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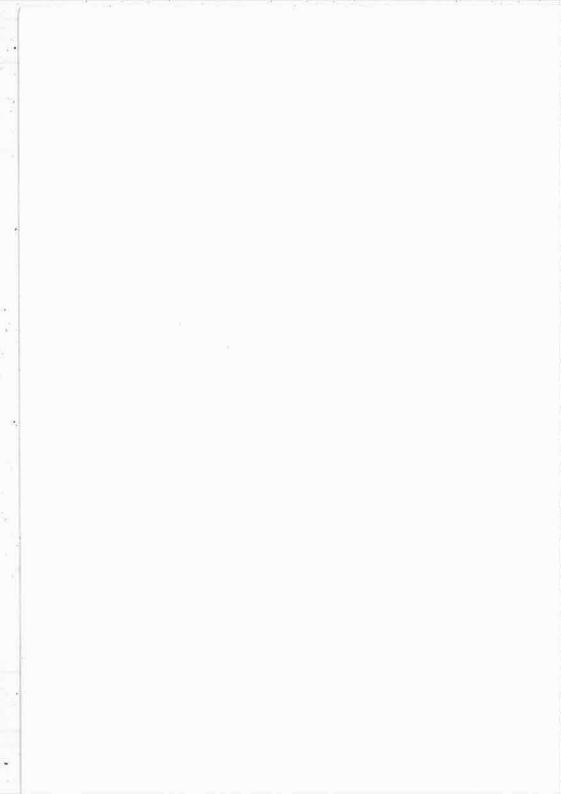
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Editorial

We might extend our deep appreciation upon the exertion of our lecturers and researchers who contributed to the compilation of this publication from the fact that the completion of this volume stemmed from their built credibility. Kigali Independent University (ULK) has always paid regard to promoting education and impacting the complete development of our nation through coupling teaching and research. In the same context, the 28th volume of ULK Scientific, tackles different current issue and suggest recommendations which are worth of consideration.

The first article by Kasai Ndahiriwe and Ruthira Naraidoo compares forecast performance of linear and nonlinear monetary policy rules using South African data. The authors aimed at evaluating the performance of three competing models in an out-of-sample forecasting exercise whereby the overall ranking revealed the superiority of the nonlinear model that distinguishes between downward and upward movements in the business cycles in closely matching the historical record. Hence, forecasting performance tests reveal that the South African Reserve bank pays particular attention to business cycles movements when setting its policy rate.

The second article by Lecturer MUSAFIRI GASANA examines the International Criminal Tribunal for Rwanda procedure in the light of the right to reparation and suggests some mechanisms in order to provide reparation to the victims of genocide in Rwanda. In spite of the recognition of the right to reparation, the victims of the Rwanda Genocide have never been compensated There is therefore a need to set up mechanisms both at the international and national level to facilitate the realization of this right

Along the third article, Titien Habumugisha and Nestor Mungarurire highlight the gaps and loopholes identified in Rwandan labor and social security. As a matter of fact, Law n°13/2009 of 27/5/2009 regulating labor in Rwanda excluded from the scope of its application any person dealing with agriculture, breeding, commercial or industrial activities. The Social Security Act of 2001 had also excluded from coverage agricultural workers. This situation has led to a number of social security issues for excluded workers.

Explore the pages and read more.

Dr. SEKIBIBI Ezechiel

Rector

Evaluating the Forecasting Performance of Linear and Nonlinear Monetary Policy Rules for South Africa

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Abstract

This paper compares forecast performance of linear and nonlinear monetary policy rules using South African data. Recursive forecasts values are computed for 1- to 12-steps ahead for the out-of-sample period 2006:01 to 2010:12. For the nonlinear models we use bootstrap method for multi-step ahead forecasts as opposed to point forecasts approach used for linear models. The aim of the paper is to evaluate the performance of three competing models in an out-of-sample forecasting exercise. Overall ranking reveals the superiority of the nonlinear model that distinguishes between downward and upward movements in the business cycles in closely matching the historical record. As such, forecasting performance tests reveal that the South African Reserve bank pays particular attention to business cycles movements when setting its policy rate.

Key words: Monetary policy rules, forecast evaluation.

JEL classification: C22; C53; E58

1. Introduction

Empirical evidence in the field of monetary policy continues to prove that the behaviour of central bankers is not symmetric either around a certain level of policy instrument, the inflation target or potential output. More recent examples include Hayat and Mishra (2010) and Martin and Milas (2010a) among others. In these cases, besides the failure to reject the null hypothesis of linearity, nonlinear models are found to outperform their rival linear models in terms of goodness-of-fit. It is well known that one of the prime benefits of robust economic models is the predictive accuracy they have. In the field of monetary policy, for instance, a robust monetary policy reaction function can help monetary authorities to predict more accurately the future values of the policy instrument[3].

Given the recent in-sample outperformance of nonlinear monetary policy reaction functions, one can expect the latter to predict the behaviour of central banks better than a simple linear policy rule. However, early in the 1990s, De Gooijer and Kumar (1992) concluded that there was no clear evidence in favour of non-linear over linear models in terms of forecast performance. More than a decade later, Clements *et al.* (2004) suspect that the situation has not changed very much, as we had not gone very far in the area of non-linear forecast models. The literature review by Clements *et al.* (2004) suggests that the forecasting performance of nonlinear models is on average not particularly good relative to rival linear models. As far as monetary policy rules are concerned, Qin and Enders (2008) find more challenging results as they report that

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3 *As far as the South African reserve bank (SARB) is concerned, Reid and Du Plessis (2010) advocate for greater transparency that could be achieved if it were to publish a forecast of the expected path of its policy instrument. Furthermore, as propounded by the same authors, forecasts of the policy instrument would shed some lights on the forward-looking nature of monetary policy and thereby enhance the predictability of the SARB's policy stance.*

the univariate models forecast better than the Taylor rules, linear and nonlinear. More recently, Naraidoo and Paya (2010) compare linear and nonlinear parametric models and, non-parametric and semi-parametric models in forecasting the South African Reserve Bank's repurchase rate. They find that a semi-parametric model that relaxes the functional form of the monetary policy rule outperforms other models especially in long horizon forecasting.

This paper contributes to the scarce literature that uses Taylor rules to forecast the nominal interest rate out-of-sample. Some notable exceptions are Qin and Enders (2008), Moura and Carvalho (2010) and Naraidoo and Paya (2010). In this study about South Africa, we construct the forecasts from linear and nonlinear Taylor type rule models under a backward looking expectations formation for the target variables and examine their forecasting gains over the period 2006:M01 to 2010:M12. The main aim of the paper is to evaluate predictive accuracy of three competing models based on a number of forecasting tests; namely the mean squared prediction error (MSPE), the median squared prediction error (MedSPE) the modified Diebold and Mariano, the encompassing and Cark and West tests.

The rest of the paper is organized as follows. In the next section, we discuss the linear and nonlinear Taylor rule versions to be evaluated for predictive ability. Section 3 discusses the data and forecasting methodology. Section 4 passes into review in-sample properties of the four alternative models by comparing their goodness of fit in terms of the Akaike information criterion (AIC). Section 5 reports an in-depth forecasting evaluation of different models with the aim to determine the best model in predictive ability. Section 6 concludes.

2. Alternative models

In this paper we make comparative forecasting evaluation among the models discussed in Kasai and Naraidoo (2012 and 2013). However, for forecasting purposes we consider backward looking versions rather than the forward looking ones. Although Kasai (2011) suggests that forward looking version of the Taylor rule describes better the behaviour of the SARB than the backward-looking, an out-of-sample forecasting exercise cannot use future values of variables in the pure forecasting sense. Therefore, models Kasai and Naraidoo (2012 and 2013) are rewritten in their backward looking versions.

Model 1:

$$i_t = \rho_i(L)i_{t-1} + (1 - \rho_i)\{\rho_0 + \rho_\pi(\pi_{t-1} - \pi^*) + \rho_y y_{t-1} + \rho_f f_{t-1}\} \qquad (1)$$

where, i_t is the actual nominal interest rate, $\rho_i(L) = \rho_{i1} + \rho_{i2}L + ... + \rho_{in}L^{n-1}$ (we have used $\rho_i \equiv \rho_i(1)$ as a measure of interest rate persistence), π_{t-1} is the inflation rate at time $(t-1)$, y_{t-1} is the output gap at time $(t-1)$, f_{t-1} is a measure of financial conditions index[4] at time $(t-1)$ used to augment the original rule, and ε_t is an error term. Parameter ρ_j is the weight on variable j.

Equation (1) is characterized by three modifications made on the original simple Taylor rule, namely interest rate smoothing, the backward-looking version and the inclusion of financial condition index. The theoretical justification for including the financial conditions measure might either be that it enters the aggregate demand curve, similar to Castro (2008) or Goodhart and Hoffman (2002) or still the policymaker might have preferences for this index being close to equilibrium as in Naraidoo and Raputsoane (2010). For instance, Walsh (2009) points out that when financial

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4. See Kasai and Naraidoo (2012) for the construction of the index.

factors cause distortions, these distortions will in general introduce corresponding terms in a loss function for monetary policy (see for example the theoretical model of Martin and Milas, 2010b). An alternative theoretical justification for the inclusion of the financial index in the policy rule is that the index determines movements in the differential between policy rates and 3-month interbank rates, the latter being the benchmark for private sector interest rates (see for example Martin and Milas, 2009).

Other alternatives consist to allow for nonlinearities in interest rate setting behaviour of the monetary authorities (see Kasai and Naraido, 2012 for more discussion). The first nonlinear version is axed on the widespread belief that central bankers' interventions through changes in a short-term interest rate are influenced by the state of the business cycle (see for instance, Bec *et al.*, 2002). This being the case, the following nonlinear policy rule is considered.[5]

Model 2:

$$i_t = \rho_i i_{t-1} + (1-\rho_i)\{\rho_0 + \theta_t^y(y_{t-1};\gamma^y;\tau)M_{1t} + (1-\theta_t^y)(y_{t-1};\gamma^y;\tau)M_{2t}\} + \varepsilon_t \qquad (2)$$

where $M_{jt} = \rho_{j\pi}\pi_{t-1} + \rho_{jy}y_{t-1} + \rho_{jf}f_{t-1}$ for j=1,2 and the function $\theta_t^y(y_{t-1};\gamma^y;\tau)$ is the weight defined below in (3). M_{1t} is a linear Taylor rule that represents the behaviour of policymakers during business cycle recessions and M_{2t} is a linear Taylor rule that represents the behaviour of policymakers during business cycle expansions. The weight $\theta_t^y(y_{t-1};\gamma^y;\tau)$ is modelled using the following logistic function (see e.g. van Dijk *et al.*, 2002):

$$\theta_t^y\left(y_{t-1};\gamma^y;\tau\right) = 1 - \frac{1}{1+e^{-\gamma^y(y_{t-1}-\tau)/\sigma(y_{t-1})}} \qquad (3)$$

In (3) the smoothness parameter $\gamma^y > 0$ determines the smoothness

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5. *Kasai and Naraidoo (2012) reported that the nonlinear Taylor rule improves its perfor-mance with the advent of the financial crisis, providing the best description of in-sample SARB interest rate setting behavior.*

of the transition regimes. We follow Granger and Teräsvirta (1993) and Teräsvirta (1994) in making γ^{y} dimension-free by dividing it by the standard deviation of y_{t-1}.

In addition to the above non-linear version of the Taylor rule, Kasai and Naraidoo (2013) have reported that opportunistic approach to monetary policy also deserves its particular attention in the context of the South African economy. On this regard, we choose a quadratic logistic function that was reported in Kasai and Naraidoo (2013) to outperform all other models. As such, equation (2) is revised to accommodate the two features of opportunistic approach to monetary policy. The model is specified as follows:

Model 3:

$$i_t = \rho_i(L)i_{t-1} + (1-\rho_i)\begin{Bmatrix} i^* + \theta_t \rho_{ZD}(\pi_{t-1} - \pi_{t-1}^I) + (1-\theta_t)\rho_{OZD}(\pi_{t-1} - \pi_{t-1}^I) \\ + \rho_y y_{t-1} + \rho_f f_{t-1} \end{Bmatrix} + \varepsilon_t \quad (4)$$

where π_t^I is the intermediate inflation target defined as

$$\pi_t^I = \mu\left(\frac{1}{n}\sum_{t=1}^{n}\pi_{t-j}\right) + (1-\mu)\pi^* \text{ and } \quad \theta = pr\{-\delta \le E_t(\pi_{t-1} - \pi_{t-1}^I) \le \delta\}$$

is the probability that inflation is within the zone of discretion.

(5)

$$\theta = pr\{-\delta \le (\pi_{t-1} - \pi_{t-1}^I) \le \delta\} = 1 - \cfrac{1}{1+e^{-\gamma\left[(\pi_{t-1}-\pi_{t-1}^I+\delta)\right]\left[(\pi_{t-1}-\pi_{t-1}^I-\delta)\right]/\sigma^2_{(\pi_{t-1}-\pi_{t-1}^I)}}}$$

Similarly, we follow Granger and Teräsvirta (1993) and Teräsvirta (1994) in making the smoothness parameter $\gamma > 0$ dimension-free by dividing it by the standard deviation of $(\pi_{t-1} - \pi_{t-1}^I)$. In equation (5) it is assumed that the policy maker responds to $(\pi_{t-1} - \pi_{t-1}^I)$. The response is assumed to depend on whether the inflation is within the target zone or not.

Within sample we would expect the fit of such alternative models to be barely distinguishable, given the high correlations between the interest rate and its lags. However, the key distinguishing feature amongst linear and nonlinear models lies in their forecast implications, namely that the equilibrium to which the reaction function returns depends on the size of the shocks/inflation and business cycle states. A linear Taylor type rule model will forecast the interest rate to stay roughly where it is if non-stationary; or, if stationary, to revert to some deterministic equilibrium. Thus the forecast implications of linear as opposed to nonlinear models are quite different. This is kept in mind when forecasting out-of-sample in the section 5 below.

3. Data discussion

In this paper we review and evaluate the predictive accuracy of a variety of models of monetary policy rules using monthly data for South Africa for the period spanning from 2000:M01 to 2010:M12. We split the sample into in-sample and out-of-sample experiments[6]. In-sample observations span from 2000:01 to 2005:12 and out-of-sample observations covers the period spanning from 2006:01 to 2010:12.

The repurchase rate (repo rate) measures the nominal interest rate. Inflation is measured as the annualized rate of change of consumer price index as the later is the SARB's preferred core measure of inflation. The output gap is measured as a difference between the logarithm of industrial production and its Hodrick-

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6 On the expanding window versus fixed-length rolling window issue we note that according to Stock and Watson (2005), "recursive forecasts are more accurate than the rolling forecasts" for the representative macroeconomic dataset they study. On the other hand, however, Giacomini and White (2006) find that a "rolling window procedure can result in substantial forecast accuracy gains relative to an expanding window for important economic time series."

Prescott (1997) trend. The financial condition index is constructed as an average of (i) the real effective exchange rate $(REER_t)$ detrended by a HP filter and where the rand appreciation increases the index, (ii) the real house price index (RH_t) detrended by a HP filter and where the house price index is an average price of all houses compiled by the ABSA bank, deflated by the consumer price index (iii) the real stock price (RS_t) which is measured by the Johannesburg Stock Exchange All Share index, deflated by the consumer price index (iv) the credit spread (CS_t) which is the spread between the yield on the 10-year government bond and the yield on A rated corporate bonds[7], and (v) the future spread which is the change of spread between the 3-month interest rate futures contracts (F_t) in the previous quarter and the current short-term interest rate.

To tackle the end-point problem in calculating the HP trend (see Mise *et al*, 2005a&b), the sample has to be expended on both starting and ending points. With regards to the starting points, this study considers actual data for twelve months prior to 2000. With regard to the ending points, an autoregressive (AR(n)) estimation has been applied to the series under decomposition and the AR model is in turn used to forecast additional observations that have to be added to each of the series before applying the HP filter. The method is applied to the industrial production and the components of the financial index (with n set at 4 to eliminate serial correlation). The obtained smoothed representation t (trend) of a given time series is considered to be its potential level. The cyclical component s represents the fluctuations around the long-run pattern. A negative value of the cyclical component indicates that the short-term level of the series is below its potential level, while a positive value indicates that the short-term level is above the potential one.

7 *For instance Burger (2008) argued that the spread between the mortgage rate and the 10-year government bond rate is very much like an intermediate monetary target since its change leads to an opposite change in output or price level.*

The constructed financial index is expressed in standardized form, relative to the mean value of year 2000 and where the vertical scale measures deviations in terms of standard deviations; therefore, a value of 1 represents a 1-standard deviation difference from the mean. Additionally, all data are seasonally adjusted. The index is also in the spirit of the UK financial conditions index provided by the Bank of England's Financial Stability Report (Bank of England, 2007).

4. In-sample evaluation

This section reviews the in-sample properties of backward looking models that are going to be tested for out-of-sample properties in the next section. Tables 1 and 2 report estimates of the Taylor rule Models 1, 2 and 3 for the in-sample period which runs from 2000:M1 to 2005:M12.

For linear Model 1, the last three rows report Hamilton's (2001) λ-test, and the λ_A and g-tests proposed by Dahl and González-Rivera (2003). Under the null hypothesis of linearity, these are Lagrange Multiplier test statistics following the x^2 distribution[8]. These tests are powerful in detecting non-linear regime-switching behavior like the one considered by Model 2 and 3. All three tests reject linearity. Model 3 in Table 2 exhibits the lowers AIC and shows that the inflation outside the zone of discretion, output gap and financial index effects are statistically significant but not the inflation within the zone of discretion. The results are in line with the opportunistic approach theory.

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8 *We run the tests using Gauss codes obtained from Hamilton's web page at: http://weber. ucsd.edu/~jhamilto/software.htm#other. To account for the small sample, we report boot-strapped p-values of the three tests based on 1000 re-samples.*

Table 1: In-sample estimates for Models 1 and 2

Coefficients	Model 1 (Linear)	Model 2 (Nonlinear)
ρ_0	0.882*** (0.01)	6.876*** (0.19)
ρ_1	0.478*** (0.04)	0.859*** (0.01)
ρ_π	1.077*** (0.08)	
ρ_y	0.023** (0.01)	
ρ_f	0.882*** (0.01)	
$\rho_{1\pi}$		0.697*** (0.03)
ρ_{1y}		0.286 (0.23)
ρ_{1f}		0.059*** (0.01)
$\rho_{2\pi}$		0.062 (0.09)
ρ_{2y}		0.116 (0.08)
ρ_{2f}		-0.024** (0.01)
τ		0.00 (0.00)
γ^y		5.00
AIC	1.173	1.205
S.E	0.418	0.416
$\overline{R}^2$	0.969	0.969
J-stat	0.248	0.230
λ-test	0.001	
λ_A-test	0.000	
g-test	0.001	

Notes:

(i) Where Model 1 is

$$i_t = \rho_i i_{t-1} + (1 - \rho_i)\{\rho_0 + \rho_\pi \pi_{t-1} + \rho_y y_{t-1} + \rho_f f_{t-1}\} + \varepsilon_t$$

and Model 2 is

$$i_t = \rho_i i_{t-1} + (1 - \rho_i)\{\rho_0 + \theta_t^y(y_{t-1}; \gamma^y; \tau)M_{1t} + (1 - \theta_t^y)(y_{t-1}; \gamma^y; \tau)M_{2t}\} + \varepsilon_t$$

with $M_j = \rho_{j\pi}\pi_{t-1} + \rho_{jy}y_{t-1} + \rho_f f_{t-1}$ for $j = 1, 2$ and y_t is the transition variable.

(ii) Numbers in parentheses are standard errors. *(**)[***] indicate that the parameter is significant at a 10(5)[1] % level respectively. AIC is the Akaike Information Criterion. J-stat is the p-value of a chi-square test of the model's over-identifying restrictions (Hansen, 1982). The set of instruments includes a constant, 1-6, 9, 12 lagged values of repo rate, the inflation, the output gap, the 10-year government bond, money (M3) growth, and the financial index.

Table 2: The Opportunistic Approach (Model 3)

Coefficients	Model 3
ρ_i	0.832*** (0.01)
ρ_π	
ρ_{ZD}	0.396 (0.30)
ρ_{OZD}	1.147*** (0.04)
ρ_y	0.523*** (0.03)
ρ_f	0.008*** (0.00)
μ	0.530*** (0.03)
δ	2.05
S.E	0.394
AIC	**1.052**
$\bar{R}^2$	0.972
H_0: $\rho_{ZD} = \rho_{OZD}$ (p value)	0.000
J-statistic (p value)	0.249

Notes: Numbers in parentheses are standard errors. *(**)[***] indicate that the parameter is significant at a 10(5)[1] % level respectively. S.E is the regression standard error. AIC is Akaike Information criterion. J-statistic is the p-value of a chi-square test of the model's over-identifying restrictions (Hansen, 1982). The set of

instruments includes a constant, 1-6, 9, 12 lagged values of repo rate, the inflation, the output gap, the 10-year government bond, money (M3) growth, and the financial index.

5. Out-of-sample evaluation

5.1. Forecasting methodology

In this paper, in-sample observations spans from 2000:01 to 2005:12 and out-of-sample observations covers the period spanning from 2006:01 to 2010:12. The number of in-sample and out-of-sample observations is denoted by R and P, respectively, so that the total number of observations is $T = R + P$. As we perform recursive out-of-sample forecasts, the in-sample observations increase from R to $T - h$. In the recursive exercise, the parameters of the model are re-estimated by employing data up to time $t - 1$ so as to generate forecast for the following h horizons. The number of forecasts corresponding to horizon h is equal to $P - h + 1$. The forecasting nonlinear monetary policy rule can be described by the following model

$$i_t = F(X_{t-1}; \theta) + \varepsilon_t \qquad (6)$$

Where $\varepsilon_t \sim iid(0, \sigma^2)$ and X_t is a $(k \times 1)$ vector of the exogenous variables and lagged repo rate as defined in Section 2. The optimal one-step-ahead forecast equals

$$\hat{i}_{t+1/t} = E[i_{t+1} / X_t] = F(X_t; \theta) \qquad (7)$$

which is equivalent to the optimal one-step-ahead for the alternative linear model. An easy way of obtaining a 2-step-ahead forecast is to draw it from the 1-step-ahead forecast and have

$$\hat{i}_{t+2/t}^{(n)} = F(X_{t+1}; \theta). \qquad (8)$$

However, this approach has been a subject of strong criticisms to the extent of being named 'naïve' by Brown and Mariano (1989) or 'skeleton' forecast by Tong (1990). These fair criticisms are based on the fact that equation (6) considers $E(\varepsilon_{t+1}/X_t) = 0$ and are supported by simulation evidence by Lin and Granger (1994) reporting substantial losses of efficiency.

As opposed to the so called 'naïve' or 'skeleton' approach numerical techniques are required in forecasting nonlinear models like the ones in section 2. Detailed discussions on the techniques are provided by Granger and Teräsvirta (1993), Franses and van Dijk (2000) and Fan and Yao (2003). In this paper, the residuals ($\hat{\varepsilon}_t$) of the estimated model is obtained through bootstrapping. With this method, the density of $\hat{\varepsilon}_t$ is composed of N independent error vectors $\left\{\varepsilon_{t+1}^{(1)}, ..., \varepsilon_{t+1}^{(N)}\right\}$ giving a better approximation of the 2-step-ahead forecast as follows:

$$i_{t+2/t}^{B} = \left(\frac{1}{N}\right)\sum_{i=1}^{N} F\left(X_{t+1/t} + \varepsilon_{t+1}^{i}; \theta\right) \tag{9}$$

To obtain h-step-ahead, one generates $\varepsilon_{t+1}^{(i)}, ..., \varepsilon_{t+h}^{(i)}$, $i = 1, ..., N$ and sequentially computes N forecasts for $i_{t+1/t}, ..., i_{t+h/t}$ with $h \geq 2$ and where a single point forecast for a particular point in time is obtained by simply averaging its corresponding N forecasts (see Teräsvirta, 2006).

Forecasting performance is evaluated using, among other tests, the Mean Squared Prediction Error (MSPE) and Median Squared Prediction Error (MedSPE) criteria. For robustness purpose, we also test the null hypothesis of equal forecasting accuracy using modified Diebold-Mariano statistics ($DM-t$) , see Harvey et al., 1997). The $DM-t$ for any two models denoted by 1 and 2 is computed as follows

$$DM - t = \left(P - h + 1\right)^{1/2} \frac{\overline{d}}{\hat{S}_{dd}^{1/2}},$$

where $\hat{d}_{t+h} = \hat{c}_{1,t+h}^2 - \hat{c}_{2,t+h}^2$; $\hat{c}_{t,t+h}$ being h-step ahead prediction error for model i

$$\overline{d} = (P - h + 1)^{-1} \sum_{t=R}^{T-h} \hat{d}_{t+h} = MSPE_1 - MSPE_2 ;$$

$$\hat{\Gamma}_{dd}(j) = (P - h + 1)^{-1} \sum_{t=R}^{T-h} \hat{d}_{t+h} \hat{d}_{t+h-j} \text{ for: } j \geq 0 \text{ and } \hat{\Gamma}_{dd}(j) = \hat{\Gamma}_{dd}(-j) ;$$

$$\hat{S}_{dd} = \sum_{j=-j}^{j} K(j/M) \hat{\Gamma}_{dd}(j) \quad \text{denotes the long-run variance of } d_{t+h}$$

estimated using a kernel-based estimator with function $K(.)$, bandwidth parameter M and maximum number of lags j. We follow Harvey et al. (1997) in correcting for small-sample bias and so the corrected test statistic is obtained by multiplying the above $DM - t$ by

$$\zeta = \sqrt{\frac{P - 2h + h(h-1)/(P - h + 1)}{(P - h + 1)}}$$

The hypotheses to be tested are

$$H_0 : \hat{e}_{1,t+h} - \hat{e}_{2,t+h} = 0 \text{ and } H_1 : \hat{e}_{1,t+h} - \hat{e}_{2,t+h} \neq 0$$

The rejection of the null is based on Student's t distribution with (n – 1) degrees of freedom rather than the standard normal distribution (see Harvey *et al.*, 1997). It is worth to mention that nonlinear Taylor rule equations nest the linear equations and therefore their population errors are identical under the null hypothesis making the variance d_{t+h} equal to zero (see McCracken, 2007). Indeed, it has been argued that asymptotic distribution theory for the Diebold and Mariano (1995) test does not hold for nested models (see McCracken, 2000; Clark and

McCracken, 2001 and Teräsvirta, 2005). However, Giacomini and White (2006) showed that when in-sample size remains finite, the asymptotic distribution of the Diebold and Mariano statistic (DM statistic) is still standard normal when forecasts are compared from nested models. Bhardwaj and Swanson (2006) also argue that the $DM-t$ statistic can still be used as an important diagnostic in predictive accuracy as the non-standard limit distribution is reasonably approximated by a standard normal in many contexts.

As far as the issue of nestedness is concerned, we apply the Clark and McCracken (2001) encompassing test ($ENC-t$) and Clark and West (2007). Both tests are designed to test the null hypothesis of equal forecasting accuracy for nested models. The $ENC-t$ statistic is given by

$$ENC - t = (P-1)^{1/2} \frac{\overline{c}}{\left(P^{-1} \sum_{t=R}^{T-1} (c_{t+h} - \overline{c}) \right)^{1/2}} ,$$

where $c_{t+h} = \hat{e}_{1,t+h}(\hat{e}_{1,t+h} - \hat{e}_{2,t+h}) = \hat{e}_{1,t+h}^2 - \hat{e}_{1,t+h}\hat{e}_{2,t+h}$ and $\overline{c} = P^{-1} \sum_{t=R}^{T-h} c_{t+h}$. The $ENC-t$ has the same null hypothesis as the $DM-t$ test, but the alternative is $H_1 : \hat{e}_{1,t+h} - \hat{e}_{2,t+h} > 0$ which is more restrictive than the $DM-t$ that considers $H_1 = \hat{e}_{1,t+h} - \hat{e}_{2,t+h} \neq 0$. For $h=1$, the limiting distribution is $N(0,1)$. By contrast, Clark and McCracken (2001) show that for multistep-ahead ($h>1$) forecasts, the limiting distribution is non-standard. However, as noted by Bhardwaj and Swanson (2006), tabulated critical values are quite close to the $N(0,1)$ values when Newey and West (1987)-type estimator is used for $h>1$. As such, standard normal distribution can be used as a rough guide for multistep-ahead forecasts comparison (see Clark and McCracken, 2001 for further details).

An alternative test for equal forecast errors is the Clark and West test (CW-test) statistics given by

$$\hat{f}_{t+h} = (i_{t+h} - \hat{i}_{1t,t+h})^2 - [(i_{t+h} - \hat{i}_{2t,t+h})^2 - (\hat{i}_{1t,t+h} - \hat{i}_{2t,t+h})^2].$$

Where the period t forecast of the repo rate i_{t+h} from the two models are denoted $\hat{i}_{1t,t+h}$ and $\hat{i}_{2t,t+h}$ with corresponding period $t+h$ forecast errors $i_{t+h} - \hat{i}_{1t,t+h}$ and $i_{t+h} - \hat{i}_{2t,t+h}$. The test for equal MSPE is performed by regressing $\hat{f}_{t+h}$ on a constant and using the resulting t-statistic for a zero coefficient (see Clark and West, 2007). As above, the null hypothesis is equal MSPE while the alternative is model 2 has a smaller MSPE than model 1. In line with Clark and West (2007), the null is rejected if the t-statistic is greater than +1.282 (for a one sided 0.10 test) or +1.645 (for a one sided 0.05 test).

5.2. Testing predictive ability

One of the prime usages of robust economic models is to predict the future pattern of economic series. Therefore, most economic models, linear or non-linear can be judged in terms of their forecasting performance. As such, this paper uses a variety of functional forms discussed in section 2 and section 4 with the aim of obtaining the best model in predictive ability. The forecast evaluation based on the mean squared prediction error (MSPE) and the median squared prediction error (MedSPE) have been reported. These two forecast error statistics are scale dependent. According to the criteria, smaller errors show better predictive ability and therefore the closer to zero the better the predictive ability of the model. The ranks of the 3 competing models' forecasts are shown in Tables 3 and 4. The comparison of forecast performance is made vertically for each horizon in terms of forecasting test. As shown in Tables 3 and 4, nonlinear Model 2 yields the smallest MSPE and

MedSPE for the short and long horizons and so ranked the first in terms of these criteria. Comparing the remaining two models, one can observe that linear Model 1 is ranked the second best for the very short horizon. However, multi-step ahead $(h > 3)$ forecast evaluation reveals empirical evidence in favour of the nonlinear model 3 in terms of MSPE. It is known that significant in-sample evidence of predictability does not guarantee significant out-of-sample predictability. This might be due to a number of factors such as the power of tests (see Inoue and Kilian, 2004). In terms of MedSPE, the linear Model 1 is ranked second. Average ranking respectively based on MSPE and MedSPE is reported in the last columns of Table 3 and 4 showing the superiority of nonlinear model 2.

Table 3: Mean squared prediction error rank (recursive estimates)

Model	h=1	h=2	h=3	h=4	h=5	h=6	h=7	h=8	h=9	h=10	h=11	h=12	Average rank
1 (b)	2	2	2	3	3	3	3	3	3	3	3	3	2.75
2 (b)	1	1	1	1	1	1	1	1	1	1	1	1	1
3 (b)	3	3	3	2	2	2	2	2	2	2	2	2	2.25

Notes: The Table reports the out-of-sample forecasting ranks of Model 1, 2 and 3 across the recursive windows for forecasting horizons $h=1,...,12$, using the Mean Squared Prediction Error (MSPE). The last column reports the average forecasting rank. Model 1 is the linear estimation, Model 2 is nonlinear with output as transition variable and Model 3 is a nonlinear estimation that accommodates the opportunistic approach to disinflation.

Table 4: Median squared prediction error rank (recursive estimates)

Model	h=1	h=2	h=3	h=4	h=5	h=6	h=7	h=8	h=9	h=10	h=11	h=12	Average rank
1 (b)	2	2	2	2	2	3	3	2	2	2	2	2	2.16
2 (b)	1	1	1	1	1	1	1	1	1	1	1	1	1
3 (b)	3	3	3	3	3	2	2	3	3	3	3	3	2.83

Note: The Table reports the out-of-sample forecasting ranks of Model 1, 2 and 3 across the recursive windows for forecasting horizons h=1,...,12, using the Median Squared Prediction Error (MedSPE). The last column reports the average forecasting rank. See Table 3 for the forecasting model definitions.

The modified Diebold-Mariano ($DM-t$) test results are reported in Table 5. These examine the statistical significance of MSPE reductions with uniform weight placed on forecast losses. The Table provides pair wise out-of-sample forecast comparisons based on recursive estimates. Table 5 shows that the modified Diebold and Mariano (1995) test points to the superiority of Model 2 over the linear model for the short and medium term horizons $(2 \leq h \leq 8)$, but such dominance disappears as the forecast horizon lengthens $(h \geq 9)$. On the other hand, the nonlinear Model 3 is never significantly better than the linear one.

Turning to the tests designed to test the null hypothesis of equal forecasting accuracy for nested models, the judgment based on ENC_t and CW_t, respectively reported in Tables 6 and 7, is not much different from the one based on MSPE above. In fact, the results in Tables 6 and 7 reveal strong empirical evidence in favour of nonlinear models. Relative to the linear Model 1, nonlinear Model 2 is reported to yield the best predictive accuracy for all horizons in terms of both the encompassing (ENC_t) and Clark and West (CW_t) tests. Comparing predictive accuracy for linear model 1 and nonlinear Model 3 it is also clear that for multi-step

ahead ($h > 3$), the nonlinear Model 3 can be judged best ranked for these longer horizons. However, the linear Model 1 can predict the near future ($h \leq 3$) better than the nonlinear Model 3.

All in all, Model 2 is best in closely matching the historical record for all the horizons. Overall ranking also shows that the nonlinear Model 3 is second best in medium and long horizons. As such, the findings would alleviate the concern by Clements *et al.* (2004) who reported lack of predictive ability for most of nonlinear models relative to their benchmark linear ones.

Table 5: Forecast Accuracy Evaluation ($DM - t$)

	Step1	Step2	Step3	Step4	Step5	Step6	Step7	Step8	Step9	Step10	Step11	Step12
Model 1 vs												
Model 2	0.02	1.46*	1.96**	2.06**	2.07**	1.78**	1.50*	1.31*	1.20	1.14	1.09	1.13
Model 3	-1.28	-1.08	-0.71	-0.34	-0.23	-0.18	-0.11	-0.08	-0.02	0.01	0.03	0.06
Model 2 vs												
Model 3	-0.75	-2.08	-2.19	-1.82	-1.75	-1.60	-1.42	-1.26	-1.13	-1.07	-1.01	-1.05

Note: Table 12 shows forecast comparisons based on modified Diebold-Mariano statistics ($DM - t$) for horizons extending from 1 to 12. The entries in the table show the test statistics for the null hypothesis that Model i's forecast performance as measured by MSPE is not superior to that of Model j at the 5% and 10% significance level respectively denoted by two and one asterisks (indicating the rejection of the null hypothesis). For definitions of Models, see footnote for Table 3.

Table 6: Forecast Accuracy Evaluation $(ENC-t)$

	Step1	Step2	Step3	Step4	Step5	Step6	Step7	Step8	Step9	Step10	Step11	Step12
Model 1 vs												
Model 2	1.38*	2.07**	2.43**	2.61**	2.91**	3.22**	3.54**	3.84**	4.20**	4.77**	5.14**	5.70**
Model 3	0.73	0.47	0.66	1.31*	1.67**	1.92**	2.25**	2.42**	2.57**	2.88**	3.08**	3.45**
Model 2 vs												
Model 3	1.78**	1.23	0.98	1.20	1.16	1.09	1.02	0.93	0.77	0.70	0.65	0.55

Note: Table 13 shows forecast comparisons based on Clark and McCracken (2001) encompassing test statistics $(ENC-t)$ for horizons extending from 1 to 12. The entries in the table show the test statistics for the null hypothesis that Model i's forecast performance as measured by MSPE is not superior to that of Model j at the 5% and 10% significance level respectively denoted by two and one asterisks (indicating the rejection of the null hypothesis). For definitions of Models, see footnote for Table 3.

Table 7: Forecast Accuracy Evaluation (CW_t)

	Step1	Step2	Step3	Step4	Step5	Step6	Step7	Step8	Step9	Step10	Step11	Step12
Model 1 vs												
Model 2	1.732*	3.922**	4.693**	4.566**	4.796**	4.599**	5.017**	4.916**	4.705**	4.536**	4.309**	4.204**
Model 3	0.721	0.470	0.657	1.303*	1.635*	1.868**	2.173**	2.312**	2.432*	2.697**	2.855**	3.163**
Model 2 vs												
Model 3	1.761**	1.221	0.969	1.192	1.140	1.064	0.980	0.889	0.731	0.652	0.508	0.503

Note: Table 14 shows forecast comparisons based on modified Clark and West statistics CW_t for horizons extending from 1 to 12. The entries in the table show the test statistics for the null hypothesis that Model i's forecast performance as measured by MSPE is not superior to that of Model j at the 5% and 10% significance level respectively denoted by two and one asterisks (indicating the rejection of the null hypothesis). For definitions of Models, see footnote for Table 3.

6. Conclusion

In this paper, three functional forms of a Taylor type policy rule have been used for forecasting exercise with the aim of obtaining the best model in predictive ability. Out-of-sample properties are assessed using point forecast for the linear model while forecast obtained by means of bootstrapping method is used for nonlinear models. The evaluation is based on several forecasting accuracy tests; namely the mean squared prediction error (MSPE), the median squared prediction error (MedSPE) the modified Diebold and Mariano, the encompassing and Cark and West tests.

Comparison of the forecasts from nonlinear functional forms with the benchmark linear model, show the advantage of considering nonlinearities in monetary policy reaction functions for most of the cases. Indeed, based on several forecasting accuracy tests, overall ranking reveals the superiority of the nonlinear model that distinguishes between downward and upward movements in the business cycles in closely matching the historical record. As such, forecasting performance tests reveal that the SARB pays particular attention to business cycles movements when setting its policy rate.

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REPARATION UNDER THE CONTEXT OF TRANSITIONAL JUSTICE AND THE LEGACY LEFT BY THE INTERNATIONAL CRIMINAL COURT FOR RWANDA

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ABSTRACT

The past century has been marked by a codification of international norms with the aim of protecting human rights. However, the full realization of these rights in accordance with the international legal instruments is yet to be achieved. In spite of the recognition of the right to reparation, the victims of the Rwanda Genocide have never been compensated. The need for adequate reparations which play an important role in helping the victims to reconstruct their life cannot be gainsaid. However, it is clear that the recognition of the right to reparations does not in itself guarantee its realization. There must exist mechanisms both at the international and national level to facilitate the realization of this right. This article examines the International Criminal Tribunal for Rwanda procedure in light of the right to reparation and suggests some mechanisms in order to provide reparation to the victims of genocide in Rwanda.

BACKGROUND OF THE STUDY

In 1994, more than a million[9] people were killed during the genocide in Rwanda. Despite the conviction of the perpetrators of the genocide, the victims of the genocide have not been compensated. During the genocide, damages included physical, moral and material effects. There was considerable bodily harm committed on the victims. The numerous people murdered during that short period in 1994 were killed with varied instruments, including traditional tools such as pangs, machetes and clubs, as well as modern weapons such as guns and grenades.[10] Women and girls were subjected to widespread sexual assault, and as one survivor put it, "most women were raped"[11]. Sexual assault took all forms; individual rapes, gang rape and sexual slavery. Such assaults caused further physical consequences such as contracting diseases such as AIDS, development of uterus infections, ruptures of the uterus, and back problems. In some cases, some victims became pregnant, leading to some women suffering from the effects of self-induced abortions[12].

Based on this opinion, the Rwandan law strongly prohibits abortion[13]. Further atrocities included mutilation by way of cutting sexual organs, breast, other body parts, and unborn foetus's in certain instances. Some victims were meant to endure burns from boiling water or acid[14].

9   Rwanda: The Preventive Genocide 2000 Report of international Panel of Criminal Personalities to investigate the 1994 Genocide in Rwanda; available at National Commission of Unity and Reconciliation website.
10   Prumier, G. The Rwanda Crisis: History of a Genocide, 1959-1994, 1st Ed., Kampala: Fountain Publishers, 1994, pp. 248-249.
11   Human Rights Watch/Africa, Shattered Lives: Sexual Violence during the Rwanda Genocide and its Aftermath New York: Human Rights Watch, 1996, p. 48.
12   Ibidem, pp. 39-64.
13   Décret-loi N° 21/77 du 18 aout 1977, instituant le Code Pénal, J.O.R.R. 7/78, N° 13 bis, p. 92, Article 379, stipulate that abortion remains illegal under Rwandan law.
14   Human Rights Watch/Africa, op cit, p.78.

Given the material and physical damages inflicted on the victims, there is no doubt therefore, that the victims continue to suffer the effects of the genocide. The memories of their relatives, friends and colleagues and the kind of death they faced still haunts them. Many remain traumatized as a result of what they saw, experienced and lost.

Unwanted children as a result of rape keep the victim reminded of the experiences they passed through[15]. Reduced chances of remarrying and marrying due to the various mutilations and amputations worsen the situation[16].

Children have been the most affected. In a survey carried out by UNICEF together with the ministry of Labour and Social Welfare in Gitarama and Butare Prefectures (nowadays Southern Province), the following was discovered:

a.   92.8% have experienced death in their family due to the war;

b.   90.4% have seen dead bodies or parts of bodies;

c.   81.3% have witnessed someone being injured or killed;

d.   67.7% have witnessed killings or injuries with pangas;

e.   65.9% have witnessed group massacres;

f.   63.6% were threatened that they would be killed;

g.   62.0% had to hide for 4-8 weeks to protect themselves during the war;

h.   47.5% have witnessed family members being killed;

i.   44.9% have witnessed killings or injuries of others by children;

j.   36.4% have witnessed rape or sexual assault.[17]

15   _Ibidem_, pp. 79-82
16   Ngarambe, J. _The compensation of 1994 victims of genocide under Rwandan Law_, Article, National University of Rwanda, Butare, June, 1999, p. 6
17   Children: _The Future of Rwanda_, a Ministry of Labor and Social Affairs/UNICEF update on children in especially difficult circumstances, N° 2, 31 July 1995, p.3, see also Ngarambe, J. _Op cit_, p. 6

These experiences have had a profound and traumatizing effect on many children, and the full extent of this damage may only be understood at a later date[18].

The victims were stripped before they were killed. Leading extremists took up Tutsi business, vehicles, industrial premises, bank accounts, cows and land[19]. Today, as one move around in Rwanda, there are many houses destroyed, either totally or by way of looting windows, doors and roofs from them. But to achieve this, the victims had to be killed or to be physical incapacitated by the perpetrator[20].

At the international level, there has been a gradual focus on the realization of the rights of victim. Article 8 of the International Covenant on Civil and Political Rights "requires parties to insure that any person whose rights, freedoms as here in recognized are violated shall have an effective remedy, not withstanding that the violation has been committed by persons acting in official capacity".[21] More recently, in 2005, the United Nations (UN) General Assembly adopted the Basic Principles, on the Right to a Remedy and Reparation for Victims of Gross Violations of International Humanitarian law.[22]

The statute of the International Criminal Tribunal for Rwanda also recognizes the need for victims to be indemnified. However, it delegates this process of indemnification to the national courts. It merely gives assistance to the victims by availing the judgment convicting the perpetrators for presentation to the national courts.[23]

18 Ngarambe, J. *Op cit*, p. 6, see also children : The future of Rwanda, a Ministry of labour and social affairs/UNICEF update on children in especially difficult circumstances, Nº 2, 3 July 1995, p.3

19 Ngarambe, J. *op cit*, p.6

20 *Ibidem*

21 Article 2 (3) of the International Covenant on Civil and Political Rights

22 General Assembly Resolution 60/147 of 16 December 2005

23 Rule 106 (B) of procedure and evidence of the International Criminal Tribunal for

Despite the consistent recognition of the right to remedy in international law, the victims of genocide have never been compensated.

Statement of the problem

The victims of the 1994 genocide underwent moral, material and physical harm losses. However, their rights have neither been facilitated by the National Jurisdictions nor the International Criminal Tribunal for Rwanda.

The International Criminal Tribunal for Rwanda bears no mandate to make orders of reparation. Instead, it is simply recognizes the mandate of the national courts to order reparations. A victim seeking reparation for the national court can claim compensation from a national court 106 (B) of Rules of Procedure and Evidence of International Criminal Tribunal for Rwanda.

This mechanism of indemnity has become theoretical because on the one hand, the UN has not availed a fund to indemnify the victims of the 1994 genocide and on the other hand, because the victims of the genocide do not take their cases against the convicted persons by the International Criminal Tribunal for Rwanda to national justice tribunals.

In light of these arguments, it is evident that the domestic reparation mechanism mentioned in the International Criminal Tribunal for Rwanda statute is hardly effective. This poses a challenge for the victims to obtain wholesome justice.

Rwanda

Objectives of the study

General objectives

This study seeks to illuminate the recognition the right of victims to obtain indemnity for harms suffered under international law. It further seeks to analyze whether the victims of the Rwanda genocide have realized this right to indemnity.

Specific objectives

Specific objectives of the study are:

- To determine whether international law recognizes the right of victims to reparation for harm caused.

- To establish whether this law governing the International Criminal Tribunal for Rwanda provides for the reparation of victims of the tutsi genocide.

- To determine whether the victim of genocide in Rwanda have been able to obtain reparation for their loss.

Significance of the study

This study generates useful information that would contribute to the realization of the indemnization of the 1994 victims of genocide. The study further illustrates that criminal proceedings not accompanied by compensation to the victims does not constitute complete justice. Thus, the study makes a case for the indemnization of victims which will make a contribution towards the peace and justice endeavors in the country.

Scope

This article focuses on principles of international criminal justice and international human rights. These principles are applied to the law governing the International Criminal Tribunal for Rwanda in regard to possible indemnization of victims of 1994 genocide in Rwanda. The latter originates from the sector of Kiramuruzi, district of Eastern province of Rwanda. These victims are males and females. It further illuminates the victims the way to follow in order to get compensation.

Research questions

The study is guided by the following research questions:

- Does international law recognize the right of victims to reparation for harm caused?

- Does the law governing the International Criminal Tribunal for Rwanda provide for the reparation of the victims of the Rwanda genocide?

- Have the victims of the Rwanda genocide been able to obtain reparation for their loss?

I. Key concepts

Genocide: Article II of the Convention on the Prevention and Punishment of the crime of Genocide adopted by the United Nations General Assembly on 9 December 1948 defines genocide as any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such :

a) Killing member of group;

b) Causing serious bodily or mental harm to members of the group;

c) Deliberately inflicting on the group of life calculated to bring about its physical destruction in whole or in part;

d) Imposing measures intended to prevent births within the group;

e) Forcibly transferring children of the group to another group.

And article III comes of the same convention enumerates the acts which shall be punishable:

a) Genocide;

b) Conspiracy to commit genocide;

c) Direct and public incitement to commit genocide;

d) Attempt to commit genocide;

e) Complicity in genocide.

"Genocide as an international crime, has been universally recognized both under customary international law and by the Genocide Convention of 1948, but unfortunately, until recently; had been completely ineffectual in bringing those individuals responsible to international justice. On the hierarchy of humanitarian and human rights crimes there can be little doubt that genocide ranks as one of the most serious and heinous of offences. Genocide is not only recognized as a crime under customary international and treaty law but is also now generally accepted as acquiring *jus cogens* status"[24].

As it has been stipulated previously (see above article II of the convention on prevention and punishment of genocide), the acts of genocide may to be committed there must be the intent to destroy, in whole or in part a particular group.

24 Claire de Than, B.A and al, *International Criminal Law and Human Rights*, London Metropolitan University, Sweet & Maxuell, 2003, p.320

Victim: A person is a victim if, as a result of acts or omissions that constitute a violation of international human rights or humanitarian law norms, that person, individually or collectively, suffered harm, including physical or mental injury, emotional suffering, economic loss or impairment of that person's fundamental legal rights. A victim may also be a legal personality, a dependant, or a member of the immediate family or household of the direct victim, as well as a person who, in intervening to assist a victim or prevent the occurrence of further violations, has suffered physical, mental, or economic harm[25].

We should note that the rules of procedure and evidence of International Criminal Court provide the following definition of victims[26]:

For the purposes of the Statute and the Rules of Procedure and Evidence:

(a) 'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court.

(b) Victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science if charitable purpose, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.

This part b shows clearly that the victims can constitute a civil party under physical and moral persons in opposition to International Criminal Tribunal for Rwanda and International

25 Paragraph 8 of the UN's Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, *adopted and proclaimed by* General Assembly Resolution 60/147 of 16 December 2005
26 Rule 85 of Rules of procedure and evidence of INTERNATIONAL CRIMINAL COURT

Criminal Tribunal for Former Yugoslavia that only consider physical persons.

Reparation: the word 'reparation' stems from 'repair' meaning to fix or mend. It overlaps with a cluster of other related concepts, including restitution, compensation, atonement, damages and remedies[27]. The aim of reparation is to eliminate as far as possible the consequences of the illegal acts and to restore the situation that would have existed if the act had not been committed[28]. Brownlie defines reparation as all payment of compensation (restitution), an apology, the punishment of the individuals responsible, the taking of steps to prevent a recurrence of the breach of duty and any other forms of satisfaction. An example of such reparation is the US government's payments to the surviving Japanese Americans who were interned during the Second World War[29].

Compensation: is the payment of money as recognition of the wrong done and to make good the losses suffered. A distinction can be made between nominal damages (a small amount of money symbolizing the vindication of rights), pecuniary damages (intended to represent the closest possible financial equivalent of the loss or harm suffered), moral damages (relating to immaterial harm, such as fear, humiliation, mental distress or harm to a person's reputation or dignity) and punitive damages (which are of a different nature, and intended rather to punish or deter than to make up for the loss suffered)[30]. On the other hand, compensation concerns financial recovery in order to indemnify physical, psychological and material prejudices, this includes

27 Gerry, J. and Danie W. V. N., *Hand book of restorative justice*, Willan publishing book, 2007, p.24
28 Emänuela C. G., RICR, September IRRC, September 2003, Vol. 85, n° 851, P.531
29 Brownlie, I. (2003), *Principles of Public International Law* (6th edn). Oxford.oxford University Press, p. 442

30 Victims: participation and reparations-megret international criminal, http://sites. google.com/site/internationalcriminallaw/Home/24-victims, accessed on 10th October 2010, p 5

notably medical fares, hospitality fees and damages to property. This indemnity must extent to damages in short and long terms. The function of compensation is to reflect in the major and limit of monetary indemnisation, undergone losses by the victims[31].

Rehabilitation can be defined as the restoration of a victim's physical and psychological health. Including rehabilitation in a full reparation programme will normally require an initiative on the part of the state and its active involvement in the provision of medical and psychological care and of legal and social services. (The mere reimbursement of medical and other related expenses can be considered a form of compensation)[32]. On the other hand, rehabilitation aims to provide medical and psychological care to the victims as well as social or legal services in order to structure and proceed with the victims' rehabilitation process[33].

"The first position, **Restitution** refers to re-establishing the situation which existed before the wrongful act was committed, although the final report of the working group on procedural matters of the Rome Conference seems to indicate a strong wish to develop international standards regarding reparations. The final report also makes reference to the basic principles and guidelines on the Right to remedy and reparation for victims of gross violations of International Human Rights Law and Serious Violations of International Humanitarian Law[34]. The aim of restitution is to restore the situation that existed before the wrongful act was committed[35]. It is necessary to mention that:

restitution of property extent by the restoration
of legal rights of ownership of the victims. This
aims to remit the person who has undergone

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31 Wemmers, J.A., (dir), *Reparation and the International Criminal Court*: Meeting the needs of victims, Montréal, International Centre of Comparative Criminology, University of Montréal, 2006, p. 87
32 Victims: participation and reparations-megret international criminal, *op cit*, p.5
33 Wemmers, J.A., *op cit*, p. 87
34 *Ibidem*
35 IRRC September 2003, vol. 85 N° 851, p 531

material losses in the situation where they could be before the commission of criminal acts. There exist two problems in connection with this mode of reparation. The first being the duration of detention of property by instances for reasons of evidence (this may become a very long process for the victims). Finally, even if the leadership has recovered the property, it will be particularly difficult, even practically impossible to find its owner[36]".

Harm: while Article 75 specifically refers to "damage, loss or injury" in the context of reparations, it is not clear from the Rome Statute or Rules whether there is any limit to the type of harm that may be claimed for purposes of reparations. This ambiguity leaves open the possibility that one Chamber may, for instance, exclude moral injury while another Chamber recognizes such injury, suggesting that the extent of harm is an area that should be addressed by the Court in its principles on reparation. We therefore recommend that the Court make clear that, for purposes of reparations, it will adopt the same broad approach to defining harm as it has taken in relation to participation. Thus, "harm" may include "material, physical and psychological harm,"[37] and it can "attach to

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36 Wemmers, J.A., *op cit*, p. 87

37 The Prosecutor v., Thomas *Lubanga* Dylo, Judgment on the Appeals of The Prosecutor and The Defense against Trial Chamber I's Decision on victims' Participation of 18 January 2008, INTERNATIONAL CRIMINAL COURT-01/04-01/06, ¶32 (Appeals Chamber, 11 July 2008). The *Lubanga* Trial Chamber subsequently clarified that "indirect victims" are persons who have "suffer[ed] harm as a result of the harm suffered by direct victims." *Lubanga*, Redacted Version of "Decision on 'Indirect Victims, '" cf. Report of the Court on the Strategy in Relation to Victims, INTERNATIONAL CRIMINAL COURT-ASP/8/45 (10 November 2009), available at http://www.International Criminal Court-cpi.int/International Criminal Courtdocs/asp_docs/ASP8/INTERNATIONAL CRIMINAL COURT-ASP-8-45-ENG.pdf (setting forth a "common framework" in relation to victims developed by the Office of the Prosecutor and the Registry, while recognizing that the strategy "does not in any way impinge on the powers of the Champers"

both direct and indirect victims[38]".

The definitions of the concepts above mentioned allow the readers of the present article to better understand and distinguish their scope.

II. LITERATURE REVIEW ON REPARATION

This part discusses existing literature on the concept of reparation and its application at the International Criminal Tribunal for Rwanda. It also explores literature on the reparation scheme at the International Criminal Court which like the International Criminal Tribunal for Rwanda, is a judicial institutional with jurisdiction over international crimes.

II.1. Concept of Reparation

"A former soldier asked a Buddhist nun how to atone for the destruction he had caused during the war. She said, 'If you blow up a house, then you build a house. If you blow up a bridge, then you build a bridge[39]. This basic notion of fairness, based on the concept of replacing what one has taken or destroyed, is essential idea of reparation[40].

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regarding "judicial determination or interpretation" of the "legal framework of the Court") n.100, ¶44 (Trial Chamber, 8 April 2009). Thus, indirect victims must establish that the loss, injury, or damage suffered by the direct victim – which itself must be "brought about by the commission of the crimes charged", - gives rise to harm to the indirect victim as a result of the relationship between the direct and indirect victims. Id. ¶49. The Trial Chamber excluded from the definition of "indirect victim" those who "suffered harm as a result of the (later) *conduct* of direct victims". Id. ¶52 (emphasis in original). See also The case based reparations scheme at the International Criminal Court, Washington College of Law, American University, War Crimes research office, International criminal court, Legal analysis and education project, 2010, p. 36
38 Lubanga, Judgment on the Appeals of The Prosecutor and The Defense against Trial Chamber I's Decision on victims' Participation of 18 January 2008, *supra* n. 110,¶ 32.
39 Gerry, J. and Daniel W.V.N., *Handbook of restorative justice*, Willan Publishing book, 2007 P.24.
40 *Ibidem.*

The word 'reparation' stems from 'repair' meaning to fix or mend. It overlaps with a cluster of other related concepts, including restitution, compensation, atonement, damages and remedies[41]. The aim of reparation is to eliminate as far as possible the consequences of the illegal acts and to restore the situation that would have existed if the act had not been committed[42]. Reparation is a kind of recompense, which means to give back or give something of equivalent value. Often the term is used in reference to making amends or paying damages. In all these senses, reparation is a mechanism for redress, i.e. a way of correcting or remedying a situation. Redress is not specific to the context of justice; one might speak of redressing a troubling economic trend, for example. But in human affairs, redress often has the connotation of correcting a wrong. From the above ideas, the aim of reparation is said to be the restoration of the initial situation or the state in which the person of the property was. It is a general principle of the general public of international law states that any wrongful act gives rise to an obligation to make compensation.

II.2. Forms of reparation

International law has long recognized that harm caused by wrongful action demands a remedy. A number of Human Rights treaties recognize the rights to reparation, including the Universal Declaration of Human Rights[43], International Covenant on Civil and Political Rights[44],.Gerry, J. and Daniel, W, V explains that:

> "Reparation can take many forms. In general, reparations are described as being either material or symbolic, although the two categories

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41 *Ibidem.*
42 Emanuela, C. G., *op cit*, p 531.
43 Article 8 of the Universal Declaration of Human Rights, General Assembly Resolution 217A (III) of 1948.
44 Article 2 (III) of International Covenant General Assembly Resolution 2200A, of 16 December 1966

overlap to a large extent. Material reparation can have a symbolic function, conveying an acknowledgement of responsibility and thus having the effect of an apology, while symbolic reparation can make a substantial difference in a victim's life. Still, the two differ in terms of their primary function: material reparation generally addresses the specific harm (tangible or intangible) that result from wrongdoing, while symbolic Reparation speaks to the wrongness of the act itself"[45].

It is necessary to mention that apology is the primary form of symbolic reparation, but there are other forms as well. For example, victims may implicitly read responsibility and remorse during a restorative justice dialogue as an offender explains how and why the crime occurred and respectfully listens to the victim's experience of it[46]. Symbolic reparation might be expressed through actions like buying a gift, providing a service for the victim, donating time or money to a charity of the victim's choice, doing community service or entering treatment in order to address the roots of criminal behaviour[47]. Partial restitution sometimes is called symbolic reparation because it conveys an offender's willingness to make amends even when full restitution is beyond that person's means.

Material reparation offers something concrete to repair a specific harm or to compensate for the damage or loss associated with that harm. Material reparation may reduce the extent of the harm done by a crime, may reduce the victim's cost for dealing with that harm, or both. This type of reparation often takes the form of good, for example the return of stolen property; it may

45 Gerry, J. and Daniel, W. V. N. *op cit*, p.27.
46 *Ibidem*.
47 *Idem*, p. 28.

also take the form of financial payments such as to cover the cost of medical treatment or psychological therapy. Reparation could also take the form of concrete action, perhaps to repair a damaged structure or to provide a service that recovers from injuries. These goods or actions might address a crime's primary or most direct harm[48], or the secondary harms set in motion by the crime. Thus reparation could include things like counseling, transportation, training, financial assistance, employment, day care, new housing or drug treatment[49].

II.3. The Function of Reparation

Repairing the damage caused by crime is important for the same reasons it is important to repair damage caused by accident or natural wear: to restore function, to make something safe to use again or to help preserve its value. Whether hit by a hailstone or a hammer, a broken tail-light needs to be fixed, to comply with the law requiring that a car have two functioning brake lights, to prevent being rear-ended, or in order to get a better price when selling the car. Repairing intangibles can be equally important for the same reasons. Therapy can help a victim function well again at school or work, or make it feel safe again to go to sleep at night; an apology might help preserve a relationship that has been important, or strengthen someone's damaged self-worth[50].

A second function is that reparation can vindicate the innocent, giving victims 'a moral statement to the community that they were right and that the other person was wrong[51]'. It gives victims

48 *Ibidem.*
49 Permanent Court of Justice, *Factory of Chorzow (claim for indemnity)*, Germany V. Poland, (Merits) PCI (Ser A) N° 17, 1928, p.29.
50 Gerry, J. and Daniel, W. V. N., *op cit*, p.28.
51 Howard, J. Z. *Restorative Justice for crime victims*: The promise and the challenges. "In Restoration Community justice: Repairing harm and transforming communities, ed. Gordon Bazemore and Mara Schiff, 87-99. With an introduction by Gordon Bazemore and Mara Schiff Cincinnati, OH : Anderson Publishing co. 2001, p.28.

a recognition that the wring suffered was in fact a wrong[52]. Victims might find vindication in the support of other individuals, through expressions of sympathy or assurances that what happened was not acceptable. Or they may find it through the criminal justice system, in that criminal prosecution confirms that certain behaviours are not tolerated by the community[53]. But vindication is most powerful when it comes from the offender, and reparation helps convey it.

Thirdly, "reparation locates responsibility. When you commit a crime, you create a certain debt, an obligation, a liability that must be met. Crime creates an obligation to restore, to repair, to undo, and reparation meets at least part of that obligation"[54].

Fourthly, reparation can help victims regain the equilibrium so often lost after a crime. Victims commonly find that their physical, mental or emotional well-being is disrupted; they may be unable to eat or sleep normally and may be preoccupied, anxious of fearful. Susan Herman reports that crime victims suffer a loss of confidence, reduced academic performance and work productivity, and increased rates of mental illness, drug and alcohol abuse, and suicide[55]. By repairing a crime's primary and secondary harms, material reparation can play a significant role in helping victims integrate the trauma and heal its effects, regaining stability and confidence. Symbolic reparation, by acknowledging the wrongness of the behaviour and expressing regret for it, returns to the victim some of the power seized by the offender in committing the crime. Minnow says: 'by retelling the wrong and seeking acceptance, the apologizer assumes a position of vulnerability before not only the victims but also the larger community of literal or figurative witnesses'[56].

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52 Ibidem
53 Bazemore, G. and Schiff, M. 2005, *Juvenile justice reform and restorative justice: Building theory and policy from practice*, Cullumpton William publishing, p.51, cited by Gerry Johnstone and Daniel W. Van Ness, *op cit*, p.28.
54 Gerry, J. and Daniel W. V. N., *op cit*, p. 26.
55 Ibidem.
56 As above .

The fact that reparation accomplishes these things does not link it exclusively to one form of redress. Reparation can have a role in retribution[57]; a court might require the payment of restitution or compensation in order to punish an offender; irrespective of the victim's needs.

Reparation can take various forms, including restitution, compensation or satisfaction. These remedies can be applied either singly or in combination in response to a particular violation[58].

II.4. Nature of reparation

Reparation has been a vehicle for justice throughout human history. Ancient societies, recognizing that retaliation could lead to costly cycles of mutual destruction, turned to restitution or some form of compensation as their primary form of redress. As societies grew more complex, they began developing legal codes that identified appropriate reparation for various kinds of harm, including limits on what could reasonably be demanded.[59] For instance, even the primitive societies recognized the right to reparation and hence codes for reparation were set up in order to avoid arbitrariness.

Reparation still has a role in contemporary legal systems. In Western civil law, which deals with individuals' offenses against one another, the focus is on the monetary value of an injury or loss, and reparation takes the form of financial compensation.[60]

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57 *Ibidem.*

58 *See Articles 31 to 34 ILC Articles on State Responsibility, Op cit. (note 1). See also the 2000 draft of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of violations of International Human Rights and Humanitarian Law, UN Doc. E/ CN. 4/2000/62, 18 January 2001, (hereinafter "draft Basic Principles and Guidelines"). These draft principles, elaborated by two independent experts pursuant to a request by the Commission on Human Rights, have not yet been finalized or adopted.*

59 Geery J. ad Daniel W. V. N., *op cit*, p.26.

60 Ibidem.

Reparation has had a less significant role in Western criminal justice, which deals with behaviour classified as offences against the state and operates primarily from a retributive philosophy. However, reparation has become more common in recent decades as a judicial sentencing option.[61]

In tandem with the demands of reparation, once the penalty becomes final, the condemned person must repair the harm he has caused to the victim.

Reparation also plays a role in the political area when Governments are seen making amends for hostilities against other nations or for policies that are harmful to their own people[62].

III. REPARATION MECHANISMS IN INTERNATIONAL CRIMINAL TRIBUNALS

International law has long recognized that harm caused by wrongful action demands a remedy. Indeed, the Permanent Court of International Justice held, as early as 1927, that "it is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form"[63]. The Universal Declaration of Human Rights, the Convention of the Protection of Human Rights and Fundamental Freedoms[64] and the American Convention on Human Rights[65], European and American Convention do not expressly recognize the right

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61 Bazemore IG, 1998, op cit, p. 773.

62 Ibidem.

63 Case Concerning the Factory at Chorzow (Claim for Indemnity) (Jurisdiction), Judgment No 8, P.C.I.J., Ser. B., N° 3, 1925, at 15-16 (26 July 1927), available at http://www. worldcourts.com/Permanent Court of International Justice/eng/decisions/1927.07.26_chorzow/.

64 Article 13 of the Convention of the Protection of Human Rights entered into force 3 September 1953.

65 Article 25 (I) of American Convention on Human Rights entered into force 18 July 1978.

to reparation but they do recognize the right to an effective remedy. An effective remedy in certain cases would be reparation. In the case of gross human rights, violations, for instance, the effective remedy for most of the victims is reparation. The right to reparation is therefore well grounded in International Human Rights Law. A number of Human Rights treaties also recognize the principle, including the Universal Declaration of Human Rights article 8 which states that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law". The International Covenant on Civil and Political Rights[66] Article 2(3), United Nations General Assembly Resolution 2200A, 16 December 1966 requires parties to "ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity", This position has been buttress by the adoption of the United Nations (UN) Basic Principles on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law in 2005.

Yet, despite the consistent recognition of the right to a remedy in international law over the past century, neither the International Criminal Tribunal for the former Yugoslavia nor the International Criminal Tribunal for Rwanda, established by the UN Security Council in 1993 and 1994, respectively, was authorized to award reparations to victims of war crimes, crimes against humanity and genocide.[67] Hence, the inclusion of a reparations scheme in

66 Article 2(3) of the International Covenant on Civil and Political Rights, United Nations General Assembly Resolution 2200A, 16 December 1966.
67 Article 105 *Rules of Procedures and Evidence* of INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA, INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YOUGOSLAVIA and Article 23 §. 3 and Article 24, §. 3 of the Statutes respectively of INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA and INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YOUGOSLAVIA.

the Rome Statute[68] was a truly unique development in the context of individual criminal responsibility for violations of international law. Although, the Basic Principles on Rights to a Remedy and Reparation for Victims are not a convention hence not legally binding on the states, they affirm the international recognition of the right to reparation.

III.1. Reparation in the International Criminal Tribunal for Rwanda

In the proceedings before the Tribunal for the Rwanda, victims are neither allowed to participate in their personal capacity nor are they entitled to receive compensation or reparation for damages suffered[69].

Indeed the primary concern of the drafters of the Statute and Rules of Procedure and Evidence (RPE) of the *ad hoc* Tribunal was the punishment of those guilty of serious violations of international humanitarian law.

To understand why the victims were not afforded a role in the proceedings, it has also to be borne in mind that the ad hoc Tribunals procedure has been based mainly on the adversarial system whereby the victim's role is merely to appear as a witness for one of the parties to the proceedings and as such cannot seek reparation for any harm suffered.

For the Drafters of the Statute, another priority was to safeguard the right of the accused to be tried fairly and expeditiously. Considering the nature and scope of the crimes over which the ad hoc Tribunals possess jurisdiction, involving a great number of victims and different emotions, the presence of the victim could

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68 Article 75 of the Rome Statutes .
69 Rule 106 (B) of Rules of Procedures and Evidence of INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA.

delay the proceedings and undermine the rights of the accused.

For all the reasons mentioned above, the rights of victims to participate and to obtain compensation was put aside and the Prosecutor was given the task of representing the victims at all stages of the criminal proceedings. It was left to national courts to decide upon any compensation awards as it is stipulated in article 116 (B) Rules of procedures and Evidence.

The victim is thus excluded from the conduct of the proceedings and neither the Statute nor the Rules afford him any personal right to intervene in the case with a view to ensuring the protection of his legitimate interests. In an address to the United Nations General Assembly in November 2000, former International Criminal Tribunal for Rwanda President, Judge Navenathem Pillay, raised the issue of reparations for victims. Judge Pillay reiterated her concern about compensation for victims and more specifically its indispensable contribution to the process of national reconciliation and the restoration and maintenance of peace[70].

It is necessary to point out that during the course of the trial, the victim can be heard only in his/her capacity as a witness (Rule 21 of International Criminal Tribunal for Rwanda Statute).

Rule 106, which is concerned with compensation to victims, provides that the Registrar shall transmit to the relevant national authorities the judgment finding the accused guilty of a crime that has caused injury to a victim. It is then up to the victim to claim compensation before the competent national court. For this purpose, the judgment of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person

70 Justice after Genocide, *The Challenges of the International Criminal Tribunal for Rwanda*, Hassan B. Jallow, Chief prosecutor, International Criminal Tribunal for Rwanda, speech to the University of Lund in Stora Salen, AF-Building, Lund, January 31st 2007, p.6, see also the letter from Ibuka Association addressed to the Secretary General of United Nations without date.

for such injury. As noted, no provision enables the victims to obtain reparation from the International Criminal Tribunal for Rwanda for any damages suffered, which, according to Rule 106, must be sought in national courts.

III.2. Reparation in International Criminal Court as A Best Practice

For the first time, an International Criminal Court has the power to order a criminal perpetrator to pay reparation to a victim who has suffered as a result of the perpetrator's criminal actions.

According to article 75, the Court may lay down the principles for reparation for victims, which may include restitution, indemnification and rehabilitation. In this regard the Rome Statute of the International Criminal Court incorporated the international principles on victims that have been developed with the framework of the United Nations[71].

The statute of the International Criminal Court (International Criminal Court) adopts a fundamentally different approach, granting the Court itself the power to make awards of compensation. Thus, Article 75 of the Statute, which deals with reparations to victims, provides that:

> 1. The Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. On this basis, in its decision the Court may, either upon request or on its own motion in exceptional circumstances, determine the scope and extent of any damage, loss and injury to, or in respect

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71 http://www.International Criminal Court-cpi.int/Menus/International Criminal Court/Structure+of+the+Court/Victims/Reparation/ accessed on 28th October 2010.

of victims and will state the principles on which it is acting.

2. The Court may take an order directly against a convicted person specifying appropriate reparations to, or in respect of victims including restitution, compensation and rehabilitation.

3. Where appropriate, the Court may order that the award for reparations be made through the Trust Fund provided for in article 79.

The Trust Fund referred to is to be established by a decision of the Assembly of States Parties for the benefit of victims of crimes within the Court's jurisdiction and will be financed, *inter alia*, by money or other property collected through fines or forfeiture, which the Court may order to be transferred to the fund[72].

The International Criminal Court's Rules of Procedure and Evidence deal with the issue of reparation in detail. *Inter alia*, the Rules provide that victims of violations can lodge requests for compensation directly before the Court[73], they grant the Court the power to proceed with regard to the award of compensation on its own motion[74]; and provide that reparation can be awarded on an individualized or collective basis, taking into account the scope and extent of any damage, loss and injury[75].

The Court has the option of granting individual or collective reparation, concerning a whole group of victims or a community,

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72 International Criminal Court Statute 1998, Article 75.
73 UN Report to the Preparatory Commission for the International Criminal Court, Addendum, finalized draft text of the Rules of Procedure and Evidence, PCNINTERNATIONAL CRIMINAL .COURT/2000/INF/3/Add.1, (hereinafter "Rules of Procedure") Rule 94.
74 Rules of Procedure, Rule 95.
75 Rules of Procedure, Rule 97.

or both. If the Court decides to order collective reparation, it may order that reparation to be made through the Trust Fund for Victims and the reparation may then also be paid to an inter-governmental, international or national organization[76].

We encourage the efforts done by the international community for having given an important place to both moral and physical victims at the International Criminal Court because this will contribute to the reconciliation process between the victims and the perpetrators of the genocide.

III.2.1. Forms of Reparation in International Criminal Court

Although Article 75 expressly mentions only restitution, compensation and rehabilitation, the Court should make clear that this list is not exhaustive[77], and specifically stress the availability of satisfaction as a form of reparation that may be awarded. Importantly, each of these forms of reparations fulfills a different purpose, as evidenced by the UN Basic Principles, which explain as follows:

Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international Human Rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of Human Rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property.

Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from

76   http://www.International Criminal Court-cpi.int/Menus/International Criminal Court/Structure+of+the+Court/Victims/Reparation/ , accessed on 28th October 2010.

77   Rome Statute, Supra n. 23, Art. 75 (1) (The Court shall establish principles relating to reparations to, or in respect of victims, including restitution, compensation and rehabilitation. (emphasis added)).

gross violations of international Human Rights law and serious violations of international humanitarian law, such as: (a) Physical or mental harm; (b) Lost opportunities, including employment, education and social benefits; (c) Material damages and loss of earnings, including loss of earning potential; (d) Moral damage; and (e) Costs required for legal or expert assistance, medicine and medical services and physiological and social services.

Rehabilitation should include medical and psychological care as well as legal and social services.

Satisfaction should include, where applicable, any or all of the following: (a) Effective measures aimed at the cessation of continuing violations; (b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations' (c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; (d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; (e) Public apology, including acknowledgement of the facts and acceptance of responsibility; (f) Judicial and administrative sanctions against persons liable for the violations; (g) Commemorations and tributes to the victims, and (h) Inclusion of an accurate account of the violations that occurred in international Human Rights law and international humanitarian law training and in educational material at all levels[78].

78 The Case-Based Reparations Scheme at the International Criminal Court, pp.44-45, see also United Nations Basic Principles and Guidelines on the Right to a Remedy and

In addition to making clear that each of these forms of reparation is available to the Court in structuring its awards, the Chambers should expressly recognize that there is no 'one-size-fits-all' approach to reparations. Rather, as the United Nations Basic Principles recognize, the individual circumstances of each case must be considered and any combination of the different forms of reparations may be awarded[79]. These reparation proceedings take place after the person prosecuted has been declared guilty of the crimes charged before the Court[80]. It is through this preceding part that the International Criminal Court, an independent institution, has considered the formal reparation to the victims of serious violations of International Human Rights Law and International Humanitarian Law.

IV. METHODOLOGY

IV.1. Research methods

In order for the researcher to collect necessary data for this study the researcher engaged in both desk and field research.

The desk research enabled the researcher to obtain secondary data which was available from published articles, books, reports, web-based resources. These resources were obtained from the International Criminal Tribunal for Rwanda libraries in Rwanda and Tanzania. The desk research not only gave the researcher the background information but also prevented him from replicating data collection on information that was already available.

Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, supra n. 10, Principles 19-22.

79 *Idem*, p.45, see also United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, *supra* n. 10, Principle 18.

80 , accessed on 28th October 2010.

In order for the researcher to collect necessary data both desk and field research were used. As far as desk research was concerned, the researcher decided to apply both internal and external desk research.

Internal research allowed the researcher to collect data from International Criminal Tribunal for Rwanda and Rwandan authorities to better understand their attitudes regarding reparation. The researcher believes that both authorities are concerned with the issue regarding the victims of genocide and their compensation. Rwandan authorities live on the field when the genocide occurred and International Criminal Tribunal for Rwanda authorities judge the perpetrators of the genocide. So, both Rwandan and International Criminal Tribunal for Rwanda authorities views' were very helpful to this research.

External research was useful as it helped the researcher to gather data from outside the boundaries and getting information from the victims of the genocide. The researcher contacted other people and organizations that are not connected with International Criminal Tribunal for Rwanda or Rwanda authorities in order to collect more relevant and varied information on the compensation of the victims.

Moreover, with desk research, the researcher obtained secondary data which was available from published article, books, reports and web based resources.

IV.2. Research design

As case study and survey research designs were used. A case study was used for two main reasons: First, it gave the researcher an opportunity to do an in-depth analysis of Kiramuruzi Sector which could make it possible to a deep and meaningful

understanding of the issues under investigation. Secondly, since the researcher could not study the entire country of Rwanda due to limitations of funds and time, a case study which zeroed to Kiramuruzi Sector was viewed and used as better substitute. Kiramuruzi sector was particularly chosen due to the fact that a good number of perpetrators detained at International Criminal Tribunal for Rwanda hail from Kiramuruzi. The first trials of genocide were held in Kiramuruzi sector since 1990. In addition, besides, the area hosts victims that visit International Criminal Tribunal for Rwanda as witnesses. Many victims of Kiramuruzi sector that claim indemnization from International Criminal Tribunal for Rwanda were living in this sector when the genocide happened.

IV.3. Sampling procedure

The researcher selected a number of people for analysis.. Sampling is necessary because, firstly, it addresses the cost constraints. If they were to be collected from the entire population, the cost would be prohibitive. Secondly, sampling addresses the time constraints; the use of sampling economizes on time. Sampling is based upon the premise that if done effectively, the data collected may provide a basis for generalization.

IV.3.1. Snowball sampling

This is also called network sampling. It involves asking a key informant to name other people who should be contacted by the investigator in order to understand some aspects of situation under study. This process is continued until the topic is saturated that is, until no more substantial information is achieved through additional respondents or until no more respondents are

discovered[81]. Snowball is normally used for locating individuals for the study where the researcher begins with other respondents who are difficult or impossible to locate using other means[82].

In our context, the researcher identified the victims of genocide. Thanks to the snowball sampling procedure that he used, the researcher used a sample of 250 victims.

IV.4. Data analysis

After data collection, data was organized in more meaningful and interpretative way to meet to the study objectives and answer the research questions. Similar findings were grouped in one category and the data was then analyzed in these clusters.

IV.5. Ethical consideration

The study primarily engaged respondents in selected victims in Kiramuruzi Sector who were viewed necessary for data collection. Accordingly, extreme confidentiality was promised and this was effectively adhered to because the researcher promised secrecy with regard to the information they provided.

IV.6. Limitation of the study

The major limitation was that the people were very suspicious of the researcher and some did not want to answer the questions. Some seemed not to take the research seriously due to the presumption that the researcher was doing it for his own benefit.

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81 Martin E. A. *Social Science Research, Conception, Methodology and Analysis*, Makerere University Printer, Uganda, 2005, p 243.
82 *Ibidem.*

V. PRESENTATION AND DISCUSSION OF FINDINGS

This article delves with the procedures of reparation as foreseen by the International Criminal Tribunal for Rwanda. It also highlights the position held by the victims and emphasizes that the failure to meet the needs of the 1994 genocide victims' rights is an impediment to the reconciliation between the victims and the offenders.

V.1. The procedure of reparation in the International Criminal Tribunal for
Rwanda

V.1.1.The restitution

Article 23(3) of the International Criminal Tribunal for Rwanda Statute foreseen some measures of restitution (recovery) towards the victims of the genocide of Tutsi in 1994.

It is in this context that this article stipulates that:

In addition to imprisonment, the Trial Chambers may order the return of any property and proceeds acquired by criminal conduct, including by means of duress, to their rightful owners[83].

In the same context, Rule 105 of Rules of Procedures and Evidence of International Criminal Tribunal for Rwanda stipulate that:

Restitution of property

(A) After a judgment of conviction containing a specific findings as provided in Rule 88(B), the Trial Chamber shall, at the request of the Prosecutor, or may, at its own initiative, hold a special hearing to determine the matter of the restitution of the property or the proceeds thereof, and may in the meantime

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83 Art. 23 (3) of the International Criminal Tribunal for Rwanda Statute

order such provisional measures for the preservation and protection of the property or proceeds as it considers appropriate.

(B) The determination may extent to such property or its proceeds, even in the hands of third parties not otherwise connected with the crime of which the convicted person has been found guilty.

(C) Such third parties shall be summoned before the Trial Chamber and be given an opportunity to justify their claim to the property or its proceeds.

(D) Should the Trial Chamber be able to determine the rightful owner on the balance of probabilities, it shall order the restitution either of the property or the proceeds or make such other orders as it may deem appropriate.

(E) Should the Trial Chamber not be able to determine ownership, it shall notify the competent national authorities and request them so to determine.

(F) Upon notice from the national authorities that an affirmative determination has been made, the Trial Chamber shall order the restitution either of the property or the proceeds or make such other order as it may deem appropriate.

(G) The Registrar shall transmit to the competent national authorities any summonses, orders and requests issued by a Trial Chamber pursuant to Sub-rules (C), (D), (E) and (F).

By perusing of the above mentioned rule (105), we find that the International Criminal Tribunal for Rwanda has competence to order the recovery or restitution of a good acquired illegally in order for the victims to be reestablished in their rights. However,

despite the plunder at large scale[84] during the genocide, the International Criminal Tribunal for Rwanda did not want to order restitution in favor of victims as stipulated by rule 105. We should note that the victims of 1994 genocide only intervene in this tribunal as witnesses of prosecution or as witnesses of defense[85] and consequently cannot intend a civil action before this tribunal in order to value their rights.

Throughout rule 105 of the Rules of procedures and evidence of International Criminal Tribunal for Rwanda, one can establish three essential criteria in order to pronounce the restitution order.

Firstly, a declaration of guilty must have been formulated against the accused.

Then, evidence must establish the link between illegal acquisition of a property and the offence; i.e. the offence leads to the obtention of that property[86].

Finally, restitution may be ordered uniquely when the prosecutor of the case presents a request to this effect or offer by the chamber. Consequently, no victim can present such a request at court[87]. Susanne M., confides that: "the rules regarding the mechanism of restitution are unique in that international tribunal may order the restitution (recovery) of the property of a physical person to the other without the application of a national right"[88].

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84 Alphonse, M., *La question de l'indemnisation des victimes du génocide devant la TPIR*, Mémoire, Université Nationale du Rwanda, Butare, 2006, p.24

85 Article 21 of the International Criminal Tribunal for Rwanda Statute

86 Article 105 of the Rules of procedures and evidence of International Criminal Tribunal for Rwanda

87 Susanne M., *"Restitution of property and compensation to victim"* dans Richard My (dir), Essay on International Criminal Tribunal for Former Yugoslavia Procedure and evidence: In Honour of Gabrielle Kirk Mc Donald, La Haye Kluwer Law international, 2001, p. 375-376

88 S. MALMSTRÖM, *op cit*, note 26, p.376

It is very regrettable to note that despite the competence of International Criminal Tribunal for Rwanda to order recoveries and the pillage on high level which took place during genocide[89], no victim has obtained restitution or recovery in conformity with the constitutive status and the rules of procedures and evidence of the International Criminal Tribunal for Rwanda.

It is this statement that has pushed Eric David to state that:

> "From the moment when the statutes foresee that international tribunals must decide on the recovery or restitution of properties of their owners without excluding willingly appearance in court of the victims with the eventual assistance of lawyers [...] in some dramatic situations whose international criminal tribunals have to know, it is contrary to justice that these victims may not make their voices heard as victim rather than witnesses"[90].

V.1.2. The compensation procedure in the International Criminal Tribunal for
Rwanda

It is through perusing the rule 106 of the rules of procedures and evidence of International Criminal Tribunal for Rwanda that we find a provision that aims at modalities of reparation of damages suffered by the victims of the genocide of Tutsi in 1994 in Rwanda.

That article stipulates that:

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89 MUBIHAME, A., _op cit_, p.24
90 Eric D., _Eléments de droit international penal_, Paris, Editions A. Pedone, 2000, p. 783 cited by Alphonse, M., _op cit_, p. 33

Compensation to Victims

(A) The Registrar shall transmit to the competent authorities of the Statutes concerned the judgment finding the accused guilty of a crime which has caused injury to a victim.

(B) Pursuant to the relevant national legislation, a victim or persons claiming through him may bring an action in a national court or other competent body to obtain compensation.

(C) For the purpose of a claim made under-Sub-rule (B) the judgment of the Tribunal shall be final and binding as to the criminal responsibility of the convicted person for such injury.

By reading this rule 106 of the Rules of Procedure and evidence of International Criminal Tribunal for Rwanda, this tribunal delegates its power of compensation to national tribunals so that they can indemnify the victims of gross violations of international human rights law and serious violations of international humanitarian law during the period of the genocide of 1994 against Tutsi.

The reparation system that is foreseen by the International Criminal Tribunal for Rwanda does not respond effectively to the needs and rights of the victims of the 1994 genocide. And this is due to the fact that the United Nations (though the Security Council) didn't set up an indemnity fund to compensate the victims of genocide. The lack of this indemnization is a factor which leads to the victims not to be effectively by the International Criminal Tribunal for Rwanda

The failure to grant reparation by the International Criminal Tribunal for Rwanda as in accordance with international law, the International Criminal Tribunal for Rwanda authorities advocate

for victims to be compensated. Specifically, the prosecutor of International Criminal Tribunal for Rwanda asked the Security Council to extend the mandate of International Criminal Tribunal for Rwanda in order to compensate the victims[91]. In an address to the United Nations General Assembly in November 2000, former International Criminal Tribunal for Rwanda President, Judge Navanathen Pillay raised the issue of reparations for victims. Judge Pillay "reiterated her concern about compensation for victims and more specifically its indispensable contribution to the process of national reconciliation and the restoration and maintenance of peace"[92].

The International Criminal Tribunal for Rwanda Chairperson informed the United Nations Secretary General that the judges of International Criminal Tribunal for Rwanda subscribe to the principle that victims of crimes within the competence of the Tribunal must be compensated for the harms they suffered. However, it indicates that 'the responsibility to process and assess requests for indemnity would not be left to the Tribunal' because, according to the chairperson, this would considerably harm the good running of the Tribunal[93].

It is in the same vein that:

> The International Criminal Tribunal for Rwanda chairperson equally notes that the judges do not suggest other mechanisms to make sure the victims are compensated. Instead they notably think of creating, through the Security Council, a new mechanism of special funds to compensate the victims based on

91 Letter from IBUKA Association addressed to the Secretary General of United Nations without date

92 Hassan B. C. Chief Prosecutor, International Criminal Tribunal for Rwanda: Speech to the University of Lund in stora salen, Af-Building, Lund, January 31st 2007.

93 United Nations Document S/2000/1198 of 15 December 2000, p.3, see also Alphonse, M., op cit, p19, see also a letter from Ibuka Association addressed to the Secretary General of United Nations without date.

the requests received by individual or by collectives. Similarly to these funds, the Tribunal would usefully be endowed with a new limited competence in the matter by ordering compensation, consisting ordering compensation, by deducting from a special reservation fund, of the victims who appear before it as witnesses. No response has been supplied to this letter[94]. It is in this context that the former chairperson of the International Criminal Tribunal for Rwanda, late judge Laity Kama declared in 1998, three years after the International Criminal Tribunal for Rwanda creation that "I think that we have not sufficiently addressed the rights of the victims of survivors"[95].

The lack of indemnization fund explains why some victims in Rwanda claim that this tribunal does not belong to them, not even convinced created for them[96].

Finally, despite the request made by the victims of 1994 genocide and those of International Criminal Tribunal for Rwanda authorities, the United Nations kept silent. Given the fact that the propositions given by International Criminal Tribunal for Rwanda authorities to make effective reparation were not successful, the only way to follow for victims is to comply with International Criminal Tribunal for Rwanda procedure in order to enjoy their rights to reparation. That is why the researcher suggests to the victims to attempt a civil action in domestic courts to make reparation possible.

In order to obtain reparation, the victims must hold the judgment

94 Alphonse, M., op cit, p.20. see also the letter attached to this article p5
95 Laity Kama, Interview with UBUTABERA, N° 39, June, 22nd, 1998, see also the indefeasible right to compensation by the Organization of the United Nations for the victims of the Tutsi Genocide (Letter addressed to the Secretary General of the United Nations by the Former Chairperson of IBUKA Association SIMBURUDARI Théodore, p 4 attached to this article.
96 Interview with victims on 17th October 2010.

of guilty that the International Criminal Tribunal for Rwanda must send back to competent authorities in order that the latter may start judiciary procedures before national instances. Currently, the concerned persons with completed cases[97] are the following:

1. AKAYESU Jean Paul (ICTR-96-4)

2. BAGARAGAZA, Michel (ICTR -05-86)

3. BAGOSORA, Théoneste (ICTR -96-7)

4. BARAYAGWIZA, Jean Bosco (ICTR -97-19)

5. BIKINDI, Simon (ICTR -01-72)

6. BISENGIMANA, Paul (ICTR -00-60)

7. GACUMBITSI, Sylvestre (ICTR -01-64)

8. HATEGEKIMANA, Ildephonse (ICTR -00-55)

9. IMANISHIMWE, Samuel (ICTR -97-36)

10. KAJELIJELI, Juvénal (ICTR -98-44A)

11. KALIMANZIRA, Callixte (ICTR -05-88)

12. KAMBANDA, Jean (ICTR -97-23)

13. KAMUHANDA, Jean de Dieu (ICTR -99-54)

14. KANYARUKIGA, Gaspard (ICTR -02-78)

15. KARERA, François (ICTR -01-74)

16. KAYISHEMA, Clément (ICTR -95-1)

17. MUHIMANA, Mikaeli (ICTR -95-1B)

18. MUNYAKAZI, Yussuf (ICTR -97-36A)

19. MUSEMA, Alfred (ICTR -96-13)

97 International Criminal Tribunal for Rwanda available at http://www.unInternational Criminal Tribunal for Rwanda.org/Cases/StatusofCase/tabid/204/Default.aspx, accessed on 8th June 2013

20. MUVUNYI, Tharcisse (ICTR -00-55)

21. NAHIMANA, Ferdinand (ICTR -96-11)

22. NCHAMIHIGO, Siméon (ICTR -01-63)

23. NDINDABAHIZI, Emmanuel (ICTR -01-71)

24. NGEZE, Hassan (ICTR -97-23)

25. NIYITEGEKA, Eliezer (ICTR -96-14)

26. NSENGIYUMVA, Anatole (ICTR -96-12)

27. NSHOGOZA, Léonidas (ICTR -2007-91)

28. NTABAKUZE, Eloys (ICTR -97-30)

29. NTAKIRUTIMANA, Elizaphan (1: ICTR -96-10; 2; ICTR -96-17)

30. NTAKIRUTIMANA, Gérard (1: ICTR -96-10; 2; ICTR -96-17)

31. NTAWUKURIRYAYO, Dominique (ICTR -2005-82)

32. NZABIRINDA, Joseph (ICTR -01-77)

33. RENZAHO, Tharcisse (ICTR -91-31DP)

34. RUGAMBARARA, Juvénal (ICTR -00-59)

35. RUGGU, George (ICTR -97-32)

36. RUKUNDO, Emmanuel (ICTR 01-70)

37. RUTAGANDA, George (ICTR -96-3)

38. RUTAGANIRA, Vincent (ICTR -95-1C)

39. RUZINDANA, Obed (1: ICTR -95-1; 2: ICTR 96-10)

40. SEMANZA, Laurent (ICTR -97-20)

41. SEROMBA, Athanase (ICTR -2001-66)

42. SERUGENDO, Joseph (ICTR -2005-84)

43. SERUSHAGO, Omar (ICTR -98-39)

44. SETAKO, Ephrem (ICTR -04-81)

45. SIMBA, Aloys (ICTR -01-76)

It is disheartening that no victim of genocide has so far requested to be indemnified in this context. This abstention is an impeding factor for national tribunals to give compensation for the genocide victims as provided by Rule 106 of International Criminal Tribunal for Rwanda Procedures and Evidence. It is true that the properties of the convicted persons are not enough to effectively indemnify the victims since they are numerous but can only improve the current situation of the victims. It is in the same vein that Karugarama Tharcisse, Former Vice president of Supreme Court and also former Minister of Justice said:

"First of all, one can never truly compensate the genocide victims. Damages are only symbolic. It is a national, even an international symbol. Even if 10,000 Rwandan francs are awarded, it acknowledges that a crime was committed. It is not the monetary amount that matters; it is the fact that 'we are showing solidarity with you.' Second, it is possible to award individual damages according to a scale. It is also possible to give money to associations in a transparent manner. I am not saying that there would not be any errors, and that there would not be any crooks, but guidelines have to be established. There are risks, but they are reasonable risks."[98]

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98 International Criminal Tribunal for Rwanda: Delayed Justice International Crisis Group (ICG), Africa Report N°30,7th June 2001, pp. 33-34.

CONCLUSION AND SUGGESTIONS

The present article highlights the conclusion made from the research findings. It also sets out the recommendations to implement so that victims can be compensated.

Indeed the present article point out the recognition of the rights to reparation in international law. It is within the same vein that ICTR delegates the task of reparation to the national courts.

This article however, identified challenges to the realization of victim's compensation through the national courts. Firstly, lack of fund to indemnify the victims of the 1994 genocide, secondly, the abstention of victims of genocide to attempt a civil action before national courts.

As it has been noted, conviction of perpetrators is one aspect of justice. To make justice fair, the needs of the victims have to be met. The researcher strongly suggests The following in order make the right to reparation a reality for victims.

Suggestions

- **To the International Community**

It is suggested that countries where genocide perpetrators are jailed should transfer them to Rwanda Government in order to facilitate the process of reconciliation and reparation of the damages they have caused to the victims.

- **To the Rwandan Government**

The government of Rwanda should implement conservatory measures to hold the properties of the convicted person: for genocide to grant reparation. These measures should also apply

to the persons accused for genocide crimes in order that the suspects can not hide their properties.

The Government should compel the convicted persons to carry out work of interest for the benefit of the victims in case they failed to indemnify the harm caused to the victims.

- **To the Victims of Tutsi genocide**

We also suggest that, the victims of Tutsi genocide should attempt a civil action before the competent tribunals in order to value their rights.

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Protection of Agricultural Workers under Rwandan Social Security Law

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Abstract

Social security law consecrates two sorts of affiliation to social security scheme in Rwanda. The first one is compulsory while the second one is optional. Compulsory membership is concerned with workers governed by the provisions of the Labor law without any distinction while working in public or private sector, notwithstanding the nature, the type and validity of the contract or remuneration, non retired political appointees, government statutory and assimilated to workers.

Optional affiliation deals with every person who has been affiliated to the social security system during at least six (6) consecutive months and ceases to fill the conditions of affiliation, has the option to remain voluntarily affiliated to the branch of the pensions provided that he or she addresses the related demand during the period of six (6) months following the date to which his/ her obligatory affiliation ended, Rwandan workers hired by an enterprise situated in Rwanda who have been sent abroad for the account of that enterprise and foreign workers who have been sent in Rwanda for the account of a foreign enterprise.

The Law n°13/2009 of 27/5/2009 regulating labor in Rwanda excluded from the scope of its application any person dealing with agriculture, breeding, commercial or industrial activities (...). The Social Security Act of 2001had also excluded from coverage agricultural workers. This situation has led to a number of social security issues for excluded workers. The author highlights that the gaps and loopholes identified in Rwandan labor and social security laws underlie the social security issues faced by farmers and agricultural workers because of a little place given to then in Rwandan economy.

In order to achieve this objective assigned in this article which is to critically analyse the current protection of the agricultural

workers under Rwandan social security law, the author suggests public and private institutions that could guarantee and ensure the effective protection of agricultural workers. These include among others, agricultural workers' trade unions, and role of cooperatives, local government, Rwanda Social Security Board and Central government. In addition, the modification of the current legal framework for the protection of agricultural workers is proposed.

Key words: protection, accident at work, occupational illness, agricultural workers, legal mechanisms, institutional mechanisms.

General introduction

The importance of social security is not of yester-
day. It can be traced back to so many decades af-
ter the Universal Declaration of Human Rights[3]
has consecrated social security as a fundamental human right.
It is now universally admitted that no stable and sustainable de-
velopment is possible without social peace, and no social peace is
possible without social security for all. The role of social security
is more and more being recognized by governments and interna-
tional organizations for its role in poverty alleviation, promotion
of social justice and economic growth[4].

The International Labour Organization (ILO), understands social
security as a set of public measures that a society provides for its
members to protect them against economic and social distress
that would be caused by the absence or substantial reduction of
income from work as a result of various contingencies like sick-
ness, maternity, employment injury unemployment, invalidity,
old age, death and health care[5].

For many decades, various social security schemes have been
put in place in Rwanda but substantial gaps still remain as re-
gards the protection of workers especially agricultural workers
because of lack of effective legal and institutional framework.

3.Article 22 of the Universal Declaration of Humana Rights of 1948; De la Vega, David S,
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5.Internal Labour Organization Convention n°102 Social security Minimum Standards,
Convention 1952.

It is common knowledge that the role and objective of law is to elaborate body of rules as a whole, which means that all concerned to it, would be subjected to it equally. Social law regulates the exercise and the consequences of the exercise of a professional activity as self-employed, independent employee or salaried person[6].

Rwandan agricultural employees, we have been observing them, are hard working and most importantly involved in preparing where to make agriculture activities, that is to cultivate, to plant or to breed animals, to deal with the outputs of those activities, to take them to the market so that everybody may afford them. In doing so, they have been coming across various social risks.

As the years replace one after another, this also goes together with a hurry technology which most of the time involves machines and other related materials at working place, which also cause the different risks to those who carry out the above professionals activities. Therefore, it should be understood that even owners of businesses also face social risks. As far as our innovation is concerned in the framework of contributing to social security law, it is opportune to come up with an idea of studying on the current social security protection of agricultural workers who are owners of their agricultural activities. Not only to verify their social protection but also to see how those social risks could be prevented.

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6. T. HABUMUGISHA, *Labour Law, Course notes*, Kigali, ULK, Faculty of law, 2009, p. 1, *unpublished*.

This problem that we are concerned about remains unsolved in Rwandan Law. The law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, especially in its article 3 paragraph 2 clearly excludes agricultural employees from its scope of the application. As earlier mentioned, that article undoubtedly states *that the person, who deals with family agricultural, breading, commercial or industrial activities, shall not be subject to the provision of the law n° 13/2009 of 27/05/2009, expect for provisions relating to health and safety at work place as well as to prohibitions for child labour and for pregnant or breastfeeding women*[7].

The fact that they are not subjected to the law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, they are excluded from the scope of application of Rwandan social security as laid down by article 2 paragraph 1 of the law n°06/2003 of 22/3/2003 modifying and completing the Decree-Law of 22/8/1974 governing the organization of social security.

One can criticize article 3 of the law n° 13/2009 of 27/05/2009 for a number of reasons. Thus, nowadays, it is quite evident that in Rwanda, there are agricultural employees whose cooperatives have legal personality. This is the case for example of cooperative named "Iterambere ry'Abahinzi-borozi ba Macyera (IABM) which is located in the southern province, Muhanga District working in Cyeza, Nyamabuye and Muhanga Sectors and cooperative Ihuza Aborozi Ba Kijyambere Bafatanije (IAKIB) which sits in Northern Province Gicumbi District. So far, members of these cooperatives are excluded from the scope of application of Rwandan social security.

7.*Article 3 of the Law no 13/2009 of 29/05/2009 regulating labour in Rwanda, in OGRR no special of 27/05/2009.*

The problematic social security protection of agricultural workers described above can be summarized into two major questions which could ultimately orient this research. *To what extent are agricultural workers protected under Rwanda social security law? What are the mechanisms to be envisaged in order to ensure the effective and efficient protection of agricultural employees under Rwanda Social security law?*

It should be noted that this article is aimed at drawing the legislators' attention so that he/she can amend the provisions of article 3 paragraph 2 of the law n° 13/2009 of 27/05/2009 regulating labour in Rwanda so that agricultural employees may get subjected freely to the Rwandan social security law and to propose mechanisms so that the Rwandan social security law may protect agricultural employees from social risks. An overview of the present state of the right to social security, an identification of the main social security challenges for agricultural workers and suggestions for the direction of future actions are to be presented.

1. Recognition of the right to social security

It is first and foremost important to make a brief presentation on the right to social security in the international legal instruments and social security in Rwanda.

1.1. Right to social security in the international legal instruments

The focus is on Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, other International Human Rights Instruments

1.1.1. Universal Declaration of Human Rights

The Universal Declaration of Human Rights recognizes the right to social security in a number of its articles. In its article 22, everyone , *as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality*[8].

Article 25 of the UDHR clearly states that *"(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection*[9].

8.*De la Vega, David S, International human rights law: an introduction, University of Pennsylvania Press, 2007, pp. 130.*

9.*Article 25 of Universal Declaration of Human Rights of 1948.*

i. International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights contains a number of articles which stipulate the right to social security. Article 9 of ICESCR recognizes the right of everyone to social security, including social insurance[10]. The right to social security is furthermore recognized in its Article 10, which states that regarding children and women that *special protection should be accorded to mothers during a reasonable period before and after childbirth*[11].

During such period working mothers should be accorded paid leave or leave with adequate social security benefits[12]. State parties to the ICESCR have the obligation to respect, protect and fulfill the right to social security. In the General Comment n° 19 (2007) *On the Right to Social Security* the UN Committee on Economic, Social and Cultural Rights clarified that the right to social security as enshrined in the ICESCR encompasses:

"*the right to access and maintain benefits, whether in cash or in kind, from (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly children and adult dependents*[13].

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10. Article 9 International Covenant on Economic, Social and Cultural Rights of 1966.

11. Article 10 of Universal Declaration of Human Rights of 1948.

12. International covenant on economic, social and cultural rights, office of the United Nations High Commissioner for Human Rights, 1966.

13. F. FELICE WILLIAM, The global new deal: economic and social human rights in world politics, Rowman &Littlefield, 2010, pp. 122-123.

Social security is understood to encompass the following nine branches: adequate health service, disability benefits, old age benefits, unemployment benefits, employment injury insurance, family and child support, maternity benefits, disability protections, and provisions for survivors and orphans. State parties to the ICESCR have the obligation to fulfill the right to social security by adopting "the necessary measures, including the implementation of a social security scheme". State parties must ensure that "the social security system will be adequate, accessible for everyone and will cover social risks and contingencies". State parties also have an obligation to facilitate the right to social security by sufficiently "recognizing this right within the national political and legal systems, preferably by way of legislative implementation" and "adopting a national social security strategy[14]. Other international human rights instruments also recognize the right to social security.

ii.   Other international human rights instruments

The right to social security is also recognized in the Convention on the Elimination of All Forms of Racial Discrimination which in article five requires that State parties must prohibit and eliminate racial discrimination in all of its forms, and to guarantee the right of everyone "without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to public health, medical care, social security and social services".

The Convention on the Rights of the Child enshrines the right of children to social security in its   article 26, stating that:

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14. F. FELICE WILLIAM, *op. cit., pp. 122-123.*

(1) States Parties shall recognize for every child the right to benefit from social security, including social insurance,and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

(2) The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child[16].

The Convention further elaborates on the right of children to social security in relation to working parents, stating that "States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

According to the Convention, *States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible[17].*

The Convention makes provisions for the right to social security of children without parents, stating that: a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State[18].

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15. S. DE LA VEGA DAVID, *International human rights law: an introduction*, University of Pennsylvania Press, 2007, pp. 132.

16. Article 126 of the United Nations Convention on the Rights of the Child of 1989.

17. Article 18 of the United Nations Convention on the Rights of the Child of 1989.

18. Article 20 of the United Nations Convention on the Rights of the Child of 1989.

In addition, States Parties must in accordance with their national laws ensure alternative care for such a child.

iii. Relationship with other rights

The right to social security is interrelated and interdependent with other economic, social and cultural rights, in particular the right to an adequate standard of living, including the right to food and the right to housing, the right to work, and the right to protection of the family.

According to the UN Human Rights Committee, article 26 of the International Covenant on Civil and Political Rights on discrimination applies to the right to social security. In a General Comment from 2000 the Committee highlighted the right to social security as an area where women are frequently subject of discrimination[19]. A number of scholars agree that globally, the access to social security is low and eighty percent (80%) of the global population has no access to any formal social security protection[20]. The situation becomes worse in countries like Rwanda where the social security protection is acute.

a. Historical background of social security in Rwanda

The Social Security Fund of Rwanda (CSR) was created during the colonial rule and catered for contractual workers in Ruanda-Urundi and the Congo-Belge. After Rwanda's independence, the decrees were amended by the Government of Rwanda to formulate the Decree Law of 15th November 1962 marking the official existence of Social Security Fund of Rwanda. The laws currently facilitating and enforcing the good functioning of the institution

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19. De la Vega, David S, *International human rights law: an introduction*, University of Pennsylvania Press, 2007, pp. 130.

20. *Article 18 of the United Nations Convention on the Rights of the Child of 1989.*

include the Law n°06/2003 of 22nd March, 2003 modifying and completing the decree- law of 22/8/1974 governing social security and the law n°45/2010 of 14/12/2010 establishing Rwanda Social Security Board (RSSB) and determining its mission, organization and functioning. The Fund, under the tutelage of MINECOFIN is mandated to provide social security services to employees in Rwanda.

❖ Problematical social security protection of agricultural workers in Rwanda

It is first and foremost important to discuss the protection against professional risks, protections in matters related to pension schemes and ineffectiveness of social security laws in the protections of agricultural workers.

b. Protection against professional risks

This section is concerned with the protection against accidents at work[21] and protection against occupational illnesses.

i. Protection against actual work accidents

A work accident, workplace accident, occupational accident, or accident at work is a "discrete occurrence in the course of work, which leads to physical or mental harm[22]. The accident at work is big issue in professional milieu. According to the International Labor Organization (ILO), more than 337 million accidents happen on the job each year, resulting, together with occupational diseases, in more than 2.3 million deaths annually.

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21. M. Vollez, *Prévention des accidents, cours d'éducation ouvrière*, 3ème éd., Genève, BIT, 1967 p.45.

22. European Commission, *European statistics on accidents at work, Methodology*, 2001.

The phrase in the course of work' means during the course of work or at work (even if the accident happens off the company's premises, or if it is caused by third parties) according to Eurostat and while engaged in an economic activity, or at work, or carrying on the business of the employer according to ILO.

The phrase physical or mental harm means any injury, disease or death. Occupational accidents differ from occupational diseases in that they are unexpected and unplanned occurrences, while an occupational disease is 'contracted as a result of an exposure over a period of time to risk factors arising from work activity.

Incidents that fall within the definition of occupational accidents also include cases of acute poisoning, attacks by humans and animals, insects etc., slips on pavements or staircases, road traffic accidents and accidents on board means of transportation in the course of work, accidents in airports, stations and so on.

It should be mentioned that there is no consensus as to whether commuting accidents (i.e. accidents on the way to work and while returning home after work) should be considered to be work accidents. The European Statistics on Accidents at work (ESAW) methodology excludes them; ILO includes them in its conventions concerning Health & Safety at work, albeit as a separate category of accidents[23] while some countries (e.g. Greece) do not distinguish them from other work accidents. Rwandan law does not distinguish such kind of accidents and accidents covered by Rwandan social security.

A fatal accident at work is defined as an accident which leads to the death of a victim. The time within which the death

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23. *Protocol of 2002 to the Occupational Safety and Health Convention (Entry into force: 09 Feb 2005)*

may occur varies among countries: In the Netherlands, an accident is registered as fatal if the victim dies during the same day that the accident happened, in Germany if death came within 30 days, while Belgium, France and Greece set no time limit. It should be noted that in the event the accidents involve multiple fatalities they are often referred to as industrial disasters.

Yves Saint JOURS characterizes actual accidents at work like sudden which are violent action, by an exterior event which causes an injury to human organ[24].

This risk which is very dangerous due to its infection over agricultural employees; thanks to current pieces of information provided by the above employees, most of them do not have garments related work, to wear while they work. Then as result, their foot is wounded by stones, hoes or other injured things (tools) hidden at the disposal of a work.

2.1.2. Protection against assimilated to accident at work

Article 13 paragraph one of the law n° 06/2003 of 22 March 2003 modifying and completing the decree-law of 22/08/1974 on organization of social security law states that, can be assimilated to an accident at work, any accident occurred to an insured during the journey from his/her residence, or from the place where he/she habitually takes his/her remuneration and vice versa, in so far the route has not been interrupted for a motive justified by a personal or an interest independent from the employment[25].

24. Cited by T.HABUMUGISHA, Social law, op. cit., p.54.
25. T. HABUMUGISHA, op.cit., p. 55.

It is also the case for accidents occurred during the journey of which expenses are paid by the employer[26]. Therefore, work accident appears usually under various factors whose principles are: material, worker and an area of an employment factors. The lack of equipments of security at the moment of work execution, machines which are not well made or protected that cause unpredictability incidents (noise, warmth).

Currently, in Rwanda, some agricultural activities have been transformed into modern system. So, this requires agricultural employees to be formed about new technology in agricultural activities; much noise and vibration excessive, heat engine and luminous excessive, insufficiency aeration to preventing accumulation of dust, smoke and gas at area of an employment are among of facilities of route accident and contamination of professional diseases[27].

Agricultural employees usually are persons who get movements connected to their working place. Then, without hesitating; they face those risks while moving on that above route accident. Then after discussing actual risks and ones related journey, others related diseases are below explained. For demonstrating these above said, we have come across the recently practical case of the work accident. Anyhow, it was in March/2011 in the route of work, where Madam MUKANKUNSI Alphonsine who is an agricultural employee and president of ITERAMBERE RY'ABAHINZI BOROZI BA MACYERA (IABM) whose right leg was wounded suddenly by a piece of wood that was located in the ground of activities from Muhanga District. She immediately went to the Kabgayi hospital for treatment; this accident was preceded by another one, she had on 16/04/2008, when she was giving pieces of formation to

26. *Ibid.*
27. *Ibid.*

agricultural employees; suddenly a piece of tree also wounded on her right feet[28]. Moreover, if Madam MUKANKUNSI Alphonsine had been affiliated in the

Rwandan social security board, she could have benefited from what is provided for the Rwandan social security law.

2.1.3. Protection against occupational illnesses

Article 13 § 1of the law n°06/2003 of 22/03/2003 modifying and completing the decree-law of 22/08/1974 on organization of social security stipulates that is considered as occupational illness any illness caused by the fact and on the occasion of the employment. It is the case of a minor worker who is reached by the silicosis, contracted illness at the time of his work[29].

The doctrine defines an occupational disease as any chronic ailment that occurs as a result of work or occupational activity. It is an aspect of occupational safety and health. An occupational disease is typically identified when it is shown that it is more prevalent in a given body of workers than in the general population, or in other worker populations. The first such disease to be recognized, squamous-cell carcinoma of the scrotum was identified in chimney sweep boys by Sir Percival Pott in 1775. Occupational hazards that are of a traumatic nature (such as falls by roofers) are not considered to be occupational diseases.

Under the law of workers' compensation in many jurisdictions, there is a presumption that specific diseases are caused by the worker being in the work environment and the burden is on the employer or insurer to show that the disease came about from another cause. Diseases compen

28. A.MUKANKUNSI, President of IABM, Interview, Muhanga District, 24/ 08/ 2011.
29. T. HABUMUGISHA, Social law, op. cit., p.55.

sated by national workers compensation authorities are often termed occupational diseases. However, many countries do not offer compensations for certain diseases like musculoskeletal disorders caused by work (e.g. in Norway).Therefore the term work-related diseases is utilized to describe diseases of occupational origin. This term however would then include both compensable and non-compensable diseases that have occupational origins.

In Rwanda, it is worthwhile noting t therefore that the employees remain unprotected against occupational disease. While, we know that *"prevention is better than cure"* (to protect or to be protected is better than to go for treatment)[30]. A professional illness can subsequently manifest itself. In all case, it should be caused by the fact and on the occasion of the execution of work. In Rwanda, the provisions related to the accidents at work also apply to the occupational illnesses. The date of the first medical observation of an illness is assimilated to the date of the accident. The Ministerial order of the 14/08/1984 establishes the list of the illnesses considered as occupational illnesses. Occupational illnesses are those which are enumerated in appendix of the Ministerial order n°623 of 14/08/1980. If the illness that an employee is suffering from is not listed on the list of occupational illnesses, the victim must prove that illness from which he is suffering from has professional origin in which case he may take a legal action basing on the contractual liability against his employer.

2.2. Protection in matters related to pension schemes

It is about the protection in case of invalidity, protection in case of anticipated pension and agricultural employees' protection against old age and death risks.

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30. HUGUKA Radio,"kwirinda biruta kwivuza conversation", accessed on 25th /07/2011.

2.2.1. Protection in case of invalidity

Article 21 of the law n°06/2003 of 22nd March, 2003 modifying and completing the decree-law of 22/08/1974 governing the organization of social security in Rwanda provides that a member who incurs disability before attaining the age of at least 55 years is eligible for invalidity pension[31], if he fulfils the conditions to have been a member for at least five years and to have contributed for six months in the last twelve months preceding the injury which led him to disability [32].

Besides these conditions, this article provides the definition of the one who is considered as invalid. The member who, following a non-occupational disease or accident, suffers from permanent reduction of his physical or mental abilities, which rendered him incapable of earning more than one half of the salary of his health counter-party" [33].

However, this definition can open to everybody to wonder, if all those employees mainly agricultural employees who are suddenly attacked by any disease or accident out of their professional activities get indemnified because of such risks. Our experiences tell the truth that many of them,

especially those concerned with this study are not protected from the risk as defined above.

31. Article 21 of the Law n°06/2003 of 22th March, 2003 modifying and completing the decree- law of 22/8/1974 governing social security, in O.G.R.R. n°12 of 15/6/2003.

32. Article 21 of the Law no 06/2003 of 22/03/2003 modifying and completing the decree law of August 22, 1974 concerning organization of social security,in Rwanda

33. Article 20 of the Law no 06/2003 of 22/03/2003 modifying and completing the decree law of August 22, 1974 concerning organization of social security in Rwanda.

2.2.2. Protection in case of anticipated pension

According to the article 20 of law n° 06/2003 of 22/03/2003 modifying and completing the article 30 of decree-law of 22/08/1974 of 22 August 1974 on organization of social security law in Rwanda states that an insured can introduce his request of anticipated pension when he is attacked by a premature injury of physical or mental and which prevents him from exercising any salaried activity [34].

From this article, three conditions have to be highlighted: to be struck down by a premature injury of his physical or mental ability duly certifies which prevents a salaried activity; not to meet the definition of invalidity and not to have the required age for benefiting old age pension [35].

However, since the Agricultural employees are excluded from the categories of people automatically or optionally affiliated to social security, the reality shows that agricultural employees are not protected as far as anticipated pension is concerned.

2.2.3. Protection against old age and death risks

It is about the risk of old age and risk of death.

2.2.3.1. Risk of old age

In Rwanda, there are currently old people whose main profession is agriculture. Nowadays, their life's conditions in regard of advanced ages cannot allow them to continue

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34. Article 20 of the Law no 06/2003 of 22/03/2003 modifying and completing the decree law of

35. T. HABUMUGISHA, Social law, op. cit., p.57.

activities, to satisfy their primary needs such as drinks, food, clothes, walking, etc. Therefore, in Rwanda many of old people are found seeking the above needs while not having force of working for that.

Their tendencies are however to depend on other people like their children or on the State. It should be noted that the economic liberalization has increased the disengagement of State from economic activity while remaining with the regulatory function[36]. The State's missions include among others to set up social-economic policies and rules from which active people become subject and as result in normal way of life, they do use their contributions from social security board; during the time their social risks are realized. The lack of active people's contributions (agricultural employees) causes them to depend financially on their children while their duties vis-à-vis their parents include among others the obedience.

Even thought moral rules and rule of law oblige children to come to aid for their parents in case of necessity and vice-versa[37] the issue would be settled positively for upholding the dignity and respect of old people (agricultural employees), in preventing them from requesting to be given a hand. Thus, they should be given a hand willingly without being pushed by their requests.

During the period of time of their work, the experience suggests that if agricultural employees were freely subject to the Rwandan labour and social security law, they would benefit from old age pension as a guarantee to retirement of insured people who meet certain conditions required by the law[38].

36. T. HABUMUGISHA, Economic and Financial Law, Lecture Notes, Kigali, Faculty of Law, ULK, 2013, p. 13, unpublished.
37. Article 200, par. two of decree law of 30th/July/1888 regulating civil code of persons and family in Rwanda in B.O., 1888, rendered enforceable.
38.Article 20 of the law no 06/2006 of 22/03/2003 modifying and completing the decree-law of 22/08/1974 on organization of social security in Rwanda.

Article 20 of the law n° 06/2006 of 22/03/2003 modifying and completing the decree-law of 22/08/1974 on organization of social security provides the following: a member of social security board who attains at least the age of 55 years, or the age as provided for by the statutes governing the Rwanda defence forces and national police or on the age as specified by the decree of the minister having social security in his/ her attributions for those working under hard conditions, receive old age pension"[39].

It is quite clear therefore in Rwanda that agricultural employees are not protected. During our interview organized on 24/8/2011, an old man whose name is Rumiya Dismas used to work for IABM as member and agricultural employee reached the retirement age and was too weak to carry out professional activity any more. He wonders where to find financial means for maintaining tomorrow's hope of living[40]. If he were member of social security board, he would benefit from social security benefits according to social security laws, especially for the pensions scheme.

2.2.3.2. Death insurance

In the past, life insurance was called death insurance due to its primary function which was to simply pay for funeral expenses. Currently, life insurance has become important in helping the surviving family members to maintain their regular lifestyle and place of residence. This is particularly important if one spouse is stayed at home, or may not be prepared to immediately enter the workforce after the death of his or her partner. In the case of cash value life insurance,

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39. *Article 20 of the Law no 06/2003 of 22/03/2003 modifying and completing the decree law of August 22, 1974 concerning organization of social security in Rwanda.*
40. *D. RUMIYA, The former agricultural employee, interview, accessed on 24/08/ 2011.*

it can also be used as a form of investment and turned in for cash at a later date[41].

As the importance of death insurance has been made clear in the above mentioned, nevertheless currently in Rwanda; most of agricultural employees' relatives worry about funeral expenses and instability of the surviving family member's regular lifestyle in regard of financial and economic matters.

This is illustrated by the following practical case relating to the lack of protection from death risk: Mrs Nikuze Madon lives in Kagitarama village, Gitarama cell, and Nyamabuye sector in Muhanga District. She is a widower whose husband Mr. Izirerera Evode died and left three (3) children; that husband was member of IABM working for his country. Unfortunately today, the surviving family is suffering from the gap that was left by Izirerera Evode[42].

2.3. Inefficiencies of Rwandan Law as regards the protection of Agricultural Employees

This section aims at finding out where some Rwandan laws have weaknesses regarding the protection of agricultural employees.

2.3.1. Inefficiency of Labour Law of 2009

The law n°13/2009 of 27/05/2009 regulating labour in Rwanda has inefficiency in its article 3 when excluding agricultural employees from its scope of application. Articles 3 § 2 of the law n°13/2009 of 27/05/2009 regulating labour in Rwanda excludes from its scope of application the person

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41. X, *death insurance, http://www.ehow.com/about_4708937_what-death-insurance. html on 06/06/2011.*

42. *NIKUZE Madon, an agricultural employee, interview, accessed on 24/08/2011*

dealing with family agricultural, breeding, commercial or industrial activities except for provisions relating to health and safety at workplace as well as to prohibitions for child labour and for pregnant or breastfeeding women[43].

When reading this exception, it is as if, the agricultural employees are freely protected by the Rwandan social security law while in this regard the affiliation to social security requires being firstly subject to the labour law provisions.

Family labour is therefore defined as "every work carried out by the husband or wife, ascendants and wards engaged in agricultural activities for the benefits of the family"[44]. Then, some of Rwandan agricultural employees today, do not only work for eating but also work for reserve of markets as it is the one of the Rwandan vision 2020's pillars[45].

This labour law in its scope of application governs labour relations between workers and employees[46]. As today, it is found that agricultural employees who have been getting united in cooperatives work under their direction and authority. Therefore, there would not be a reason of excluding them from the scope of the application of labour law as it is the indication of the provision of article 3 Paragraph 2 of the law n°13/2009 of 27/5/2009 regulating labour in Rwanda.

2.3.2. Inefficiency of the law n°06/2003 of 22/3/2003 governing social security in Rwanda

It is about discussion related to the inefficiency of law n° 06/2003 of 22/03/2003 regulating social security in

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43. *Article3 of the law no13/2009 of 29/05/2009 regulating labour in Rwanda.*

44. *Article 3 of the law no13/2009 of 29/05/2009 regulating labour in Rwanda.*

45. *T. HABUMUGISHA, Economic and Financial Law, Lecture notes, Kigali, ULK, Faculty of Law, 2012, p. 49, unpublished.*

Rwanda regarding the protection of agricultural employees from social risks and inefficiency as regards the prevention of those risks.

2.3.2.1. Inefficiency as regards the protection of agricultural employees

To find out this inefficiency of protecting agricultural employees, it is to see that issue in all angles of how this law protects employees who work under statute, contract, independent employees and self-employee. Besides this, it is worth mentioning here that some articles of this law should be criticized. Articles 3 and 21 of the law n°06/2003 of 22/3/2003 need to be taken into consideration and be sanctioned by the amendment due to the reasons shown below and discussed.

Therefore, after analysing the legal texts and the reality from the field, it is overt that along with many other employees

who work in form sector of activities especially independent workers and self-employees; the agricultural employees' social risks are not yet coved by the Rwandan social security law.

According to the article 3 of the present law, on paragraph one states that all persons having been affiliated on regime of social security law, during consecutive six months and fail to fulfil conditions of social security contributions, can remain willingly assured to the branch of pension over condition of requesting that, in 12 months which follow the date by which his compulsory assurance got over[47].

46. *Article 2 of the law no13/2009 of 29/05/2009 regulating labour in Rwanda.*

47. *Article 3 of the Law no 06/2003 of 22/03/2003 modifying and completing the decree law of August 22, 1974 concerning organization of social security.*

This paragraph gives birth to the couple of critic. The first one motivates to wonder on reason why the law limits to the twelve months to those who were subjects to the Rwandan social security law. On one hand, this may constitute the element of blockage and limitation to be subject to the law in question"[48]. to the many of employees. On the other hand, that can push employees to regain social security risks coverage in order to avoid fear of risks.

But the worry is that, many of employees may not be pushed by the latter to retake social security risks coverage immediately with a will, after getting new jobs. Because, even most of them do not know this right and it is important. That is why social security coverage would have a compulsory character to every employee along with the mobilization in active populations until they comply with the law voluntarily.

Another criticism concerns the limitation which comes only to the branch of pension, without allowing them for the branch of professional risks by which they are exposed at the time they regain another employment[49]. The paragraph 2 of the law aforementioned states that this authorization of getting optional social security coverage, under request, it is also open to self-employees and independent workers who were never subject to the Rwandan social security law; in condition of not exceeding 45 years of ages[50].

However, this subjective provision is like welcoming agricultural employees to the Rwandan social security law. While, it should be compulsory to every worker in Rwanda, because it contains

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48. *S.NIYONGERE, op.cit. p. 21.*
49. *Ibid.*
50. *Ibid.*

public policy which maintains interests of those who are subject to it. As a result, among others, there is extension of welfare among citizens.

It is not only to be criticizing its article 3 but also its article 21 makes confusion when one reads it. However, thanks to above facts, we have discussed, together with the content of that article 21 in above mentioned discussion by which was to us as means for criticizing it.

2.3.2.2. Inefficiency as regards the prevention of social risks

Social risks that would be prevented are professional risks and those which give birth to pensions. Therefore, professional risks prevention is a set of measures regulations or techniques tending to avoid accidents and sicknesses. It aims at principle for improving conditions of health and employees' security and reducing all possible cost of work accidents and professional sicknesses[51]. It is also a set of legal dispositions of nationals and internationals that regulate workers' employment conditions that protect those workers and determining supervision there of[52].

All of these pieces of explanation of professional risks scope at making defining what are professional risks prevention but fail to give the meaning of death risk prevention which is a crucial problem to those who reach the time of retirement.

In fact, when a person has an occupation, the latter helps his whole body to operate and that occupation helps that person to

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51. E.GAHIGI, De la protection légale des travailleurs du bâtiment et des travaux publics(B.T.P)en droit positif Rwandais, Kigali, ULK, Faculté de droit,2010, p.9, inédit.
52. INRS,"Introduction à la prévention des risqué professionnels" disponible sur www.inrs. fr,accessed on 11/03/2010 ; E.GAHIGI, De la protection légale des travailleurs du bâtiment et des travaux publics(B.T.P)en droit positif Rwandais, Kigali, ULK, Faculté de droit, 2010, p.52, inédit.

keep his tomorrow's hope of well living. Moreover the retirement by which a person stops from doing his professional activity and start living on pension; this sometime causes him to get weaker and weaker. Therefore, once this time is not well managed, the community and a family of the one who is in retirement period may risk losing him, while any human being is always needed and important to himself the family and his whole community.

As it is emphasized by adage "If youth can, even old people know"[53], this means here that no one should be put aside pretending that he is not or no long productive and be deprived from consideration. While all the categories of people are complementary and need one another. Therefore old people necessitate a consistence social protection especially during the period of retirement "the one of Chine's policies has been taking care of old people so that they can keep up explaining where the country has come from and its future"[54].

Even though, the above consulted texts scopes clarifying about professional risks prevention, nevertheless the Rwandan social security law so far remains silent on proving provisions which would determine the way of preventing both professional risks and death risk preventions.

In addition, article 41 of the decree law of 22/08/1974 governing the organization of social security law states that the amount to pay periodically in long attributed to rents or pensions can be re-valued by a presidential order upon proposition of Ministry having social security in his attributions, following the variations of level general salaries resulting from variations of the life cost[55].

53. I.NAMBAJE, Education politique et morale, notes de cours, Nyanza, ESPANYA, 2004, p.7, inédit.

54. Rwandan radio, news, Kigali, heard on 23th July, 2011.

55. Article 41 of the Decree-Law of 22/08/1984 on organization of social security in Rwanda, in Official Gazette N° 18 of 15/08/1974

From the above perspectives, it is quite clear that the revalorizations of pension in Rwanda were respectively done in 1981 and in 2002. However both of them did not achieve its goals of taking into consideration prices of consummation which since that period of time, up to now have almost quadrupled[56].

Though-out objectives of old age pension as above mentioned, the old age pension remains too insignificant to improve the beneficiaries' lives. Moreover, it does not fit the current life standard in terms of confronting the poverty that may occur at the time of retirement to the most of Rwandan retired people. It should be noted that due to the insufficiency pension, it would be re-valued on basis of various factors like the level of life standard in the framework of markets' prices such as medicals care costs and revaluing the old age pension basing on outcome and fruitful results of investments made by the Rwandan Social Security Board.

It should be noted that most of social risks of Rwandan agricultural employees are not yet covered by the Rwandan Social Security Law. Therefore, to fill the above gaps that both Rwandan labour and social security laws now present, sustainable mechanisms should be proposed.

2.3.2.3. Reasons for exclusion of agricultural workers

After discussing with one of trade unions[57] which is operational in Rwanda about the problem of agricultural workers, it is quite clear that the most difficult issues that employees face include the wages salary structures, the incomes which are neither regular nor stable. Many agricultural workers are under poverty line. With their incomes, they are not able to cover the primary

56. L.MUYANGO, *Les conditions d'octroi des pensions et leur impact sur les conditions de vie de l'assure, mémoire, Kigali, ULK, Faculté de droit, p.48, inédit.*

57. *COTRAF-RWANDA*

very difficult unless daily minimum wage be fixed at reasonable amount. Trade unions are negotiating so that the Daily Minimum Guaranteed Wage is fixed at one thousand and five hundred (1,500) Rwandan francs. It is worth noting that the current Daily Minimum Guaranteed Wage is one hundred (100) Rwandan francs according to the law 1974 which is still in force in Rwanda. The issue here is the fact that some of the agricultural employees don't have the regular activities which will allow the calculation of social benefits. In addition, a number of such employees work in their own land; one may consider them as the independent workers.

It is necessary to note that the contributions are calculated basing on the salary. Most of agricultural workers do not have the regular and fixed salary. So, it will be difficult to calculate their contributions hence the necessity of looking at different mechanisms for protecting agricultural employees against social risks in Rwanda.

❖ Mechanisms for protecting agricultural employees against social risks in Rwanda

The present chapter deals with propositions of legal and institutional mechanisms as means of covering agricultural employees' social risks.

c. Proposition of institutional mechanisms for the protection of agricultural employees

It is about the role of agricultural employees' trade unions, roles of cooperatives, the role of local governments, the role of Rwanda Social Security Board and the role of central government.

i. The role of agricultural employees' trade unions

A trade union is an association of workers executing similar or related professions with the exclusive purpose of studying and defending their economic and social interest[58]. It is an organization of workers exercising one and same profession, similar occupation, related professions and seeks to cater for and defend their socio- economic interests[59].

Article 38 paragraph 2 of the Constitution of the Republic of Rwanda stipulates that every worker may defend his or her rights through trade union action under conditions determined by Law[60].

It follows therefore, the one would propose to the existing trade unions to discuss more and more about issues relating to social and economy of their members. Trade unions' executive committee would try to explain members their rights that they think they do not have like the protection from social risks, to create a good relationship with other organs that would be their partners in activities like districts and others that may be in touch with them, by requesting those partners to arise up about the agricultural employees' protection from social risks.

To create other trade unions in other districts in Rwanda where they do not yet exist; with the purpose of making studies of all challenges their members face by trying to find out solutions to them. Therefore, they would be much

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58. *Article 1, 22°, 115-118 of labor code, of the law n° 13/2009 of 27/05/2009 regulating Labour law in Rwanda in O.G. n° special of 27/05/2009.*

59. *T. Treu, Labour law and industrial relations in Italy, The Hague, Kluwer Law International, 1998, p.131.*

60. *Article 38 paragraph 2 of the Constitution of the Republic of Rwanda of 4/6/2003 as revised to date*

involved in defending social and economic interest of them. Moreover, there would be confederation of all agricultural employees' trade unions in Rwanda so that cultivated areas exploiters can have a start of sharing experiences especially the regard of defending the protection of their social risks[61].

ii.   Role of agricultural employees' cooperatives

A co-operative society is a voluntary association started with the aim of service of its members. It is a form of business where individuals belonging to the same class join their hands for the promotion of their common goals. These are generally formed by the poor people or weaker section people in the society. It reflects the desire of the poor people to stand on their own legs or own merit. The philosophy of the formation of co-operative society is "all for each and each for all"[62].

The cooperatives of agricultural employees are the midpoint of the issue's remedies. The employment contract between a cooperative and each member, would make a cooperative to be an employer of him/her, the latter also becomes employee who engages himself to be employed for that cooperative. Therefore, the five characteristics of an employment contract appear in that operation. That contract is synallagamatic both parties owe reciprocally each other; it is consus contract, onerous contract which means that they do not cooperate for free of charge, *intuitu personae*, which means that each employee from agriculture activities execute his obligations according to his personality, it is successive[63].

61. *Article 115 of the law no13/2009 of 27/05/2009 mentioned above.*

62. *Sanket Khandkar «Business studies» available at http://www.publishyourarticles.org/ knowledge-hub/business-studies/what-do-you-mean-by-co-operative-society.html, visited on 26/6/2012.*

63. *M.UWAMARIYA, De la protection du travailleur dans le cadre du contrat de travail en droit Rwandais, dissertation, Kigali, ULK, Faculté de Droit, p.10,unpublished.*

Recently, declarations insisted more about cooperative as a tool of development[64]. The latter nowadays means "as a process of expanding the real freedoms that people enjoy focusing on human freedoms contacts with narrower views of development with the growth of gross national product, or with the rise of person's incomes, with industrialization, technical advance, and social modernization"[65]. As it is connected to the latter, social security is situated in social welfare of the population; therefore, sustainable development cannot be achieved without coverage of agricultural employees' social risks.

It is in the above perspectives that the law n° 50/2007 regulating cooperatives in Rwanda especially in its article 2 states that cooperatives shall respond to the needs of their members[66]. Among those needs there is social security.

For mobilizing them about social security, this would pass throughout training and information to members[67]. In this regard, we would like to propose to cooperatives to be in touch with agricultural employees' trade unions and take the issue before the districts' authority so that the problem can be discussed from that organ of administration, in order to seek the proper way to protect the farmers from social risks.

Some employees under cooperatives which control their activities on daily basis can be considered as their employers and pay their contributions. That is the case where Rwanda Social Security Board, Rubavu Branch seized the cooperatives properties

64. *S.R.HARROD, L'Epargne dans la recherché économique contemporaine, Bruxelles, November, 1965.*

65. *F.NTEZILYAYO, International development law, Lecture notes, Kigali, ULK, Faculty of law, p.2, unpublished.*

66. *Article 2 par.2 of the law no50/2007 providing for the establishing, organization and functioning of cooperative organizations in Rwanda in O.G.no 23/bis of 01/12/2007.*
67. *Article 3 paragraph 5 of the law no50/2007.*

because it had refused to pay the social security contributions of its members[68]. This case can be considered as a precedent or a model.

3.1.3. Role of local governments

A district in Rwanda is autonomous administrative entity with administrative legal status and financial autonomy. It is an entity for the promotion of solidarity of the population in its development efforts[69]. The district shall support activities, in which the population participates. In elaborating development activities, the district shall endeavour to take its people's wishes into account and shall immediately coordinate all development activities in the district"[70]. The supervision of social security of employees would be considered as part of development.

Therefore, the development process of the Rwandan agricultural employees would not only be seen as mobilizing them to be professional workers, to work for economic growth, enjoying a good environment, political matters, etc[71], but also to seek mobilizing them about getting developed socially by making consideration into their protection from social risks.

Along with mobilization to agricultural employees in sectors about their rights of being protected from social risks, Sectors would make reports of all professional employees who work for their cooperatives and take those reports to

68. *Rwanda radio, Kinyarwanda news, 12/06/2012, on Pfunda Industry case.*

69. *A.NSABIMANA, Administrative law, Lecture notes, Kigali, ULK, Faculty of law, 2010, p.104, unpublished.*

70. *Article 6 of the law no08/2006 determining the organization and functioning of the district in O.G, NO special of 24 February 2006.*

71. *F.NTEZILYAYO, Op.cit.,p.1.*

the districts. The latter also to their return would make arrangement of those reports and take them to Ministry of Local Government. Then, the remaining task of districts would be making the mobilization to agricultural employees about the importance of being protected from social risks and do as much as they can for advising the cooperatives of agricultural employees and the way the market of their outputs can be extended[72].

3.1.4. Role of Rwandan Social Security Board

This role is about the role of RSSB among others in regard of employees' contributions, different benefits to the beneficiaries and the establishments of international institutions relations.

3.1.4.1. Role in case of dealing with contributions of employees

To register employers, employees, beneficiary and person for whom subscription was made in various branches of the social security managed by RSSB[73], this purpose of RSSB would make it to know and to make legislation of all agricultural employees' cooperatives and take them as employers of their members. For having in its plan to request them contributions taken from earnings of their employees whose 5% comes from cooperative's account and be liquidated in the account of each employee to protect them from various social risks as are provided by the law in force which regulate social security in Rwanda. It would also register each employee of those cooperatives for being aware of earnings and contributions of each agricultural employee to be liquidated on time.

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72. *Article 7 of the law no08/2006 determining the organization and functioning of the district.*

73. *Article4 of law no 45/2010 of 14/12/2010 establishing Rwanda social security Board and determining its mission, organization and functioning.*

The rate of contribution for the branch of the pensions is fixed to 6% of the remunerations paid to the account of insured. The rate of contribution for the branch of professional risks is fixed to 2% of the remunerations received by the insured. This contribution is entirely paid by the employer. For example, a salaried employee monthly receives the remunerations amounting to FRW 100,000. The rate of contribution for the branch of the pensions is of 6%[74]. The employer should pay to Social Security Boards for the branch pensions FRW 6000 per Month, of which FRW 3000 are to be paid by the employer and FRW 3000 to be paid by the salaried employee. The rate of contribution for the branch of the professional risks is 2%. The employer should entirely pay for the professional risks branch an amount of FRW 2000 per month"[75].

Thanks to the above mentioned regards, the agricultural employees' contributions would be taken from their earnings as follows: An average of agricultural employees' earning from IABM is FRW 981,500 per year, per one month it is FRW 81,791.667[76].

It should be noted therefore that in proportion with the income of each agricultural employee, the contributions which would be liquidated in RSSB are following: Via the FRW 531,500 of the IABM pays to an agricultural employee, this means that a month his/her earning is FRW 88,583.333 of which FRW 4,429.166 would be paid by IABM and FRW 2,657.5 is to be paid by agricultural employee. The IABM would entirely pay the professional risks branch an amount of FRW 1,771.666.

74. T. HABUMUGISHA, Op. cit., p.63, unpublished.
75. Ibid.
76. A.MUKANKUNSI, President of IABM, interview, Muhanga District,2011.

3.1.4.2. Role in case of dealing with different benefits to the beneficiaries

To pay social security benefits to beneficiaries; Rwandan Social Security Board pays social security benefits to the victims to covering financial problems caused by the sinister that has occurred. Therefore, social security benefits which are paid to the victims are the following: social security benefits in case of professional risks, this one contains permanent incapacity which may be either total or partial incapacity.

In case of victim's death, an amount estimated at FRW 200,000 of funeral fees allowance is paid to survivors after presenting the death certificate issued by a physician accepted by the government or the mayor of the District or Town in which the death has occurred[77]. Anyhow, an agricultural employee who dies would be recognized by State throughout its institution RSSB by providing all indemnifications to his/her survivors.

3.1.5. Role of central government

The Government of Rwanda recognizes the role which it plays in boosting the socio-economic development of the country[78]. Through this role it appears that the welfare of the population is the one of the four government's pillars which is taken as barometer of the Rwandan development progress. The latter cannot be achieved without the well-being of the population in regard of protecting employees from social risks. Therefore, the default of that, leads to close

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77. *Prime Minister order no06/03 of 15/03/2003 bearing determining of the amount of funeral fees,O.G.R.R,15/06/2003.*

78. *Ministry of infrastructure, Energy Investment Opportunities,http://mininfra.gov.rw/index.php?option=com_content&task=view&id=117&Itemid=145,accessed on 10/09/2011*

up or delay doing activities, when an employee gets route or actual work accident and misses the compensation, together with unhappiness of employees when risks that cause different pensions get realized and miss the indemnification due to that sinister.

It is quite obvious that agricultural employees are not protected from social risks. Furthermore, the local governments after reporting all issues that agricultural employees have in regard of their protection from social risks to their tutelage- MINALOC, the latter, MIFOTRA and RSSB would try to convince the Cabinet about the relevance of the agricultural employees' social risks problem for motivating them to make the proposal of drafting law which aims at modifying both Rwandan labour and social security laws, by seeking the way they could be protected from social risks.

Therefore, after the initiators of the above policy's common understanding about what constitutes the problem and solutions summarized into the draft bill, the latter would be submitted to the parliament for being amended for opening rights of social protection towards agricultural employees.

3.2. Proposition of legal mechanisms

In this second section, we are going to propose certain legal measures that could be applied for a better protection of agricultural employees from social risks. Therefore, it is about reinforcement of declarations relating to employees' social protection, modification of Rwandan labour and social security laws as regards to the protection of agricultural employees.

3.2.1. Modification of the law Code

As it has been seen that the Rwandan agricultural employees are excluded from the scope of the application of the Rwandan labour law, as also it has been the indication of Mr. MUNYANGABE Frodouard where he wrote that in the statement of motives of project of law regulating labour law of 28 February 1967, it was reminded that agricultural employees had been put out of the scope of the application of labour law instituted by law of 28th February 1967, and the article 186 of the same law provided that problem would have been governed by the special dispositions enacted by a particular law. Nevertheless those dispositions were never taken[79].

In this regard, it is now a good time to suggest the modification of article 3 of the law n° 13/2009 of 27/05/2009, by making removal of its paragraph 2 which explicitly excludes agricultural employees from its scope of the application. Coming to its article 2 paragraph 1, where it indicates the scope of its application, this law governs labour relations between workers and employers as well as between the latter and the apprentices or the trainees under their authority as per contract"[80]. Therefore, the law which protects apprentices would not fail to protect agricultural employees, thus, our proposal would be formulated as follows: This law governs labour relations between workers and employees, between the latter and apprentices and between cooperatives and their members.

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79. *F. MUNYANGABE, Op. cit., p4.*

80. *Article 2 of the law no13/2009 of 27/05/2009 regulating labour in Rwanda.*

Therefore, once this above proposal comes from being taken into consideration, the objectivity of the Rwandan labour law will open rights of agricultural employees who work for their cooperatives and feel as an employee who at the same time becomes subject to the Rwandan social security law[81]. Therefore, the modification to this above article would not be only motivated by the above proposed but also these employees can also feel as other employees, and become able to claim any other kind of rights which might favour them.

For example, as the agricultural employee Mr. BUCYANA Gaspar who told us that "there is most of the time delay to be paid"[82], so, once they feel as employees by professional they can claim for being paid by their cooperatives on time basing on the article 64 of law n° 45/2011 of 25/11/2011 Governing contracts and the latter also can start up looking for the all possible measures to pay them on agreed time. Therefore, there would be a written convention between an agricultural employee and a cooperative he/she works for, in framework of insuring rights of their protection[83]. This written convention will enable both agricultural employees and their cooperatives to know their rights and obligations[84].

3.2.2. Modification of the social security law of 2003

It is about to make proposals of modification of the existing provisions of the law governing social security in Rwanda and to show how professional risks would be prevented.

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81. *Article 2 of the Law no 06/2003 of 22/03/2003 modifying and completing the decree law of August 22, 1974, concerning organization of social security.*
82. *G. BUCYANA, agricultural employee and member of IABM, witness, Muhanga District, 2011.*
83. *L.M.NTAGANDA, op.cit., p.43.*
84. *Ibid.*

3.2.2.1. The filling of Rwandan social security law's gaps

As, it has been seen, the law has an objectivity characteristic for elaborating the body of rules as whole. To this mentioned, the subjected to that law would be benefiting it fully without being broken by any obstacle. Moreover, article 3 paragraph 2 of Law N° 13/2009 of 27/05/2009 regulating labor in Rwanda, as its gap has been illustrated, we would propose to it as follows: The modification of that paragraph would be a necessity; there would be a removal of that limitation age condition for being affiliated to the RSSB, because the social security is rights to everyone who works[85]. Even thought, the one who can be affiliated aged beyond 45 years old and by unfortunate become too weak to work without contributing in RSSB during 15 years, this would not be the cause of depriving him to be affiliated because during the time of his retirement he would be benefiting from what are provided by the law and accordingly to his contributions in RSSB.

For the matter of compensating him for the old age, there would either to give him allowances or rate. When he dies, the FRW 200,000 of funeral fees would be made available. Then, the survivors would be indemnified in accordance with provisions of the law. There would not be only the necessity of amending the above par. two but also the par. one would be amended due to its weakness it presents.

Therefore, the matter of limitation based on time condition would be removed. But, whenever he regain an employment, along with his an employer, they would start up abide by contributing again in RSSB as required by the law.

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85. MINICOFI, National Social Security Policy, http://www.minecofin.gov.rw/webfin_send/16 accessed on 15115/09/2011.

The modification of this article favours agricultural employees because whenever they obtain an employment, they can be insured in the RSSB by using their own affiliation insurance number without any modification to it. In addition to these, we would like to propose about having social security law's provision defining clearly about how the amount that are paid to beneficiaries can be fit of the cost life situation[86].

3.2.2.2. Elaboration of a specific law protecting agricultural employees

The development of this research has shown especially in second chapter that in Rwanda there is no specific law protecting the agricultural employees despite the place they occupy in Rwandan economy. The research indicates that in some countries like Serbia, Albania and Macedonia agricultural employees are covered by special social insurance schemes, sometimes together with all those working on the farm; sometimes special arrangements are (formally or informally) made for farmers within the general social insurance schemes[87].

Now that in Rwanda there is no specific law protecting agricultural employee, it is necessary to deplore the exclusion of agricultural workers from the scope of application of social security. In USA such exclusion has been also a big problem. The Social Security Act of 1935 excluded from coverage about half the workers in the American economy. Among the excluded groups were agricultural and domestic workers a large percentage of whom were African Americans. This has led some scholars to conclude that policymakers in 1935 deliberately excluded African Americans from the Social Security system because of prevailing racial

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86. *Ibid.*
87. *Paul Schoukens, Social security protection for farmers: Farmers' social protection in Serbia, Albania and Macedonia set off against European best practices, 2007, p. 3.*

biases during that period. The exclusion of agricultural and domestic workers from the early program was due to considerations of administrative feasibility involving tax-collection procedures.

3.2.2.3. Mechanisms for the prevention of social risks

It is about the professional risks and death risk preventions. Therefore, these risks among others would be prevented so all employees might be protected from social risks.

Professional risks, as we have discussed its danger towards employees, these would be prevented via the following ways: it is mainly up to employers to set up polices in their enterprises by using possible tools and methods which firstly is to involve the workers in taking decisions on preventing their social risks and again to the side of employers would provide facilities for achieving that police[88]. This is to insure the physical, mental integrity of employees and at the same time to create conditions of their physical, mental, and social well being[89].

As we have seen that the death is uncertain event unavoidable but possible to delay. Therefore, an employee who starts his/her retirement there would be measures to prevent that unfortunate event from him/her. Moreover, there would be indexation of pension that would aid retirees to solve their fundamental needs which includes among others food, drinks, shelter, transport etc[90].

According to the French legislation, this revaluation is automatically and is legalized by the law. According to Jean Jacques Depeyroux, A decree intervenes every year for

88. E.GAHIZI, *De la protection légale des travailleurs des bâtiments et des travaux publics(B.T.P) en droit positif Rwandais, mémoire, KIGALI, ULK, Faculté de droit, 2010, p.54, inédit.*

89. *Idem, p. 55.*
90. B.MUSIKA, *Analyse juridique de l assurance vieillesse en droit Rwandais de la sécurité sociale, mémoire, Kigali, ULK, Faculté de droit, p.63, inédit.*

fixing the coefficients of revaluation applied to pension and rents already liquidated in order to maintain the purchase capacity[91].

Therefore, as it comes from being emphasized by the foreign legislation, this act also would be taken into consideration by our Rwandan lawmaker so that different pensions may fit the standard of living. Moreover, the revaluation of the amount of the money which is given to RSSB's beneficiaries cannot only bring the interests to the beneficiaries but also the active workers may remain trust in RSSB's services. To the side of RSSB's interests are to be making much more investments in economics activities due to the rate of old people's deaths diminution[92].

As far as our own contributions are concern to this part of the work, we call up on Rwandan agricultural employee's throughout their trade unions to defend their rights leaning on the Rwandan law. We also call upon the Rwandan lawmaker to provide provisions of law that define ways of how old age pension would be revalued in accordance with life standard's requirements.

3.2.2.4. Instructions for the prevention of social risks

In her research, Julian Hall suggests instructions which should be followed at work place in order to avoid accident at work[93].

1. *Always be alert on the job - Being awake and alert all the time while at work will not only prevent accidents from happening at work. It will also enhance the performance of the worker and can even earn him a promotion or a salary increase. Most of the people who become involved with accidents at work are those who feel sleepy while working.*

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91. J.J.DEPEYROUX, *Sécurité sociale*, 5ème Ed., Paris, Dalloz, 1973, P.412.
92. Idem, p. 66.
93. See http://www.character-training.com/blog/top-10-tips-on-how-to-prevent-an-accident-at-work/, accessed on 2/3/2013

2. *Wear the required uniform – A person who works in a factory has a greater chance of being involved in an accident at work. Thus, he should be more vigilant about the wearing of proper uniforms and other protective garments when working. Never take safety to chance so always go to work with the proper dress code. If your work requires you to wear a hardhat helmet then wear it.*

3. *Listen and actively participate during emergency drills – Some work places conduct emergency drills to make sure their employees know what to do in cases of emergencies so as to avoid accidents. Some employees take this as another boring drill so they just look around and take it for granted. So when emergency time comes they are the ones who are left behind in the face of grave danger.*

4. *Always ask your supervisor about the possible risks of doing a certain task – There are workers who are exposed to danger just by doing their regular workloads. A worker should always check with his supervisor if he is unsure about the task at hand or if he feels that doing that task will expose him to great danger.*

5. *Never take a high-risk job for which you have not been trained for - It is stupid for anyone to take on a high-risk job especially if he has not been trained for the job. Imagine an untrained person doing the job of a fireman? Doing this will not only expose you to a great danger but will expose other people to danger as well.*

6. *Always follow the safety program of your workplace – Employers are responsible for the well-being of their workers while at work so they have installed safety programs which the employees should follow. Employees can avoid an accident at work if they follow the safety program mandated by the employer.*

7. *Always be on the lookout for possible cause of accidents and then report it to the management - There are workers who are already aware of a disaster waiting to happen but they refuse to see the warning and go on with their work. If you see telltale signs of a possible cause of accident at work like a ceiling that is about to give way or a stairway that is about to give way then you should report it to the proper authority immediately. Do not wait for the accident to happen as it might happen to you.*

8. *Owners of a company should always post signs or rules that should be observed by their employees in order to avoid a possible accident at work. These posters should be posted in areas that are highly visible to the workers so they will be able to read them.*

9. *Formation of an emergency team among the workers - The team will be responsible for monitoring possible hazards at work that may cause an accident. They will also formulate rules and regulation to be observed in case of possible incidents that may cause harm to the workers.*

10. *Never risk the health and safety of the employees – Profit may be the main motivation of a company but they should earn their keep without exposing their workers to hazard. Company owners should always prioritize the health and safety of their workers no matter what[94].*

It should be noted that preventive measures that both employers and employees can take to prevent an accident at work are many. However, a worker who follows the safety measures and procedures set by the employers for the workplace can most likely be able to prevent accidents.

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94. *http://www.character-training.com/blog/top-10-tips-on-how-to-prevent-an-accident-at-work/, accessed on 2/3/2013.*

❖ General conclusion

Towards the end of this article entitled, «the protection of agricultural employees under Rwandan social security law" it is important to note that in the course of dealing with the body of this work, we have not hesitated to find out gaps and inefficiencies which held by both Rwandan labour and social security laws.

In fact, they are challenges of social risks which are the following: the professional risks which include protection against actual work accidents- protection against route accidents and protection against occupational diseases and risks which cause different pensions which are risk of invalidity, risk which cause anticipated pension, risk of old age and the one of death.

However, the legal problems related to Rwandan law are the main reasons of the fact that the agricultural employees are not protected from social risks. First of all, the law n° 13/2009 of 27/5/2009 regulating labour in Rwanda in its article three paragraph 2 excludes them from its scope of the application. The Law n°06/2003 of 22/3/2003 governing social security in its article 2 states those who are subjected to it among others there are workers subjected to the provisions of labour law.

Regarding the law regulating social security law in Rwanda; it has been clear its inefficiencies rely on the fact that its articles 3 and 21 manifest gaps by which some criticisms have been raised up. Therefore, inefficiency of the law regulating social security in Rwanda especially on phase of protecting agricultural employees from social risks, it has been found that protection towards agricultural employees is seen in all angles of how this law protects employees who are subject to the current law in force. However, articles 3 and 21 of the law regulating social security in Rwanda have been criticized as follow: article 3 paragraph 1 states that

all persons having been affiliated on regime of social security law, during consecutive six months and fail to fulfil conditions of social security contributions, can remain willingly assured to the branch of pension over condition of requesting that in 12 months which follow the date by which his /her compulsory assurance got over.

Therefore, this paragraph gives birth to the couple of critic. The first one motivates to wonder on reason to why the law limits to the 12 months to those who were subjects to the Rwandan social security law? On one hand this may "constitutes the element of blockage and limitation to be subject to the law in question to the many of employees. On another hand that can push employees to regain social security risks coverage in order to avoid fear of risks. Therefore, the research has also found that the article 21 has been criticized as follows: when taking its paragraph two and try linking it to the first one.

After the findings presentations, we have come up with proposed solutions for filling up the loophole that we have identified in the course of research. Therefore, we came up with institution mechanisms and legal ones as solutions to the matter. Therefore, all along of the discussion of institution mechanisms, we have dealt with the role of agricultural employees' trade unions and cooperatives, the role of agricultural employees' cooperatives, the role of local governments and the RSSB; then, lastly the role of central government. Therefore, the one solution mechanism to the problem has been the role of agricultural employees' trade unions and cooperatives, where trade unions would come back to their one of their objectives of defending social and economic of their members.

The role of local governments and the RSSB, these last two organizations are invited to collaborate while seeking the way

agricultural employees can be protected from social risks as follow: Districts would report to their tutelage MINALOC about the number of professional agricultural employees that they have so that the latter and RSSB can try to explain to the session of Ministerial cabinet about the relevance of the problem. The central government in its return, after having got sense to the problem, it would set up a police aiming at modifying both Rwandan labour and social security laws. In additional, legal mechanisms would contribute to the protection of agricultural employees.

We cannot wind up with this general conclusion without proposing suggestions as follow: we would like to propose to all concerned with Rwandan social security to be involved in how farmers can be protected from social risks. Therefore, basing on the contributions of workers which are invested by the RSSB and most of employees' contribution for professional risks which the latter have not been realized and those contributions are used by the Board; we would like to suggest the increase of pensions which are provided to beneficiaries.

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