

Sub-unit 5: Human rights in the context of Rwanda

Introduction

Rwanda has committed itself to build a state governed by the rule of law, based on the respect for human rights, freedom and on the principle of equality of all Rwandans before the law as well as equality between men and women¹. To put this commitment in action, the Government of Rwanda has guaranteed to citizens the enjoyment of fundamental rights. These are expressed in the constitution and other laws. Furthermore, policies have been formulated and institutions have been put in place to monitor the implementation of these rights.

This sub-unit presents human rights in the context of Rwanda.

Sub-unit outline

- 1. Background to human rights in Rwanda**
- 2. Current legal, policy and institutional framework for protection and promotion of human rights in Rwanda**

Before making a clear assessment of the current legal, policy and institutional framework for protection and promotion of human rights in Rwanda, it is worth presenting the background to human rights in Rwanda.

¹ Preamble of the Constitution of the Republic of Rwanda of 2003 revised in 2015.

1. Background to Human Rights in Rwanda

Three important periods illustrate better the historical backgrounds of human rights protection in Rwanda: the colonial period, the post-independence period and the period after the 1994 genocide against Tutsi.

1.1 Human rights in the Colonial period

Rwanda was a German colony from 1883 until 1919 when it was converted to a League of Nations Mandate Territory following Germany's defeat by Allied Forces at the end of the First World War. Belgium formally accepted to administer the mandate territory on behalf of the League of Nations in 1923. Following the establishment of the United Nations Organisation (UN) at the end of the Second World War, all mandate territories were converted to trust territories wherein Belgium then held Rwanda on trust for the UN with the obligation to prepare it towards independence. The Belgians adopted the administrative policy of indirect rule which was based on an inscriptive classification of humans into inferior and superior beings. In 1959, an unprecedented Hutu revolution dismantled Tutsi aristocracy resulting in a massive wave of emigration of the latter into neighboring Congo, Uganda and Burundi. This was the beginning of a Hutu hegemony that transcended the establishment of the second republic in 1973, under Juvenal Habyarimana, until the civil war and external winds of change in the 1990s. This effectively ended almost 30 years of dictatorship, tribalism and ushered in a new political and constitutional order. The presidential system was maintained with a bicameral legislature.

1.2 Human rights in post-independence Rwanda

The first constitution of Rwanda was that of 24th November 1962. During the period covered in this phase, the history and politics of constitution making was the sole responsibility of the colonial office acting by and through the colonial officials in Rwanda. The result was that the dominant ruling class of the country –at that time the Hutu, was made to serve the interests of the colonizers. Rwandans had practically no part to play and were not even considered as entitled to be consulted. Thus the history and politics of the constitution of 1962 was made by the colonialists with limited inputs from “Native experts.” Although the 1962 constitution envisaged

a pluralist regime with various political parties to participate in elections, a single party system was quick to emerge in Rwandan political life.

The Constitution of 1978 that came thereafter did not make changes in terms of democracy. It is important to note that the 1978 constitution came into existence after 5 years of absence of a constitution in Rwanda.² The provisions related to human rights survived, but other 31 articles of the constitution of 1962, including those regarding the judicial review were absent.³ Another characteristic of this constitution is the abolition of multiparty system. Only the *Mouvement Révolutionnaire National pour le Développement* (MRND), the ruling party then, was allowed to operate in Rwanda and only the president of this party was allowed to run for presidential elections.⁴

This situation continued until 1991, when the pressure of both internal and external opposition obliged president Habyarimana to adopt a new constitution recognizing a multi party system. In the meantime, the war of 1990 was going on and lasted (with long periods of cease-fire) close to four years. Its final three months coincided with the period of the genocide, which was only halted by the ultimate triumph of RPF in July 1994.

The 1991 constitution later amended by the Arusha Peace Accords⁵ essentially re-introduced multiparty democracy⁶ and upheld the principle of separation of powers and rule of law. The 1991 constitution, together with the Arusha Peace Accord and additional Protocols on Rule of law constituted the Fundamental Law of Rwanda until the 2003 Constitution was adopted. Constitutional development ought to operate within social and cultural contexts. Where a society is culturally and ethnically divided, as is the case with Rwanda, constitutional legitimacy should

² The Constitution of 1962 was suspended after the coup of 1973, when President Habyarima took over power. This situation continued until 1978.

³ E. Ntaganda, *Rétrospectives du Constitutionnalisme rwandais : quelles leçons pour la nouvelle constitution rwandaise 2002*, p. 7, unpublished paper

⁴ See art. 40 of the 1978 constitution

⁵ The 1991 Constitution was adopted on 30 May 1991. On 18 August 1992, the Protocol of Agreement between the Government of Rwanda and the Rwandese Patriotic Front (RPF) on the Rule of Law was signed at Arusha,

⁶ Art 7, 1991 Constitution of Rwanda

involve striking a balance between the protection of the wider minority interests and the power of the central state authority. Sadly, this was not the case. For example, soon after Rwanda attained its independence, the principle of limited government that was embodied in the 1962 constitution was replaced by the practice of absolute government, which concentrated state power in the hands of the President. Both Kayibanda and Habyarimana appropriated power and generally conducted their affairs with impunity.⁷ The judicial apparatus that is generally responsible for upholding the rule of law was in a state of comatose that rendered it unable to, and ineffective in protecting the rights of the Rwandan citizens. The absence of constitutionalism in both the first and second republic governments of Rwanda is arguably, a direct consequence of the processes that were used to adopt those constitutions.

1.3 Rwanda after the Genocide: the 1994-2003 constitutions

After the triumphant entrance of the RPF into Kigali in July 1994, a new transitional government was formed. It adopted the Arusha Accords as its constitutional base, though with some important modifications. The Mouvement Révolutionnaire National pour le Développement (MRND) and all other individuals involved in the genocide were banned from participating in government. The Arusha Accords had attempted to establish a balance of power between the MRND, the RPF and the Mouvement démocratique républicain, Parmehutu (MDR).

The constitution of 2003 as amended update has provided for fundamental rights and duties. The preamble of the constitution reflected the nation's commitment to human rights observance and promotion where a number of international legal norms and instruments are recognized especially the universal declaration of human rights. The constitution provided for the right to life, health, work, adequate housing and some other socio economic rights.

⁷ The 1962 Constitution of Rwanda had a limited equality clause which was expanded in the 1978 constitution to include fundamental liberties identified in the Universal Declaration of Human Rights and an inclusion of race, colour, origin, ethnic group Clan, affiliation, sex, opinion or social position. See generally chapter 1 article 1, Chp 11, art 16-17 Rwandan Constitution, 1962. See also article 11 and 16 1978 Constitution of Rwanda

Gender equality and youth participation have been entrenched with the constitution providing for the creation for the creation of national youth commissions.

As a post conflict country, a national reconciliation commission has been established to address the social and political causes of the conflict. Owing to the larger numbers of refugees before the 1994 tutsi genocide which had been partly one of the causes of the Rwandan Conflict , the new Rwandan constitution abolishes banishment of Rwandans into exile. 30% of women in decision making positions and allowing all Rwandan to participate in the democratic reform process.

In 2015, the 2003 constitution was substantially revised, its human rights provisions are discussed below.

2. Current legal, policy and institutional framework for protection and promotion of human rights in Rwanda

This part presents the substantive human rights recognized and guaranteed in the constitution, international laws ratified by Rwanda, various laws and policies as well as institutions established to monitor and/or ensure the respect, the protection and the fulfillment of fundamental human rights in Rwanda.

2.1 Legal framework

In Rwanda, human rights are guaranteed by the constitution, ratified international human rights instruments and other specific domestic laws.

2.1.1 The Constitution

Chapter IV of the Constitution of the Republic of Rwanda⁸, from article 12 to article 40, provides for the fundamental human rights and freedoms. The Constitution guarantees the enjoyment of civil and political rights as well as economic, social and cultural rights.

➤ Civil and Political rights in the Constitution

⁸ The constitution of the Republic of Rwanda of 2003 revised in 2015

The following civil and political rights are provided in the constitution: right to life (article 12), inviolability of a human being (article 13), right to physical and mental integrity (article 14), equality before the law (article 15) , protection from discrimination(article 16), right to marry and found a family(article 17), respect for privacy of a person and of family (article 23), right to liberty and security of person(article 24), right to a country and nationality (article 25), right to freedom of movement and residence (article 26), right to participate in government and public services (article 27), right to seek asylum (article 28), right to due process of law (article 29),: Freedom of conscience and religion (Article 37) Freedom of press, of expression and of access to information (Article 38), right to freedom of association (Article 39), right to freedom of assembly (Article 40).

➤ **Economic, social and cultural rights in the Constitution**

These are the economic, social and cultural rights guaranteed in the Constitution: protection of the family(article 18), child's right to protection (article 19), right to education (article 20), right to good health (article 21), right to a clean environment (article 22), right to free choice of employment (article 30) , right to form trade unions and employers 'associations (article 31), right to collective bargaining (article 32), right to strike (article 33), right to private property (article 34), right to private ownership of land (article 35), right to activities promoting national culture (article 36).

➤ **Limitation clause in the Constitution**

Human rights are not absolute. It is a common principle in all legal systems of the world that the rights of others and the legitimate needs of the society may justify the imposition of restrictions on the exercise of fundamental rights. For example, houses can be entered in and searched, letters can be lawfully intercepted and conversations overheard by the members of the police in order to gather the necessary evidence on a criminal activity.All of this constitutes limitations to the right to privacy which is otherwise guaranteed by the Constitution.

Under Rwandan law, limitations on fundamental rights are governed by **article 41 of the Constitution** which provides as follows:

“In exercising rights and freedoms, everyone is **subject only to limitations** provided for by the law aimed at ensuring recognition and respect of other people's rights and freedoms, as well as

public morals, public order and social welfare which generally characterise a democratic society”.

2.1.2 International human rights instruments

As per the constitution, all ratified treaties and conventions are integrated into domestic legal system⁹. Rwanda has effectively ratified eight of nine core universal human rights instruments and most of their additional protocols. Many other international and regional human rights conventions were ratified by Rwanda.

Thus Rwanda is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on Prevention and Punishment of the Crime of Genocide, the International Convention on Civil and Political Rights, the International Convention on Economic, Social and Culture Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the African Charter on Human and People’s Rights, Convention on the Rights of Child, Convention on the Rights of Persons with Disabilities, The International Convention on Migrant Workers, as well as several key Protocols related to those treaties among others.

2.1.3 Other domestic laws

Rwanda has also enacted new and/or amended existing laws that emphasize the protection and respect of Human Rights. Some of the national laws include the Penal Code 2018¹⁰, labour law¹¹ 2018, laws concerning land 2013¹², the media laws including a specific law on access to information 2013¹³, Civil society laws 2012¹⁴, political parties law 2013¹⁵, law on persons and

⁹ Article 168 of the constitution provides: “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 this Constitution.”

¹⁰ Law n° 68/2018 of 30/08/2018 determining offences and penalties in general in O.G. (no. Special of 27/09/2018)

¹¹ Law n° 66/2018 of 30/08/2018 regulating labour in Rwanda in O.G. (no. Special of 06/09/2018)

¹² Law N° 43/2013 of 16/06/2013 governing land in Rwanda

¹³ Law n° 04/2013 of 08/02/2013 relating to access to information

¹⁴ Law N°04/2012 of 17/02/2012 governing the organisation and the functioning of national non-governmental organizations, Law governing the organisation and functioning of international non governmental organizations, Law N°06/2012 of 17/02/2012 determining organisation and functioning of religious-based organisations.

¹⁵ Organic Law n° 10/2013/OL of 11/07/2013 governing Political Organizations and Politicians in O.G. (n° Special of 12/07/2013)

family 2016¹⁶, law on successions 2016¹⁷, law on children rights 2018¹⁸, the criminal procedure law 2019¹⁹ and others.

2.2 Government's policies, programmes and home grown initiatives in regard to the promotion and protection of human rights

In addition to the laws, the Government of Rwanda has designed and implemented policies, programs, home grown initiatives aiming at the promotion and protection of human rights, in civil and political rights as well as in economic, social and cultural rights.

Thus, in the framework of access to justice to the Rwandan population in general and to children in particular, the Ministry of Justice adopted policies aimed to offer legal aid to the population. Those policies are the followings: National Legal Aid Policy, which was adopted in September 2014; Justice for Children Policy, which was adopted in October 2014.

Regarding the right to employment, the following policies and an order were adopted in the framework of protecting the health and security of workers at their workplace: Workplace Health and Safety Policy of 15/10/2014; Presidential Order n° 107/01 of 10/07/2014 determining responsibilities and functioning of the Security Committee.

Furthermore, the improvement of the living conditions of poor and vulnerable persons is achieved through the following programs: Umuganda, Ubudehe, Vision 2020 Umurenge Programme (VUP), Labour Intensive Public Works (HIMO), Membership of Mutual Health Insurance Schemes which enables financial access to health and protects people from catastrophic health expenditure thereby contributing significantly to the economic growth as well as socio-economic development of Rwandan citizen, especially those in informal sector.

¹⁶ Law N°32/2016 of 28/08/2016 governing persons and family

¹⁷ Law N° 27/2016 of 08/07/2016 governing matrimonial regimes, donations and successions

¹⁸ Law n° 71/2018 of 31/08/2018 relating to the protection of the child

¹⁹ Law No 027/2019 of 19/09/2019 relating to the criminal procedure

Umurenge SACCO and One Cow per Poor Family Programme(Girinka) are also programmes that have helped to realize economic and social rights of citizens Umurenge Sacco has helped poor citizen to access financial services and obtain loans. The Girinka program has contributed to the reduction of malnutrition through consumption of milk and has increased agriculture production through production of organic manure and boosted family incomes through the sale of milk.

Another home grown initiative is the Tumurere Mu Muryango (TMM) Program where orphaned children are fostered or adopted by families instead of living permanently in orphanages. As a result of this initiative almost all orphaned children in Rwanda are living with foster or adoptive families.

The Isange One Stop Centres for responding to gender based violence are also a uniquely Rwandan initiative. At the one stop centres holistic care is provided for victims of GBV including investigation and gathering evidence for prosecution of the case.

The Nyagatare rehabilitation centre is a product of the Government's policy to promote rehabilitation rather than incarceration for minors.

Rwanda has a unique access to justice system which is decentralised to the local level through the Access to Justice Bureaus. The Ministry of Justice employs three access to justice officers in each of the 30 district to provide immediate legal advice when needed.

2.3 Institutional Framework

The promotion of human rights is a responsibility of the State.²⁰ The constitution entrusts the promotion mandate to the National Commission for Human Rights²¹. Regarding the protection of rights and freedoms, the Judiciary has been recognized as the guardian of human rights and freedoms²². To the above institutions which have been constitutionally mandated to ensure the

²⁰ Article 42 of the constitution

²¹ Idem.

²² Article 43 of the constitution

promotion and protection of human rights, specific laws have been adopted to create additional institutions to compliment them or to deal with persons in special categories.

1. National Commission for Human Rights

The National Commission for Human Rights is provided for in the Constitution in its article 139. The Commission also conforms to the requirements of the Resolution No A/RES/48/134 of 20 December 1993 adopted by the United Nations General Assembly, establishing the Fundamental Principles of National Human Rights Commissions, determining the organization and functioning of National Commissions in charge of the promotion and protection of human rights.

The missions and powers of the Commission are determined in articles 4 and 7 of Law n° 19/2013 of 25 March 2013 determining the missions, organization and functioning of the National Commission for Human Rights.

The Commission has special missions as stipulated by articles 5 and 6 of Law n° 19/2013 of 25 March 2013 determining the missions, organization and functioning of the National Commission for Human Rights. Those missions include:

➤ With regard to the promotion of human rights:

- To educate and sensitize the population on matters relating to human rights and participate in the development of Human Rights educational programmes;
- To collaborate with other organs in designing strategies to prevent violations of human rights;
- To prepare and disseminate reports on the respect of Human Rights in Rwanda, annually and whenever necessary;
- To provide views, upon request or at its own initiative on laws, regulations of public organs in force in the country and bills so as to ensure their conformity to fundamental principles of Human Rights;
- To urge relevant Government institutions to ratify international treaties related to Human Rights and incorporate them in the existing domestic laws;

- To urge relevant Government institutions to submit on time the reports related to international treaties on Human Rights ratified by Rwanda;
- To collaborate with other foreign National Human Rights institutions, local associations and international organizations in Human Rights promotion and protection activities.

➤ **With regard to the protection of human rights:**

- To receive, examine and investigate complaints relating to Human Rights violations;
- To examine Human Rights violations in Rwanda committed by State organs, those who work in the public service abusing their powers, associations and individuals;
- To carry out visits to custodial places with the purpose of inspecting whether the rights of detainees are respected and urge relevant authorities to address identified cases of violation of the rights of detainees;
- To particularly monitor the respect for the rights of the child, women, Persons with disabilities, people living with HIV/AIDS, refugees, migrant workers and members of their families and the elderly;
- To monitor the respect for Human Rights throughout elections process and submit reports to relevant organs;
- To propose to relevant Government authorities measures to be taken to address and punish any violation of Human Rights in accordance with law.

2. The Office of the Ombudsman

It is an independent public Institution established by the Constitution in its article 139. As per article 4 of Law No 76/2013 of 11/9/2013 determining the mission, powers, organization and functioning of the office of the ombudsman, the Office is responsible, among other things, for acting as a link between the citizen, the public and private institutions; preventing and fighting against injustices, corruption and other related crimes in public and private administration; receiving and examining, in the aforementioned context, complaints from individuals and independent associations against the acts of public officials and private institutions and to mobilize these officials and institutions to find solutions to such complaints; as well as receiving

declaration of assets of senior government officials and different other government officials with the aim to prevent the embezzlement of public funds.

3. The supreme court and other courts

The courts play a role in the protection and promotion of human rights through fair and timely judgments. Judgments of the Supreme Court increasingly refer to international human rights treaties ratified by Rwanda. The Supreme Court regularly compiles these cases and avails them to courts for reference.

3 The Rwanda Investigation Bureau (RIB) and the prosecution departments

The Rwanda Investigation Bureau and the national prosecution authority are the two principle organs that receive human rights violations. These two important offices have even established special departments to monitor human rights violations of particular groups. There is gender-based violence within the RIB and a witness protection unit in the prosecution.

4. National Commission for Children (NCC)

Within the framework of respecting and giving a voice to Children's rights, the Government of Rwanda adopted Law No. 22/2011 of 28/6/2011 establishing the National Commission for Children (NCC). The NCC is an independent organ under the Ministry of Gender and Family Promotion (MIGEPROF) and its responsibility is to monitor, promote and protect the rights of children in Rwanda. The NCC has a special mandate to ensure the realization of the rights and freedoms of Rwanda's children, particularly those that are vulnerable in society.

NCC organizes an Annual Children's Summit that serves as a national consultative forum that brings together child delegates from all the administrative sectors across the country. Thus children are given an opportunity to have their perspective included in what is planned for them. In 2014, the Annual National Children's Summit coincided with the 25th anniversary of the UN Convention on the Rights of the Child. In that summit, 507 children from across Rwanda and 17 other children from other East Africa nations convened to discuss on child rights and protection.

5. The Gender Monitoring Office (GMO)

The Government of Rwanda established a Gender Monitoring Office, whose mandate is to monitor gender mainstreaming in all public, private, civil society and faith-based institutions and organizations, as determined by the law N° 51/2007 of 20/09/2007v. The positive rate of gender mainstreaming across the Country can be directly related to the work of this institution that is dedicated to ensuring that the laws and policies are effectively implemented. In addition, the GMO also has the responsibility to participate in the development of policies and response to cases of gender based violence.

6. The National Council for Persons with Disabilities (NCPD)

As per the constitution, The State has the duty to establish special measures facilitating the education of persons with disabilities. The State also has the duty, within its means, to undertake special actions aimed at the welfare of persons with disabilities²³. Furthermore, the Government has the responsibility to ensure the inclusion of persons with disabilities in the decision-making process. In particular, persons with disabilities have the right to have one representative in the Parliament's Chamber of Deputies²⁴ from the National Council for Persons with Disabilities. The NCPD was established by law No. 03/2011 of 10/02/2011 with the purpose to coordinate activities aimed at the advancement of persons with disabilities, to

7. Rwanda Governance Board (RGB)

The Rwanda Governance Board (RGB) is a public institution established by law No 41/2011 of 30/09/2011. RGB's core mission is to promote the principles of good governance and decentralization, conduct research and policy analysis related to governance, monitor the practices of good governance, coordinate and support media sector development and enhance citizen participation among others.

In the fulfilment of its mandate, RGB conducts regular research on the impact and perception of Government services among the public. One of their most successful innovations is the Rwanda

²³ Article 51 of the constitution

²⁴ Article 75. 4 of the constitution

Governance Scorecard, a comprehensive governance assessment tool. The Rwanda Governance Scorecard (RGS) is an annual publication of the Rwanda Governance Board (RGB) that seeks to accurately gauge the state of governance in Rwanda. The RGS is a comprehensive governance assessment tool constructed from data based on over 200 questions, which are structured based on a set of 8 indicators, 35 sub-indicators and 143 sub-sub-indicators. This initiative reflects a continued commitment to evidence-based policies and objective self-assessment in order to identify areas for improvement and drive policy reforms.

It has now become customary for Rwanda to produce evidence of its rapid economic development in various domains, including governance, to feed and inform a number of external comparative assessments. A unique and significant aspect of the RGS vis-à-vis external assessments is that it utilizes a plethora of new, locally-generated data sources, such as citizen perception surveys and detailed institutional data, which are often not considered by external indexes.

The RGS thus seeks to meet the following objectives:

- To generate credible and reliable data on governance issues for national and international stakeholders ;
- To serve as a practical tool that will drive policy reform through the identification of areas for improvement and actionable recommendations;
- To contribute to current knowledge about governance in Rwanda.

8. The National Commission for the fight against Genocide (CNLG)

The National Commission for the fight against Genocide was created by law No 09/2007 of 16/02/2007 determining the attributions, organization and functioning of the national commission for the fight against genocide. The commission started operating in April 2008 and has a core mission to prevent, fight against genocide and genocide ideology; and address genocide consequences both within and outside Rwanda. The commission has helped to elaborate and put in place strategies meant to address the consequences of the Genocide such as trauma and other related physical and mental illnesses. CNLG also conducts advocacy for Genocide survivors on various issues concerning them.

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