and men for work of equal value has been acknowledged by the ILO Constitution[38] and is set out in the Equal Remuneration Convention, 1951 (No. 100).[39] According to M. Oelz, S. Olney and M.Tomei, the principle of equal remuneration for work of equal value is designated to achieve pay equity between men and women.[40]

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[37] This except is set up to protect pregnant or breastfeeding women against work likely to harm their health as well as that of their baby.
[38] See Constitution of the International Labour Organization, as amended in 1946 to add a specific reference to equal remuneration for work of equal value in the Preamble (originally set out in Article 41): ILO, Geneva, Official Bulletin, 15 November 1946, Vol. XXIX, No. 4.
[39] Rwanda ratified this convention in 1980.
[40] Oelz, Olney and Tomei, Equal Pay: An Introductory Guide, Geneva: ILO, 2013, p. 30.

Oelz, Olney and Tomei (2013) explain the difference between "equal pay" and "work of equal value":

> The concept of "work of equal value" includes but goes beyond "equal work". Equal pay for equal work means that similarly qualified women and men will be paid equally when they perform the same or virtually the same work in equivalent conditions.
> (...)
> Equal pay for work of equal value covers not only cases where men and women do the same or similar work, but also the more usual situation where they do different work. When men and women perform work that is different in content, involving different responsibilities, requiring different skills or qualifications, and is performed under different conditions, but is overall of equal value, they should receive equal remuneration.[41]

Oelz, Olney and Tomei observe that the principle of equal remuneration for work of equal value is difficult to achieve in practice, hence it requires a means of measuring and comparing different jobs on the basis of objective criteria such as skills, working conditions, responsibilities and effort[42] since women and men often perform different jobs, under different conditions and even in different establishments.[43]

The progress in labour relations can also be seen in the increased freedom and flexibility in negotiations of working conditions between the employer and the employee and through a more asserted trade union freedom. The Labour Code of 2001 sets out a legal basis for balanced rights and obligations between employers and employees. However, the numerous ministerial decrees provided for in the same labour code for the implementation of these rights and obligations were not adopted, making it impossible for employees to enjoy their fundamental rights.

Other progress in labour relations and working conditions sets out in this code include the following:

- clarification concerning the exercise of the right to organise
- the integration of agricultural workers into the scope of the labour code
- the redeployment of workers who are victims of work accidents
- the right to severance pay
- the right to the end of career allowance

[41] Ibid. p. 31.
[42] Ibid. p. 25.
[43] Ibid. p. 31.

- the right to transport compensation
- the precision of the duration of the layoff of the worker
- the obligation for each company to have internal regulations.

2.2. Decline in the development of workers' rights

Although the Labour Code of 2001 marks a significant progress in labour relations and working conditions, it takes a step backward in the protection of rights acquired by workers through the Labour Code of 1967. As an example, the following can be noted:

- omission of Article 47 of the 1967 labour code which required the employer who acquires a company to continue the execution of employment contracts in progress on the day of the transfer of the company;
- loss of the right to be reinstated in employment after being dismissed for economic or technical reasons
- restriction of the grounds for suspension of the employment contract.

2.3. Slow progress in the collective labour relations

Unlike individual labour relations that have registered significant progress, collective relations have remained static. Trade unions have been incapable of performing the functions that the labour code assign to them. This is mostly due to the weakness of trade union movements and the interference of the Government through restriction on the right to organise. Also the procedure for settling collective labour disputes has not changed much under the 2001 labour code. The procedure for settling industrial disputes, although less lengthy than that established by the 1967 Labour Code, have remained equally discouraging.

In conclusion the Labour Code of 2001 has not facilitated the development of the private sector in Rwanda as it was expected. Moreover, some of its provisions appeared to be hindrance for the establishment of companies and the creation of jobs.[44] Therefore, the revision of the Labour Code of 2001 was a necessity to facilitate doing business in Rwanda.

[44] Such provisions related to the limitation of the renewal of fixed-term contracts, the validity period of work permit and its acquisition, the duration of weekly working hours, the remuneration of women during the maternity leave, etc.

3. The law of 27/5/2009 regulating labour in Rwanda

The Labour Code of 2001 was repealed by Law n° 13/2009 of 27/5/2009 regulating labour in Rwanda[45] in order to facilitate the development of the private sector in Rwanda as one of the pillars of the vision 2020. More specifically, this law was enacted in order to bridge the gaps identified in Law nº 51/2001 of 30/12/2001 establishing the Labour Code which was considered as an obstacle to the promotion of business in Rwanda.

Unlike the Labour Code of 2001, the Law of 2009 provides extensive protection to workers. This law covers individual employment contracts and regulates among other things, different forms of contract, the conclusion, execution and termination of the employment contract, working time, health and safety at the place of work, holydays, paid annual leave, protection of vulnerable workers, etc.

Following its promulgation, a great number of regulations implementing this law have been enacted. They include among others, a Presidential Order determining official holidays[46], a Prime Minister's Order determining the mission, organisation and functioning of the National Labour Council[47] and various ministerial orders implementing different provisions of the above-mentioned law.[48]

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[45] See *O.G.* n° special of 27/05/2009.
[4646] See Presidential Order n° 06/01 of 16/2/2011 determining official holydays, O.G. nº10 of 07/03/2011.
[47] Prime Minister Order 62/03 of 2/11/2005 creating National Labour Council, *OG* nº3/2006 of 1/2/2006.

[48] Examples:

- Ministerial Order Nº06 of 13/07/2010 determining the list of worst forms of child labour, their nature, categories of institutions that are not allowed to employ them and their prevention mechanisms, *Official Gazette* nº 30 of 26/07/2010.
- Ministerial Order N°03 of 13/07/2010 determines the circumstantial leaves, in *Official Gazette* nº 30 of 26/07/2010.
- Ministerial Order Nº 08 of 13/07/2010 determining the implementation modalities for professional training and its related leave, in *Official Gazette* nº 30 of 26/07/2010.
- Ministerial Order nº09 of 13/7/2010 determining the modalities of electing workers representatives and fulfilment of their duties in *OGRR* nº30 of 26/07/2010.
- Ministerial Order nº07 of 13/07/2010 determining modalities of the functioning of the Labour Inspector *Official Gazette* nº 30 of 26/07/2010.
- Ministerial Order Nº04 of 13/07/2010 determining essential services that should not stop and the terms and conditions of exercising the right to strike in these services *Official Gazette* nº 30 of 26/07/2010.

Furthermore, it should be noted that the modalities of exercise of the fundamental rights of the worker also known as the core labour standards are provided for following the ratification of all the ILO conventions relating to the protection of fundamental rights of the worker.

These core standards are:

- The Freedom of association[49]
- The right to collective bargaining[50]
- The prohibition of all forms of forced labor[51]
- Elimination of the worst forms of child labour implementing a minimum working age and certain working condition requirements for children[52]
- Non-discrimination in employment: equal pay for equal work.[53]

Nevertheless, Law n° 13/2009 of 27/5/2009 contained some grey areas which required an authentic interpretation. For instance, the phrase "work of equal value" defined under Article 1.9 of this law has attracted critics from the ILO Committee of Experts in the Application of Conventions and Recommendations.[54]

In its report of 2011, the Committee noted that the Law regulating labour in Rwanda contains a definition of the expression "work of equal value" (Section 1.9), but regrets that this definition is too narrow to give full effect to the provisions of the Equal Remuneration Convention, 1951 (No. 100) since it refers to "similar work", and further, that the new Act contains no substantial provisions prescribing "equal remuneration for work of equal value".[55] The Committee regrets that the Government of Rwanda has not taken the opportunity to give full legislative expression to the principle of equal remuneration for work of equal value within the meaning of the

[49] International Labour Convention n° 87 of July 9, 1948 concerning Freedom of Association and Protection of the Right to Organize.
[50] International Labour Convention n° 98 of July 1st, 1949 concerning the Right to Organize and Collective Bargaining.
[51] International Labour Convention n° 29 of June 28, 1930 concerning Forced Labour and International Labour Convention n° 105 of June 25, 1957 concerning the Abolition of Forced Labour.
[52] International Labour Convention n° 138 of June 26, 1973 concerning the Minimum Age for admission to Employment; and the International Labour Convention n° 182 of June 17, 1999 concerning Worst Forms of Child Labour.
[53] International Labour Convention n° 100 of June 29, 1951 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value.
[54] See ILO, Committee of Experts on the Application of Conventions and Recommendations, First Ed. 2011, p. 464.

[55] Ibid., p. 464.

Convention and therefore recommends that the Government takes the necessary steps to give full legislative expression to the principle of equal remuneration for men and women for work of equal value as set out in the above mentioned Convention.[56]

It also appears that some of the rights acquired by workers through the former labour code have been challenged by the new one. These are for example:

- possibility of indefinite renewal of the fixed-term employment contract;
- increase in maximum working hours per week;
- absence of precision in respect of the role of the ministry in charge of labour in the monitoring of redundancies.

Besides, certain categories of disadvantaged workers such as daily workers and domestic workers are not protected as Law n° 13/2009 of 27/5/2009 regulating labour in Rwanda. This law does not address their special needs in terms of working time, health and safety at workplace, social security, etc. Likewise, workers in the informal sector, which constitute the major employing sector in Rwanda[57], are not protected by this law.

Like in most Sub-Saharan countries, the provisions of the law regulating labour in Rwanda comply with the ILO standards, but the practice has shown that trade unions struggle with limited organisational, financial and administrative capabilities, with a lack of leadership and research skills.[58] The lack of capability among trade unions affects the effective protection of workers' interests at the workplace.[59]

To this is added a long and discouraging procedure for the settlement of collective labour disputes. For instance, the report of the ILO Committee of Experts on the Application of Conventions and Recommendations observed that compulsory arbitration in the context of collective bargaining imposed by the law regulating labour in Rwanda is generally contrary to the principle of the voluntary negotiation of collective agreements established by the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and thus the autonomy of bargaining partners.[60]

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[56] Ibid. p. 465.
[57] See J.B. Rukundo, "Understanding Informal sector Employment in Rwanda", *International Review of Research in Emerging Markets and the Global Economy (IRREM)*, http://globalbizresearch.org/files/6023_irrem_johnson-bosco-rukundo-136137.pdf, accessed on 21/01/2020.
[58] Tzehainesh Teklè , (ed.), *op. cit*., p. 209.
[59] Ibid.
[60] See ILO, Committee of Experts on the Application of Conventions and Recommendations, First Ed. 2011, p. 152.

The above committee recommended with regard to the right of trade unions to organize their administration and activities and to formulate their programmes in full freedom, that the control exercised by the public authorities over trade union finances should not go beyond the requirement for the organisations to submit periodic reports.[61]

Despite great efforts made by the Government of Rwanda to improve the framework for labour relations and collective bargaining through Law nº13/2009 of 27/5/2009, it is also necessary to note that the Government still had to undertake greater efforts to promote genuine social dialogue and tripartite consultation in order to achieve the social peace in the employment relationship. Under such circumstances, the revision of Law N° 13/2009 of 27/05/2009 was paramount to address the flaws identified and also align the Rwandan labour legislation to international labour standards.

4. Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda

Law N° 66/2018 of 30/08/2018 regulating labour in Rwanda[62] marks noticeable development in the relationship between employers and employees by addressing some previous contentious provisions. This intention is reflected in the explanatory note issued by the Ministry of Public Service and Labour:

> (...) the rationale for revising Law N° 13/2009 of 27/05/2009 Regulating Labour in Rwanda was for its harmonisation with International Conventions formulated by International Labour Organisation (ILO) and ratified by the Republic of Rwanda; Common Market Protocol of East African Community and Northern Corridor Integrated Initiative Project on Free Movement of Workers in Partner States.[63]

Apart from the concern to fulfil its international obligations, the new law regulating labour in Rwanda seeks to fill the gaps remaining in the relationship between employers and employees.

The following can be noted among others: extension of the scope of application of the new law and new developments in the protection of individual labour relations.

4.1. Extension of the scope of application of the new labour law

[61] Ibid.
[62] See OG No *Special of 06/09/2018* hereinafter referred to as the New Labour law.
[63] MIFOTRA, Explanatory note for the Draft Law Regulating Labor in Rwanda, 2018.

Unlike the law of 27/5/2009 regulating labour in Rwanda, the new law applies not only to employment relations based on an employment contract between an employee and an employer in the private sector, but also on employment relationship between an employee and an employer in the public service.[64] This is a tremendous improvement as the previous law had explicitly excluded from its scope of application employment contracts in the public service.[65]

Likewise, employees in the informal sector are recognised in the new labour legislation and protected with regard the following:

- occupational health and safety;
- the right to form trade unions and employers' associations;
- the right to salary;
- the minimum wage in categories of occupations determined by an Order of the Minister in charge of labour[66];
- the right to leave;
- social security;
- protection against workplace discrimination;
- protection from forced labour;
- prohibited forms of work for the child, pregnant or breastfeeding woman.[67]

Practically almost all the rights recognised to employees in the structured sector are also recognised for employees in the informal sector. This is a tremendous step forward as the share of the informal sector in non-agriculture employment is 72.6 % according to the recent statistics released by the National Institute of Statistics of Rwanda (NISR)[68].

4.2. New developments in the protection of individual labour relations

[64] See art. 2.
[65] See Art. 3 Law n° 13/2009 of 27/5/2009 regulating Labour in Rwanda.
[66] It's worth noting that the minimum wage recognized by Law based on each category of occupation is yet to be determined by a ministerial order.

[67] See art. 2.
[68] See NISR, *Labour Force Survey: Annual Report*, 2018, p. 16.

Article 8 on **Prohibition of sexual harassment** improves on former Section 3 of the law of 2009 regulating labour in Rwanda on the protection of workers against violence or harassment. The new law prohibits any form of sexual harassment against an employee. It also prohibits the dismissal of an employee for having reported or testified on sexual harassment committed by his/her supervisor, and in case there is tangible evidence that an employee has resigned due to sexual harassment committed against him/her by his/her supervisor, his/ her resignation is considered as unfair dismissal.

Article 15 on the Modification of the enterprise's status is the revival of Article 47 of the 1967 labour code which required the new employer to continue the execution of employment contracts in progress on the day of the transfer of the company. The repealing of this provision since the enactment of the Labour Code of 2001 has caused a serious prejudice to employees whose contracts were terminated as a result of the transfer of an enterprise.

Article 22 on the Right to be reinstated in employment after being dismissed for economic or technical reasons provides that an employee dismissed for economic or technical reasons and whose dismissal does not last more than six (6) months is entitled to be reinstated in employment without competition when he meets the profile required for the position to which the employer seeks to fill.
A similar provision existed in the labour code of 1967 but had been repealed by the labour code of 2001. Trade unions have since been decrying the violation of employees' legitimate right to be reinstated in priority. Therefore, the re-establishment of this provision is justice made to employees.

A special protection for **employees executing public or private tenders** is, for the first time, provided for in the law regulating labour in Rwanda. From this perspective, this is spelled out under Article 122 as follows:

> A successful bidder of a public or private tender shall pay salaries of employees employed.
> A successful bidder who sub-contracts a part of the tender to a third party is responsible for payments of employees' salaries in case the sub-contractor has not paid employees' salaries.
> A successful bidder who is awarded a tender is not entitled to payments without showing to the procuring entity the proof that he/she has paid the debt related to salaries of employees employed.

In case a successful bidder fails to pay the employees' salaries, the procuring entity retains the amount equivalent to employees' salaries, until the successful bidder proves that he/she has paid the employees.
However, if the payment is not effected by the successful bidder in a period of forty-five (45) days, the procuring entity pays the concerned employees the salaries equivalent to the amount retained.

This is a commendable development as this provision aims at avoiding abuse of employees' rights in the execution of public contracts.

In the same vein, for the first time, the new law regulates private employment agencies. A private employment agency is defined under Article 115 as a natural or non-government legal person, which provides one or more of the following labour market services:

1 º matching offers and applications for employment, without becoming a party to the human resource management;
2 º looking for job seekers with a view of making them available to an employer and continuing to assign then tasks and supervise them;
3 º providing advice on labour-related matters;
4 º training of jobseekers;
5 º providing job-related information;
6 º other services relating to job seeking which can be approved by the Minister in charge of labour, after consulting employees' organisations and employers' organisations.

A person wishing to establish a private employment agency applies for an authorisation granted by the minister in charge of labour who determines modalities for establishment of private employment agencies and their functioning trough a ministerial decree.
This innovative provision avoids abuses and exploitations of employees by companies wishing to recruit and export labour force outside Rwanda.

The new law has also the merit of improving health and safety at workplace compared to the previous laws regulating labour in Rwanda. A new provision has been adopted to prevent and fight occupational accidents and diseases.[69] This is translated into the obligation for the employer:

1 º to assess risks of occupational accidents and diseases;

2 º to develop occupational safety and health policy and monitor its implementation;

[69] See art. 81.

3 º to prevent risks of occupational accidents and diseases;

4 º to reduce in the best possible way risks of occupational accidents and diseases;

5 º to fight occupational accidents and diseases;

6 º to adapt modalities of preserving occupational health and security of employees with new technology.

Health, safety and welfare of employees at workplace are entrusted under the responsibility of the employer and employees are not required to pay any cost in connection with measures aimed at ensuring occupational health and safety.[70]

In conclusion the new labour law has greatly improved on the protection of employees' rights compared to the successive labour laws which were more favourable to employers than employees. Whilst individual labour relations have evolved over time, collective labour relations have remained static, which indicates the weakness of the trade union movement in Rwanda.

4. The role of the courts in the development of labour laws

Although the Rwandan judicial system has never set up labour courts, the ordinary courts have regularly handled cases relating to individual labour relations. However, labour disputes have kept growing in numbers following the steady development of the private sector so that some are now calling for the establishment of labour courts. Since the judicial reform of 2004 and the reinstatement of the Supreme Court, judicial decisions are regularly published on the website of the Supreme Court of Rwanda[71] where they can be accessed free of charge. This practice of reporting courts decisions regularly may contribute to the development of a body of a coherent jurisprudence.

[70] See art. 77.

[71] See The Supreme Court of Rwanda, https://www.judiciary.gov.rw/index.php?id=2

Although the courts do not follow the rule of precedent or the *doctrine of stare decisis* largely applied in the Common Law legal systems, the decisions of the Supreme court are binding on lowers courts in similar issues or facts.[72]

The courts tend to apply strictly the application of labour law and workers are willing to sick legal redress when their rights are violated. The case law of the courts on unfair dismissals and serious misconduct which constitute the majority of cases brought before the courts is particularly consistent. In rare cases, courts go beyond the literal interpretation of the law and seek the intention of the legislator. For example, in *KK Security vs Harerimana Enos et. al*,[73] the Supreme Court had to interpret Article 29 of Law No 51/2001 of 30/12/2001 establishing the Labour Code and ruled that the procedure set out in Article 29 on retrenchment of workers is not "merely for reasons of procedural fairness but as part of establishing whether substantive grounds for dismissal are present and, if so, the most appropriate manner of mitigating the consequences". Therefore, the purpose of this procedure is to protect workers and failure to abide by it amounts to unfair dismissal.

It can however be observed that since the advent of the labour code of 1967 to date, the courts have heard no cases concerning collective labour disputes. One explanation may be the relatively weak organisation of trade unions and the complicated procedure to settle collective disputes which impose compulsory arbitration before seizing any court of law.

5. Conclusion

The journey through the laws regulating labour in Rwanda since 1967 reveals some ups and downs in the labour legislation. This legislative instability can be partly attributed to the changes in policies and economic choices adopted by Rwanda over the past 20 years. While the working relationship between the employer and the worker has steadily improved as Rwanda ratified the ILO conventions, collective labour relations have not, in contrast, experienced significant development in practice. As mentioned earlier, trade unions have suffered and continue to suffer

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[72] See art. 47, par. 6 Organic Law No 03/2012/OL of 13/06/2012 determining the organization, functioning and jurisdiction of the Supreme Court, *O.G.* No 28 of 09 July 2012.
[73] See *KK Security vs Harerimana Enos et. al*, SCR, 11/01/2008, R.SOC.AA 0006/07/CS.

lack of strong leadership, financial and administrative capabilities, which affects the effective protection of workers' interests at the workplace. As an example the minimum wage although provided for in the successive labour laws was set to be determined by an order of the minister in charge of labour but trade unions and employers organisations have not succeeded to negotiate a realistic minimum wage to replace the obsolete ministerial order of 1980.[74] Furthermore, the long and discouraging procedure for the settlement of collective labour disputes continues to hinder genuine social dialogue which would help to achieve social peace in the employment relationship.

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