

Social Security and Social Protection in the East African Community

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Abbreviations

AAR	Air Ambulance Rescue
AIDS	Acquired Immuno Deficiency Syndrome
BNR	Banque Nationale du Rwanda (National Bank of Rwanda)
CBHIR	Community-Based Health Insurance in Rwanda
CBOs	Community-Based Organisation
CCM	Chama Cha Mapinduzi
CHF	Community Health Fund (Tz)
COFTU	Central Organisation of Free Trade Unions
CORAR	Compagnie Rwandaise d'Assurance et de Réassurance
CSR	Caisse Sociale du Rwanda (Rwanda Social Security Fund)
EAC	East African Community
FARG	The Fund for Genocide Survivors
GPs	General Practitioners
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGG	Inspector General of Government
ILO	International Labour Organisation
ILOLEX	International Labour Organisation Legislation
IMF	International Monetary Fund
INAMA	A Maternity Illness Insurance Body for the Informal Sector
INSS	Institut National de la Sécurité
ISSA	International Social Security Association
IPAR	Institute of Policy Analysis and Research
KCK	Kituo Cha Katiba
LAPF	Local Authorities Provident Fund

MFP	Mutuelle de la Fonction Publique (Civil Service Mutual Insurance Provider)
MINALOC	Ministry of Local Government (Rwanda)
MINECOFIN	Ministry of Finance (Rwanda)
MoFPED	Ministry of Finance, Planning and Economic Development (Uganda)
MMI	Military Medical Insurance
MPs	Members of Parliament
NBFI	Non-Bank Financial Institutions
NGOs	Non- Governmental Organisations
NHIF	National Health Insurance Fund
NHIS	National Health Insurance Scheme
NOTU	National Organisation of Trade Unions
NRM	National Resistance Movement
NSSF	National Social Security Fund
ONPR	Office National des Pensions et Risques Professionnels (National Pension and Workplace Insurance Service)
PEAP	Poverty Eradication Action Plan
PPF	Parastatal Pension Fund
PRSPs	Poverty Reduction Strategy Papers
PSPF	Public Service Pension Fund
PSPS	Public Service Pension Scheme
PSSP	Public Service Pension Fund
RAMA	La Rwandaise d'Assurance Maladie (Rwanda Health Insurance)
RDCS	Resident District Commissioners
RBA	Retirement Benefits Authority
RoR	Republic of Rwanda
RoU	Republic of Uganda
RSSB	Rwanda Social Security Board

RWF	Rwandese Franc (currency)
RPF	Rwanda Patriotic Front
SADC	Southern African Development Community
SAPs	Structural Adjustment Programmes
SORAS	Société Rwandaise d'Assurance
TMEA	Trade Mark East Africa
UBOS	Uganda Bureau of Statistics
UN	United Nations
UNHS	Uganda National Household Survey
UPDF	Uganda People's Defence Forces
URT	United Republic of Tanzania
VUP	Vision 2002 Umurenge Programme
WHO	World Health Organisation
ZSSF	Zanzibar Social Security Fund

List of Legislation Considered

Uganda

Constitution of the Republic of Uganda 1995 (amended in 2005)

The Pensions Act (Cap 286)

The Parliamentary Pensions Act No. 6/2007

The National social Security Fund Act (Cap 222)

The Leadership Code Act (Cap 168)

The Electricity Act (Cap 145)

Local Governments Act (Cap 243)

Uganda Peoples' Defence Forces Act No. 7/2005

Police Act (Cap 303)

Prisons Act (Cap 304)

Security Organisations Act (Cap 305)

Bank of Uganda Act (Cap 51)

Electoral Commission Act (Cap 140)

The Uganda Retirement Benefits Authority Bill 2010

The Liberalisation of the Retirement Benefits Sector (Draft) Bill 2011

The National Health Insurance (Draft) Bill 2010

The Judicature Act (Cap 13)

Tanzania

The Constitution of the United Republic of Tanzania 1977 (amended severally thereafter)

The Political Parties Act No. 4/1992

The National social Security Fund Act No. 28/1997

The Public Service Retirement Benefits Act No. 2 of 1999

The Parastatal Pensions Act No. 14/1978

The Local Authorities Provident Fund Act No. 6/2000

The Local Authorities Provident Fund Act No. 9/2006

The National Health Insurance Fund Act No. 8/1999

The Political Service Retirement benefits Act No. 3/1999

The National Provident Fund Act No.36 of 1964

The Judges (Remuneration and Terminal Benefits) Act 2007

The Social Security (Regulatory Authority) Act No. 8/2008

Zanzibar

The Zanzibar Social Security Fund Act No. 2/2005

Kenya

The Constitution of Kenya 2010

The National Social Security Fund Act 1965

The National Hospital Insurance Fund Act No. 9/1998

The Pensions Act (Cap 189)

The Retirement Benefits Act No. 3/1997

Rwanda

The Constitution of the Republic of Rwanda 2003

Decree Law No. 6 of 1974 of August 1974

Law No. 62/2007 of 30th December, 2007

Law No. 23/2005 of 12th December, 2005

Law No. 27/2007 of 27th June, 2007

Law No. 24/2001 of 27th April, 2001

Law No. 69/2008 of 30th December, 2008

Law No. 02/1998 of 22nd January, 1998

Law No. 13/2009 of 27 May 2009 Regulating Labour in Rwanda

Burundi

The Constitution of Burundi 2005

Code of Social Security 1999

Law on Pension and Occupational Risks Statute No. 1/11 of 29th November, 2002

The Restructuring of Pension Schemes and Work Risks of Civil Servants, Magistrates and Judicial Officers 2009

International Conventions Considered

The Universal Declaration of Human Rights, 1948

The International Covenant on Economic, Social and Cultural Rights,
1966

The African (Banjul) Charter on Human and Peoples' Rights, 1981

Employment Injury Benefits Convention No. 121 of 1964

The Invalidity, Old Age and Survivors' Benefits Convention No. 128 1967

The Equality of Treatment (Social Security) Convention No. 118 of 1962

The Employment Promotion and Protection Against Unemployment
Convention No. 168 of 1988

The Maintenance of Social Security Rights Convention No. 157 of 1982

The Social Security (Minimum Standards) Convention No. 102 of 1952

Foreword

As the East African regional integration progresses, the demand to address related social economic issues by civil society and other stakeholders likewise, continues to rise. Kituo Cha Katiba: The Eastern Africa Centre for Constitutional Development (KCK) has risen to this challenge by scaling up her interventions to meet the growing demands. In line with our mission: the promotion and protection of constitutionalism, good governance and democratic development in Eastern Africa, KCK's contribution has been directed to examining the interface between economic integration and human rights. We have thus identified the subject of social security as a basic human right pertinent to the exercise by East Africans of their right to free movement of labour in the region within the context of the East African Community (EAC) Common Market Protocol.

This publication is an output of a project titled *Towards a Common Formal Social Security and Pension Scheme for The East African Community: An Examination of National Legislative Framework*, that involved a comparative study in 2010, of the legislative framework in the area of social security and pensions schemes in the six EAC countries of Burundi, Rwanda, Kenya, Tanzania Mainland, Uganda and Tanzania Zanzibar, within the context of the EAC Common Market Protocol. The project marked one of a series of projects KCK hopes to accomplish under the Common Market and in the area of EAC economic integration.

I wish, on behalf of the Board and Staff of KCK, to extend our deepest gratitude to Trade Mark East Africa (TMEA) for the support for this project, which also marked a major milestone in KCK's programmatic interventions in the area of EAC economic integration. Our special thanks go to Prof. John-Jean Barya of the School of Law, Makerere University for undertaking the study with exhibited professionalism and thoroughness. KCK is highly indebted to Mr. Dominico Kabyemera of Arusha Tanzania, for the useful information provided for the study. Our most sincere appreciation goes to Mr. Jean Claude Cibogoye of Burundi, Mr. Edmond

Odaba and Monica Were of Kenya, Mr. Emmanuel Kayitare of Rwanda, and Mr. Abdallah Gonzi of Tanzania Mainland, whose comments to the report were extremely valuable in refining the report. Finally, I express gratitude to the KCK Secretariat for conceptualizing the project idea and to Ms. Jackee Omara for coordinating the project.

Hon. Sarah Bagalaaliwo

Chairperson Kituo Cha Katiba

1

Social Security in the East African Community: Introduction and Context

Introduction

This book aims at conducting a relatively comprehensive and comparative review of the status of social security and social protection, broadly conceived, for the people in the EAC countries (Uganda, Kenya, Tanzania, Rwanda and Burundi) as it exists today (2011). In specific terms, the book seeks to provide a comparative review of the existing legislative framework on formal social security and pension schemes in the five EAC countries in order to contribute towards a harmonised EAC social security, pensions and social protection regime for the entire community. It is also hoped that such a social security regime would contribute to economic development and social protection within the context of the EAC Common Market Protocol and become part of a process of strengthening the EAC integration process as a whole.

The book also aims at determining the levels of coverage, adequacy and equity of the existing social security, pension and social protection schemes with a view of highlighting the commonalities and differences and thereafter defining and providing a common EAC social security and social protection standard. The book also ensures that the interests and rights of the poor and vulnerable social groups in the EAC are taken into account as indeed the majority of EAC citizens are actually the poor and vulnerable.

The book is divided into eight (8) chapters. Chapter I is the introduction and consists of the methodology and state of knowledge on the subject in EAC as well as the historical, political and socio-economic context in which social security and social protection in the five EAC countries should be understood. Chapter II deals with major concepts including social security, social protection, social assistance and pensions. It introduces the EAC instruments that attempt to deal with social security and social protection. The Chapter also introduces the international normative standards on which social security and social protection systems should be based or which they should at least take into account. Chapter III deals with the social security situation in Uganda. Chapter IV deals with both mainland Tanzania and Zanzibar but separately because as a federation or Union, Tanzania Mainland and Zanzibar have different social security systems. Chapter V deals with Kenya, Chapter VI with Rwanda, while Chapter VII deals with Burundi. Chapter VIII is the conclusion and assesses the differences and commonalities among the EAC countries regarding the policies, constitutional provisions, legislation and practices relating to social security and social protection. Recommendations are then outlined as to what normative standards EAC countries should consider applying in order to attain a substantively common standard on social security and social protection.

Methodology and State of Knowledge on Social Security, Pensions and Social Protection in the EAC

In order to accomplish the tasks set out above, a number of methodologies and sources have been deployed. This book, therefore, is prepared relying on the following sources:

- a. A survey of existing secondary literature on social security, pensions, social protection and the social structures of EAC societies, from the pre-colonial period, through the colonial

period to the present. This literature has been authored by academics, government and social security bureaucrats/officials, civil society organisations (CSOs) and others.

- b. Government documents, records and various sources of the five (5) governments in the EAC. For Tanzania, Tanzania Mainland and Zanzibar are considered separately. These sources include the following:
 - Government social security policy documents or statements.¹
 - Government reports on inquiries related to social security.²
 - Government budget statements or backgrounds to the budget.
- c. Social Security institutions (NSSFs) and government position statements on social security and pensions.³
- d. Constitutions of each country as the main source of law and the legislation related to social security, pension (central and local governments), regulatory statutes and all relevant subsidiary legislation.
- e. Case law in so far as it touches the right to social security and various issues that cases have raised in courts of judicature and quasi-judicial bodies such as Human Rights Commissions and Ombudsmen.
- f. The Treaty for the East African Community and the Protocol for the East African common market.
- g. International conventions United Nations (UN, African) and International Labour Organisation (ILO) conventions on the right to social security.
- h. Newspapers and magazines.

¹ For instance Republic of Rwanda (RoR) 2009; The URoT 2003

² For instance Republic of Uganda (RoU) 2003

³ For instance Retirement Benefits Authority (K) 2007; E.E. Mwemezi Baruti (Tz) 2008; Said Chitembwe K. 2007.

- i. A workshop considering an earlier draft of this work held in Kampala on 10th December 2010 in which social security institutions, intellectuals, members of parliament and civil society activists in the area of social security and social protection from all the five EAC countries contributed.⁴
- j. Interviews and discussions with relevant personalities.

The existing literature on social security, pensions and social protection is mainly of an international character or deals with the situation in individual EAC countries. There hardly exists any comparative literature on social security in EAC countries.⁵ Only one preliminary study limited in content attempts to compare social security systems in Tanzania, Kenya and Uganda.⁶ Elements of a good social security system ensuring the right to social security is provided for and actually realised are raised by several writers that have done work on such elements as: availability or existence of a social security system, levels of coverage (ILO provides for 9 branches), adequacy of the benefits and accessibility to the same.⁷

On the other hand, a number of writings have been made on social security in South Africa and Southern African countries especially Southern African Development Community (SADC) countries. The studies have covered issues of social security as a right, issues of coverage and equity, the informal sector, the rural-urban divide and issues of integrated and inclusive frameworks for the whole spectrum of social protection.⁸

⁴ See Kituo Cha Katiba 2010

⁵ See for instance Platform for Labour Action, 2008 (Uganda), J.J. Barya 2009 (Uganda); D. Kasente, N. Asingwire, F. Banugire and S. Kyomuhendo, 2002 (Uganda); Tungaraza F.S, 2004, (Tanzania) Pensioners' Union of Tanzania 2009 and Chitembwe Said 2007 (Kenya).

⁶ R. K. Dau 2003

⁷ See Riedel (Ed.) 2006; A. Chapman & S. Russell (Eds) 2002; C. Gillion, J. Turner, C. Bailey & D. Latulippe 2000

⁸ See for instance Oliver M. & Kalula E. (Edn) 2004; Brand D. & Heyns C (Eds) 2005

It is, therefore, important that a comparative study of this nature is done for the East African countries so that as the Common Market Protocol is implemented, all the relevant issues of social security and social protection are simultaneously addressed for the benefit of the working (and unemployed, elderly, vulnerable) people in all the EAC countries.

Historical, Political and Socio-Economic Context

We should look at issues of social security and social protection from a historical perspective in order to understand today's situation. In this case, we propose to look at social security and social protection by taking into account three historical phases, namely: the pre-colonial period, the colonial period and attendant changes as well as the post-colonial period-leading to the current situation.

Pre-Colonial or Traditional East African Societies

In general terms, traditional and pre-colonial systems of social protection were based on the traditional (so-called extended) African family and the clan. Although some societies were more centralised than others, with some having fairly developed state systems, such as the kingdoms of Buganda, Bunyoro-Kitara or Rwanda, many communities-whether with states or stateless-relied on family, clan or communal systems for ensuring social protection for all generations, for children, the sick and the disabled and the very old.

Specifically, traditional social security systems in Africa and East Africa, in particular, depended upon the social structure of a particular community. The structure was defined by, for instance, whether the members of the community were settled agriculturalists or pastoralists or, as stated above, whether they were organised in a state or whether they were stateless.

Thus, whether agricultural or pastoral and whether living in a society with a clear social hierarchy and a state or a in stateless one, there were no formal social security systems but society relied on

the traditional family and kinship relationships to deal with issues of social protection. One writer, for instance, assessing the Ugandan situation observed:

...traditional authority exercised through a system of clan elders and heads of households was very effective in maintaining social control and order in a situation where there was not distinction between *home* and *place of work* ... Clan organization and authority were reinforced by the system of extended families in ensuring area-based development through the exercise of collective responsibility in areas such as housing, creating and maintaining access roads, farming, food, harvesting and its storage, hunting down wild animals and destroying vermin that were a potential danger to both human security and food crops, caring for the elderly and the sick, counseling and assisting the clan/family members in bereavement, to mention only a few of the instances based on mutual aid, assistance and reciprocity (Steven Ouma 1995:5).

The above observation shows two major elements in traditional forms of social protection. One, the home was both a place of work and a living place where there were no employer-employee or labour-capital relations. Two, social protection existed within a family, clan or community context on the basis of “mutual aid, assistance and reciprocity”. The above observations on Uganda apply equally to the majority of the people in pre-colonial East Africa.

For most of the colonial period, the overwhelming majority of the Africans lived in the rural areas under traditional social protection systems. According to R.M.A Van Zwanenberg and Anne King, in East Africa,

...up to 1948 Africans were poorly represented in the urban process. At that time there were only seventeen towns with a population of over 2000 people (each) together they had a total population of 285,000 of which only 161,000 were Africans. By 1962 the number of towns with over 2000 people had risen to a total of thirty-four with 671,000 population of which only 442,000 were Africans. This

meant that only 7.8% of the total Kenyan population, or 5.3% of the total African population in Kenya were living in towns in 1962. Such figures should be compared to 3.2% of the total population of Uganda and 4.1% for Tanganyika in 1959 (R.M.A Van Zwanenberg & Anne King: 257).

Thus, the proportion of Africans living in urban areas in East Africa was extremely low compared to, for instance, the urban population in Ghana (23%), Egypt (38%), Brazil (45%) or Europe (between 60-80%) in 1959 (ibid.).

What is significant even for the small African urban populations in East Africa before independence is that most of them were not living in the urban areas permanently.

The vast majority not only were born in rural areas but also regularly visit the rural areas, send cash back there monthly and remain as committed to rural as to urban life (ibid: 258-259).

Until the 1960s, the usual pattern was to spend only a short time in the city before returning home - a pattern called circular migration. The reason, among others, was that

...up to the mid-1950s urban wages were so low throughout East Africa that only a tiny minority of urban migrants could think of bringing their families; thus one explanation for the recent (1960s) rapid increase in urban growth has been that whole families have been coming to the cities rather than single men (ibid. 259).

During the colonial period, therefore, the majority of the African population was not affected by the social security systems put in place by the colonialists. Indeed, the colonial state assumed that Africans would take care of their own social security. The colonial state and colonial economy extracted labour and raw materials from the people and society generally without any significant reciprocal benefits for the Africans. Let us look at the colonial social security system put in place.

Colonial Social Security in East African Countries

The issue of social security and social protection was conceived and laws were made in consonance with the interests and objectives of colonisation and colonial policy. One of the hallmarks of colonial labour policy was to have cheap labour, that is, labour at a low cost, especially very low wages. In the case of Uganda, forced paid labour (*kasanvu*) was used up to 1923 when it became costly and unsustainable (Buell R.L 1965: 568). Not only were wages arbitrarily fixed but, in the case of Uganda, they were kept low due to the abundant supply of migrant labour especially from Rwanda, Burundi and Belgian Congo (current Democratic Republic of Congo (DRC), W. Kaberuka 1990: 109-111). The result was that because of low wages, administrators

were prepared to use force to obtain African labour for public works and also for private employers The wages paid were not enough to maintain a worker and his dependants and, in fact, could hardly sustain a worker himself, so that many looked to the subsistence sector to provide their food (ibid: 113).

In the British colonies, the colonial state provided for social security meant essentially for the white settler community (Edwin Kaseke: 2). In the case of Tanzania for instance,

...during the colonial era social security coverage was extended to a few people who were in the colonial employment. Most people were excluded from any type of public social security scheme. The majority of the Tanzanian people depended upon the traditional social system for their protection, which is still the case to date (2003) though effects of urbanization and difficult economic environment have weakened the same (URT 2003: 1).

This system “depended on the family, clan members and members of the community for assistance ...” (ibid: 5).

In countries where there was a substantial white settler community, the situation was considerably worse, such as in Kenya, because big

chunks of land were taken over by the white settler community; indigenous Africans were dispossessed of the land; and were made wage-earners - paid low wages with no social security (for instance regarding unemployment, health or old age).

In Uganda, social security covered the Europeans, Asians and a few Africans in certain types/levels of colonial government employment. This included such employees covered by different legislation from 1921⁹ for Europeans and for Asians from 1927¹⁰ and for a few African civil servants from 1929.¹¹ The Government Employees Provident Fund Ordinance No. 1/1941¹² catered for some employees while the Provident Fund (African Local Governments) Ordinance No. 38/1950¹³ established a Provident Fund “for the benefit of employees of such African Local Governments as may desire to become contributors thereto and ... for the control and management thereof ...”¹⁴ It was a Provident Fund for “non-pensionable servants in the service of local governments”¹⁵ (S. 3(1), Cap 75, *ibid.*).

The numbers covered by the above legislations included Europeans and Asians and a few Africans. The situation in Kenya, Uganda and Tanzania was more or less the same except that Kenya was more urbanised; with Tanzania falling in between. The colonial state had been set up to serve the interests of the colonisers and it is, therefore, not surprising that social security for the Africans was not at the forefront of colonial state concerns. What happened after independence? To this we now turn.

⁹ The Asiatic Officers' Pensions Ordinance 1935 (Cap. 8) and The European Widows' and Orphans' Ordinance No. 2/1921

¹⁰ The Asian Widows' and Orphans' Pension Ordinance No. 6/1927

¹¹ The African Civil Servants Regulations 1929

¹² Cap. 53, Laws of Uganda 1951

¹³ Cap. 75 Laws of Uganda 1951

¹⁴ Long Title, Cap. 75, Laws of Uganda, 1951

¹⁵ S. 3 (1), Cap. 75, *ibid*

Social Security after Independence

Immediately after independence, the three East African countries of Kenya, Uganda and Tanzania did not fundamentally alter the existing formal social security system put in place during the colonial period. Irrespective of whether the country attempted to go capitalist (Kenya) or socialist (Tanzania and Uganda - especially the former) the social security regime that was put in place in the three countries was fairly the same with a few differences. In the case of Rwanda and Burundi, the situation was not very different.

Within the first ten years of independence, the three East African countries of Kenya, Uganda and Tanzania (1961-1971) had the following as the main features of their social security systems.

- a. The majority of the population, the peasantry in the rural areas as well as the self-employed, the unemployed and the so-called (mainly urban) informal sector were excluded from that social security system and were left to their own devices.
- b. A non-contributory defined benefit pension scheme for permanent public servants, and other some public officials was put in place under some Pension Acts.
- c. A provident fund for private sector employees and non-pensionable public servants including employees of public enterprises or so-called parastatals, which was a compulsory savings scheme based on earnings-related contributions by workers (members) and their employers, was put in place. These are the so-called NSSFs.
- d. A range of other benefits provided for under an array of legislation relating to: workers compensation, at times sick pay, maternity leave and in some cases severance payments all provided directly by employers under a specific legal obligations (Workers' Compensation Acts, Employment Acts, etc.) were also provided for.

- e. A public health care system that aimed at giving free access to health care for the whole population. Whether it actually worked for all of them is another issue.¹⁶

It appears, however, that the above social security regime obtained until the mid 1980s and early 1990s in the three East African countries without major challenge, except some few changes by Tanzania. This could be explained partly by the still existing traditional systems of social security, fairly easy access to land and limited urbanisation. But the 1980s and 1990s exposed East African societies to strong forces of Structural Adjustment Policies (SAPs), privatisation, the retrenchment of the state and broad neoliberal economic policies. The so-called Washington consensus led by the American Government and the Bretton Woods Institutions (World Bank and International Monetary Fund (IMF)) took centre stage. Here, not only was the role of the state in the economy challenged, what had been traditionally regarded as the obligation of the state in providing certain basic services (such as health, education, water and others), then not seen as rights, was also being negated by the so-called Washington consensus. In terms of social security, deregulation processes were put in motion with the aim of leaving everything to the market because “the state had failed”!

Neoliberalism, Social Security and Movement Towards Comprehensive Social Protection

In the two decades between 1990 and 2010, the major philosophical and ideological pillars of government policy included and were indeed limited to neoliberal economic policies in all the EAC countries.

The initial programmes in the 1980s and early 1990s were the SAPs. The major objectives of SAPs demanded by the IMF and

¹⁶ See for instance E.M.M. Baruti 2008; S.K. Tungaraza 2004 for Tanzania; J.J. Barya 1991 & 2009 for Uganda; Hakijamii Trust 2007, for Kenya

the World Bank were, as stated by them, intended to achieve the following:

...general financial discipline for the restoration of balance of payments equilibrium through export promotion; solution to the debt crisis via debt rescheduling and more loans; the revival of agriculture and the rural economy as well as overall recovery from the economic and social crisis of the 1980s (see B. Onimode 1988: 289)

In order to achieve the above objectives, policy actions were designed that greatly impacted on the social welfare of citizens in countries that adopted the SAPs. These policy actions included:

...massive devaluation (of currencies); trade liberalization; privatization of public enterprises; drastic subsidy withdrawal and expenditures cuts in all sectors; credit and wage freeze with increase in interest rates; and relaxation of restrictions on multinational corporations ... (ibid.).

The end result of the SAPs in the 1980s and 1990s was not only to intensify foreign domination and exploitation of African countries but they undermined the working class and all working people (including the salaried middle class or petty bourgeoisie), particularly through wage freezes and massive retrenchments from the government and public enterprises.

... aggravated ... unemployment of all categories of workers through its massive retrenchment in the public and private sectors, privatization, subsidy withdrawal, drastic expenditure cuts, destruction of small and indigenous capital and import dumping (ibid.).

These processes further and directly impacted on the welfare functions of the state mainly: education, health and housing. It also exacerbated social inequalities by redistributing wealth in favour of the rich and powerful, caused unemployment and made the poor poorer!

SAPs were then replaced with Poverty Reduction Strategy Papers (PRSPs), also imposed by the World Bank and the IMF as the main

development framework documents. In the case of Uganda, the PRSP was the Poverty Eradication Action Plan (PEAP). The PRSPs sought to achieve high levels of economic growth and higher levels of development with a view of “reducing poverty”. However, social protection was not recognised in these “development” frameworks as having a role to play in poverty reduction. Social protection was not given priority or adequate coverage in the PRSPs (see J.J. Barya 2009: 8 and Ould el Hadj & Diakhate 2007: 1-2). Indeed, in the case of Uganda, both the Ministry of Finance and President Museveni opposed some proposed labour laws as being populist, anti-investors and anti-development (see J.J. Barya 2007: 23-26). The laws that they opposed and which have an impact on social security included the Workers’ Compensation Act (passed in 2000), the Labour Unions Act, the Occupational Safety and Health Act, the Employment Act and the Labour Disputes (Arbitration and Settlement) Act-all passed in 2006 as a result of pressure from Ugandan, international and American trade unions (ibid: 25-26).

However, in the last decade, some countries in the EAC have consciously developed social security policies, albeit within the context of neoliberal economic frameworks. These include Tanzania (in 2003) and Rwanda (in 2009). Kenya, Uganda and Burundi do not have explicit social security and social protection policies. Uganda is currently grappling with the whole issue of reforming the social security and pension regimes as well as trying to implement a social assistance programme through the Ministry of Gender, Labour and Social Development (MGLSD), as we shall see later (*infra*).

Finally, we observe that within the broader context of the EAC, both the treaty establishing the EAC and the Common Market Protocol recognise the need for and the importance of social security though in a limited sense. Social security is seen as part and parcel of the principles of free movement of labour, the right of entry and residence and the right to provide and receive services. This book,

therefore, considers and analyses the social security principles in the Common Market Protocol vis-à-vis existing legislation in each of the jurisdictions of the six legal regimes of the EAC , with a view of determining what legislative and policy reforms will be necessary in order to achieve the objective of social security and social protection across all the EAC countries.

2

Social Security and Social Protection in the EAC and International Normative Standards

Introduction

This Chapter deals with the major concepts used in the book including social security, social insurance, social protection, social assistance and pension. It also outlines the approach the EAC has taken with regard to these issues and introduces international normative standards on social security. These international normative standards are important as benchmarks for instituting a common social security standard for all the EAC countries.

Major Concepts Used in the EAC

There are several concepts and issues of a philosophical and normative nature that need to be teased out before we look at the social security and social protection situation in each of the EAC countries as it stands today in 2010.

Let us deal with the terminology first. The main terms used in this book are: social security, social protection, social assistance and pension.

Social Security refers to a formal system or arrangement concerned with protection against socially recognised conditions, including poverty, old age, disability, unemployment, sickness, orphanage and others. The most comprehensive attempt to conceptualise social

security is the International Labour Organisation (ILO) Convention No. 102, that is, ILO Social Security (Minimum Standards) Convention 1952 that provides for the right to social security to include among others the right to security regarding:

- a. old age,
- b. health care,
- c. sickness benefits,
- d. unemployment benefits,
- e. employment-related injury benefits (workers' compensation),
- f. family and child support,
- g. disability benefits (general),
- h. survivors and orphans, and
- g. maternity benefits, including: prenatal, child birth and post-natal care and hospital care, where necessary.

Most formal social security arrangements appear in the form of social insurance. Social insurance refers to arrangements or schemes, usually defined and prescribed by statute where people receive benefits or services in recognition of their contributions to an insurance scheme. These schemes typically include provision for retirement pensions, disability insurance, survivors' benefits and unemployment insurance. This concept of social security seems to have originated from England after the Beveridge Report of 1942 which noted that the goal of social security was to guarantee a basic level of income for all citizens without stifling their initiative to secure more than a mere subsistence (see Friedlander and Apte 1980; also Paul Spicker 2006, and P. Alcock 2008). The report proposed a social security system that would include: social insurance, family allowances, a national health service, social assistance and full employment (Friedlander and Apte; *ibid*, Paul Spicker, *ibid.*).

Social protection on the other hand is a more comprehensive concept and refers to a set of benefits available (or not available but considered necessary) from the state, the market, civil society and households or through a combination of these agencies to individuals and households to reduce or deal with multidimensional deprivation.¹⁷ This deprivation affects all sorts of people and situations: the elderly, the disabled, the unemployed, orphans and the poor. This concept seems to be more relevant to underdeveloped countries, like those of the EAC because formal social security referred to the above (ILO Convention 102 and Beveridgian) is more applicable in conditions where large numbers of citizens or population generally depend on a formal capitalist economy for their livelihood and where labour-capital relations are the major form of social relations. But within the context of an underdeveloped essentially rural peasant economy with a big informal economy in the urban centres, the vast majority of the working population is necessarily excluded from formal social security arrangements modeled on the advanced capitalist economies of Europe and North America (J.J. Barya 2009: 5).

Social assistance refers to government social protection programmes designed to protect the destitute with no other means of adequate support and incapable of contributing adequately to their social protection benefits. These benefits are not tied to previous work or contributions but are based solely on need. Thus:

...a means-test must be satisfied in order to qualify to receive them. They are important for some retirees who would receive low or no benefits through the retirement benefits programme due to low wages or not having substantial periods of work (Collin Gillion et al 2000: 13).

Social assistance includes: one: general assistance where cash benefits are provided for all or most people below a specified minimum income level, two: categorical assistance in which cash

¹⁷ See Wikipedia, http://en.wikipedia.org/wiki/social_security; see also Olivier MP & Kalula E.R. 2004

benefits are provided for specific groups, sometimes at a level above the minimum; and three: tied assistance where the state provides free or subsidised access to specific goods or services either in kind or in cash (*ibid.*, 14).

Pension refers to an arrangement whereby regular periodic payments (usually monthly), like a wage or salary are made to an aged (old) member for some defined period or to dependants upon the member's death. Pension may be provided by the public (state) or private sector.

The above concepts and social security interventions are conceived within a capitalist framework and, therefore, the labour-capital relation is, for these interventions, taken for granted. However, it should be emphasised that in any other political system, for instance, socialism, social security would not be conceptualised in the same way. Socialism as a philosophy and ideology opposes private ownership of the means of production, but rather supports collective or state ownership. In this case, there is no capital-labour relationship. Instead the principle of a socialist economic and social system resting social or communal/public property, removal of exploitation and social inequality, distribution according each of one's needs and true human freedom and personal independence are envisaged (see K. Marx and F. Engels 1848). According to Maurice Cornforth, for instance:

...by instituting social ownership of the means of production we can institute social planning of production to employ available resources and labour to meet human needs. And the state which abolishes the rights of private capital and sets out to protect public property in the means of production can then protect everyone's right to benefit from social production and, by the social planning of production, can seek to establish and protect social security for everyone for work, personal property and the pursuit of happiness (M. Cornforth 1968: 287).

Accordingly, under socialism (and eventually the classless society of communism) social security and social protection would be conceived not as arrangements each individual citizen would cater for with minimal assistance from the state but rather the reverse. The state, the community or society as a whole would be obliged to ensure the social protection of every member of society, thus fulfilling the maxim “from each according to his ability to each according to his need”.

In dealing with issues of social security and social protection, therefore, account must be taken of the socio-economic context in which the subject is being discussed today, namely a post-Cold War world imbued with neo-liberal politico-economic ideology of a unipolar world. (see J.J. Barya 1993). Below, we deal with a number of important elements, which even within the context of dependent and undeveloped capitalism in the EAC countries need urgent attention if social security and social protection are to be achieved given the limitations that EAC societies face today in the current politico-economic world order. These include: coverage and political commitment (see UN Comment No. 19); principles of an equitable social security system; ideology, policies and policy options; and the issue of development and social security.

EAC Instruments on Social Security and Social Protection

The East African Community is set up by the Treaty for the establishment of the EAC 1999. In Article 120 of the treaty, social security and social protection are visualised as social welfare rather than as rights. The Partner States undertake to cooperate with respect to

- a. employment, poverty alleviation programmes and working conditions;
- b. vocational training and the eradication of adult illiteracy in the Community;

- c. the development and adoption of a common approach towards disadvantaged and marginalised groups, including children, the youth, the elderly and persons with disabilities through rehabilitation and provision of among others, foster homes, health care, education and training”.¹⁸

When the EAC Protocol on the Common Market (2010) was drafted, it also did not envision social security as a right. The protocol recognises the need for Partner States to “coordinate and harmonise their social policies to promote and protect decent work and improve the living conditions of the citizens ... for the development of the Common Market” (Article 39 (1)). They also agree to coordinate and harmonise their social policies relating to, *inter alia*: good governance, the rule of law and social justice, promotion and protection of human and peoples’ rights, and the promotion and protection of the rights of marginalized and vulnerable groups¹⁹. In this regard, they agreed to undertake to implement programmes to, *inter alia*:

- a. promote employment creation;
- b. strengthen labour laws and improve working conditions;
- c. eliminate compulsory and forced labour;
- d. promote occupational safety and health at work places;
- e. abolish child labour in particular the worst forms of child labour;
- f.
- g.
- h. Expand and improve social protection;
- i. ...
- j. Promote the rights of persons with disabilities;
- k.

¹⁸ Article 120

¹⁹ Article 39 (2)

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Even in the East African Community Strategic Plan for Gender, Youth, Children, Social Protection and Community Development of November 2010,²¹ social protection is seen in its narrowest sense. What is conceived as social protection is actually social assistance as this book defined. The Strategic Plan sees social protection as:

a range of public actions carried out by the state and others in response to unacceptable levels of vulnerability and poverty, which seek to guarantee relief from destitution for those sections of the population who, for some reasons beyond their control, are not able to provide for themselves.²²

In this regard, several social protection instruments are proposed “to reduce vulnerability.”²³ According to this Strategic Plan they include *social safety nets* (e.g public works programmes and food aid), social security instruments (e.g social assistance and social insurance) and human development measures.

Safety nets are designed to prevent destitution and help people cope with emergencies. They include food distribution, food aid and public works programmes. Social security instruments include food subsidies and cash transfers.²⁴

It is clear, therefore, that the EAC is still grappling with the issues of social security and social protection while emphasising the aspect of social assistance. An analysis of social security policies (where they

²⁰ Article 39 (3) of the Protocol

²¹ See EAC 2010

²² EAC 2010: 31 of the Protocol

²³ Ibid. 32

²⁴ Ibid. Emphasis in original

exist) and social security laws in each EAC Country²⁵ will show that there is so much variation in terms of conceptualisation and political commitment that a call for a minimum standard and a call for a minimum level of comparability are quite in order.

Political Commitment and Social Security Coverage

The thinking (philosophy), understanding and level of political commitment that any government gives to social security and social protection to its citizens is related to the extent to which such a right is then enjoyed by the citizens and inhabitants of a given country. Thus, a more developed country may have less social security or coverage than a less developed one depending upon the ideological orientation and level of commitment of its political leadership.

A number of elements are important in ensuring a satisfactory social security and broader social protection regime. These include those we enumerate below.

- a. Coverage: A good social security system should cover all the people, that is, the entire population in a given country. It will be seen that in most of the EAC countries, the majority of the population is excluded from the formal social security system while the traditional social security arrangements have also broken down.
- b. Protection against poverty and multidimensional deprivation in these circumstances:
 - old age,
 - disability, whether work-related or non-work related or general disability however caused,
 - death of a wage earner, and
 - provision for health or protection/insurance against sickness.

²⁵ See Chapters III-VII in this book

- c. Income to replace earnings as a result of voluntary or involuntary retirement for all those who have contributed in the formal sector
- d. Income for the unemployed or underemployed
- e. Indexation or adjustment mechanisms of income to take inflation into account or take account of general rise of living standards
- f. Creation of an environment (legal, economic and political) for the development of additional voluntary provisions for retirement income.²⁶

International Normative Standards

The subject of social security and social protection is not a new one. Human experience has ensured that many societies, countries, governments and institutions give it serious attention. A number of international conventions, especially conceived in the aftermath of World War II do provide important standards and benchmarks for the interrogation of the state of social security and social protection in the EAC countries (see J.J. Barya 2009: 14). There are a number of international and regional conventions that we point out here.

First is the general human rights instrument; the Universal Declaration of Human Rights 1948. This instrument provides that everyone has a right to a standard of living adequate for health and well-being of himself and 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. The instrument also provides that motherhood and childhood are entitled to special care and assistance; while all children, whether born in or out of wedlock, shall enjoy the same social protection.

²⁶ See Colin Gullion et al 2000: 27, J.J. Barya 2009

The International Covenant on Economic, Social and Cultural Rights 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises "... the right of everyone to social security, including social insurance." The convention on the rights of the child, guarantees the rights of children to:

- Health, proper nutrition and education;
- Social security, including social insurance;
- An adequate standard of living;
- Development (physical, mental, spiritual, moral and social);
- Education (basic or primary) and opportunities for secondary, vocational and higher education (Article 28).

The African (Banjul) Charter on Human and Peoples' Rights of 1981, recognises the right:

- To work under equitable and satisfactory conditions;
- To physical and mental health;
- To education and cultural life of the community.

There are several general and specific ILO conventions dealing with the right to social security. The following conventions, for instance, deal with different aspects of social security including:

- Convention 121 - Employment Injury Benefits Convention 1964;
- Convention 128 - Invalidity, Old Age and Survivors' Benefits Convention 1967;
- Convention 168 - Employment Promotion and Protection Against Unemployment Convention 1988;
- Convention 118 - Equality of Treatment (Social Security) 1962; and
- Convention 157 - Maintenance of Social Security Rights Convention 1982.

However, the above conventions are too specific and piecemeal. The Social Security (Minimum Standards) Convention No. 102 1952 provides the main benchmarks and standards on social security worldwide as stipulated by the ILO as a UN specialised agency on labour and industrial relations issues. ILO Convention 102 on Social Security provides for the right to social security to include, among others, at least, the right to security with respect to:

- a. Health care;
- b. Sickness benefits;
- c. Unemployment benefits;
- d. Employment-related injury benefits;
- e. Family and child support;
- f. Maternity benefits, including-perinatal, childbirth and post-natal care and hospital care where necessary;
- g. Disability benefits;
- h. Survivors and orphans benefits; and
- i. Old age benefits.

Uganda and all EAC countries have not ratified Convention 102. It has not ratified related conventions such as those on employment injury benefits (No. 121), invalidity, old age and survivors (No. 128), employment and protection against unemployment (No. 168) and conventions 118 and 157. However, as we shall see later, aspects of these conventions are embedded in the Public Service Pension Scheme (PSPS) and the national social security fund Acts.

The international and regional instruments referred to above provide significant normative benchmarks for the existence of an all-round social security system that would encompass social protection as discussed above. However, we must be conscious of the fact that while the above benchmarks are useful, they are more amenable to dealing with formal sector employment and situations where an employer-employee relationship exists. For the rest and majority of

the population in the urban informal sector and the rural peasantry, other solutions and interventions are likely to be required to deal with the issues of social security and social protection for this majority of the population in all the EAC countries.

In the following chapters we attempt to chronicle the social security and social protection situation in each of the EAC countries. This statement and analysis will then provide a basis for a comparative review of social security and social protection in all the EAC countries with a view of proposing a common East African (EAC) standard and making relevant recommendations for harmonization following the adoption of the EAC Common Market Protocol.

3

Uganda

Introduction

This Chapter outlines the social security and social protection situation in Uganda. There is no social security policy in Uganda while constitutional provisions on the subject are at best vague or debatable. The relevant laws on social security are analysed below.

As we saw earlier, pre-colonial societies' social security systems were based on the traditional African family and the clan. The colonial state introduced social security systems to cater for Europeans and, to a lesser extent, working Asians. The African workers in the private sector were not covered although eventually certain categories of civil and public servants had some coverage, especially from the early 1950s. Today, the formal social security system has been undermined by various factors: population growth, social and class differentiation, urbanisation, land scarcity and change of family structure.

Ugandan society is essentially rural. A majority of working people are in rural areas estimated by the Uganda Bureau of Statistics (UBOS) at 85% (UBOS 2006: 5, 68) and about 77% of this labour force/working people had either no formal education at all or only primary education. Out of the entire working population, only 15.2% were salaried and wage earners, while a whole 27.4% were self-employed (UBOS 2002 census and UNHS 2002/2003). While unemployment was by 2006 estimated to be low, at only 3.5%, underemployment was rampant at 16.9%. Although unemployment was officially low, poverty was high and this is due to underemployment, poor returns on self-employment and low wages in employment Uganda Bureau

of Statistics (UBOS 2006:46, J.J. Barya 2009:10). According to UBOS unemployment rates were low because:

...very few people can afford to be unemployed for any period, and the bulk of the population must engage at all times in some economic activity however little or inadequate it may be. Although at the same time they may be seeking other or additional work they will not be considered as unemployed (UBOS 2006: 46).

Owing to the situation of the rural economy the formal social security system will be seen as not applying to the majority of the population as that system deals only with employees in the formal private sector and public service employees.

Constitutional and General Legal Framework

The constitutional provisions with respect to social security and social protection are found in both the National Objectives and Directive Principles of State Policy as well as in the main substantive part of the constitution. It should be noted though that the 1995 Constitution as amended in 2005 provides, among other things, that Uganda shall be governed based on principles of national interest and common good enshrined in the National Objectives and Directive Principles of State Policy.²⁷ The relevant provisions in the National Objectives related to social security and social protection are crafted in the following terms:

Protection of the aged

The state shall make reasonable provision for the welfare and maintenance of the aged.

General social and economic objectives

The state shall endeavour to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall in particular ensure that:

²⁷ See Article 8A, inserted in 2005

- a. All developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and
- b. All Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, decent shelter, adequate clothing, food security and pension and retirement benefits.

Educational objectives

- a. The state shall promote free and compulsory basic education.
- b. State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.

Protection of the family

The family is the natural and basic unit of society and is entitled to protection by society and the state.

Medical services

The state shall take all practical measures to ensure the provision of basic medical services to the population.

Clean and safe water

The state shall take all practical measures to promote a good water management system at all levels.

Food security and nutrition

The state shall:

- a. take appropriate steps to encourage people to grow and store adequate food;
- b. establish national food reserves; and
- c. encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy state”.

Natural disasters

The state shall institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or nay situation resulting in general displacement of people or services disruption of their normal life.

The above National Objectives and Directive Principles of State Policy seek to deal with most aspects of social protection that require that attention be paid to: old age, education, health, water, shelter, clothing, food, pension (or retirement benefits) and the family itself.

However, when it comes to the substantive part of the constitution, the provisions are quite narrow and disappointing. The only direct substantive part which is clearly justiciable is with respect to public servants or government employees. Under Article 254, "... a public officer, shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service." In addition, "... the pension payable to any person shall be exempt from tax and shall be subject to periodic review to take account of changes in the value of money." Finally, "... the payment of pension shall be prompt and regular and easily accessible to pensioners."²⁸

In addition, some areas in the constitution that may be said to deal with aspects of social protection are those dealing with education, women and workers' rights. Article 30 states that "... all persons have a right to education", while Article 34(2) provides that "... a child is entitled to basic education which shall be the responsibility of the state and the parents of the child". Then in vague terms regarding women, Article 33(2) provides that "... the state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them realize their full potential and advancement". Article 33 (3) provides that "... the state shall protect women and

²⁸ Article 154 (1)-(3)

their rights, taking into account their unique status and natural maternal functions in society.”

On the other hand, a worker’s rights are to some extent recognised and protected with regard to the right to form and join trade unions, “... for the promotion and protection of his or her economic and social interests”. The rights to collective bargaining and to strike are also recognised. In addition, parliament is enjoined to make laws to ensure workers work “... under satisfactory, safe and healthy conditions” and also regarding “... payment for equal work without discrimination”, and that “... every worker is accorded rest and reasonable working hours and periods of holidays with pay as well as remuneration for public holidays.” For women employees, “... the employer of every woman worker shall accord her protection during pregnancy and after birth, in accordance with the law”. Thus, maternity leave is at least constitutionally guaranteed.²⁹

In light of the above, it may be argued that while the National Objectives and Directive Principles of State Policy clearly recognise the right to social security and social protection with regard to almost all aspects including: old age, education, health, water, shelter, clothing, food, pension and retirement benefits as well protection of the family and preparedness to deal with disasters and natural calamities, the substantive part of the constitution only clearly guarantees one aspect of social protection-that is pension and only for public officers. It, therefore, still remains necessary to examine the extent to which the current social security system provides protection to citizens other than public service officers. And even in respect of the latter, it is necessary to examine the extent of their protection.

The Law on Social Security and Pension in Uganda

As already mentioned, Uganda operates a public pension scheme, the NSSF, for the private sector, disparate arrangements by different

²⁹ See Article 40

public bodies and purely private schemes not underpinned by any law. These schemes will be analysed separately.

The Public Service Pension Scheme (PSPS)

The PSPS, run by the Ministry of Public Service, covers a number of public servants and excludes others. The Pensions Act covers public servants of central and local governments. S.9 in particular provides that "... every officer employed in the public service who has qualified for a pension shall be entitled to it". The minimum qualifying age is 45, having worked for at least 10 years, or compulsory retirement at the age of 60.³⁰ Provision has now also been made for pension and gratuities for the army.³¹

All the pension and gratuity schemes for central government public officers, some local government staff, teachers, the army, the police and prisons officers are managed and operated by the Ministry of Public Service. However, due to decentralisation, all the personnel that have been recruited by District Service Commissions are a responsibility of those districts. Under the Constitution "the terms and conditions of local government staff shall conform to those prescribed by the Public Service Commission for the public service generally." (Article 200: 2).

Incidentally, as of 2007, Uganda's working population was estimated at 11 million people. Out of these, the PSPS covers only 2.8% while the NSSF covers only 2.3%. In short, both the PSPS and NSSF cover only 5.1% of the entire working population. About 95% of Uganda's population is, therefore, not covered by the formal social security schemes. This is so even when one takes into account the private arrangements outside the NSSF scheme. Even if one stretched the coverage to include these private schemes, formal social security cannot be beyond 7% of the population.

³⁰ See Sections 10(2) and 12 (1), Pensions Act (Cap. 286)

³¹ See the Uganda Peoples' Defence Forces UPDF Act 1\2005, Sections 24, 71-91

In addition to the PSPS, members and staff of parliament are now provided with pension and gratuity under the Parliamentary Pensions Act 2007 (No. 6/2007). The scheme covers all members of parliament whether elected or ex-officio except the Prime Minister and Vice-President. What is interesting is that both the current and the former 7th Parliament members are covered (S. 5 (3)). The membership of the 7th Parliament (2001-2006) was made retrospectively. Contribution by members of parliament is 15% of their pensionable emoluments while government contributes 30% monthly. In addition, the government has to guarantee the solvency of the scheme (Parliamentary Pension Scheme) "... for any payment that may be required under it" in the short and medium term (S. 21).

Apart from the above elements of the PSPS there are a number of other laws covering some other public servants namely: local government staff, police and prison officers, judges, magistrates, intelligence officers and some public bodies, authorities and enterprises. Their social security arrangements vary and are subject to decisions of boards of public bodies.

For Judges of the High Court, Justices of the Court of Appeal and Supreme Court provision was made in 1996 under the Judicature Act (Cap. 13) to the effect that once they are appointed on pensionable terms they are eligible "for pension on completion of one year of service or in accordance with the Pensions Act, whichever is sooner"³²

For the Local Government, the Local Governments Act³³ provides that the terms and conditions of service of local government staff shall conform with those prescribed by the Public Service Commission for the public service generally (S. 61 (1)). In practice the local government pensionable officers are paid gratuities and pensions by the central government because the local governments cannot

³² S. 46 (3) of the Judicature Act

³³ Cap 243

afford to pay this pension let alone cover most of their obligations without central government support.

For the Uganda Peoples' Defence Forces (UPDF), the UPDF Act³⁴ makes provision for pensions and gratuity for both officers and militants (non-officers). The formula used to compute pensions and gratuities under the UPDF Act is similar to that applied to pensions and gratuities of public servants (S. 71). Provision is also made for pensions and gratuities in case of death or disability (S. 78).

For the police officers, the Police Act³⁵ establishes a police authority which is empowered to make provisions for the establishment of schemes for the grant of pensions, gratuities and other benefits in respect of officers appointed on permanent or temporary terms (S. 62, Police Act). The Prisons Act does not make provision for terms and condition of service and pensions for prison officers. And no separate schemes have been established for the police or the prisons. The central government foots the pension bill of all these institutions.³⁶ However the Pension Regulations which are Schedule One to the Pensions Act provides for gratuities for police officers below the rank of assistant inspector and prison officers below the rank principal officer.³⁷ But the rest of the ranks are not mentioned.

The Security Organisations (Terms and Conditions of Service) Regulations³⁸ made under the Security Organisations Act (Cap 305) provides for compensation for employees of intelligence organisations for injury during the normal course of duties (Regulation 24) amounting to not less than one year's salary. On retirement (at 50 years or 25 years of service) however there is no pension but an *ex*

³⁴ No. 7/2005

³⁵ Cap 303

³⁶ Interview with former Commissioner for Pension, Public Service, Mr Kiwanuka-Kunsa, 18 April 2011

³⁷ Regulation 31, Pensions Regulations

³⁸ S. I 305 - 1

gratia payment “equivalent to 5% of the officer’s gross earnings for the period served”³⁹ as well as transport for self and family to his or her home village.⁴⁰ There is also provision for general gratuity every three years equivalent to 30% of an officers’ gross salary earnings for every completed year of service⁴¹, as well as provision for burial expenses where the officer dies or his/her family member dies⁴² and death gratuity is payable to the family of the deceased officer.⁴³

Every Commission, Authority or public enterprises (the few that were not privatized or that were created in the last two decades) such as the Electoral Commission, Uganda Human Rights Commission, Public Service Commission, Electricity Regulatory Authority, Uganda Revenue Authority, Bank of Uganda or Uganda Investments Authority, there are Regulations and terms and conditions specific to that Authority, Commission or public enterprise.

For instance the Bank of Uganda Act (Cap 51) provides that Board members not being employees of the Bank may be paid remuneration or allowances as the Board may in consultation with the Minister determine (S. 12) and the Board itself is empowered to make byelaws to regulate conditions of service of Board members while for the staff they are engaged “on terms and conditions that shall be laid down by the Board” (S. 28 (4)).

For the Electoral Commission, officers and employees are employed “upon such terms and conditions as shall be determined by the Commission in consultation with the Public Service Commission” S. 5 (6)).⁴⁴

The Electricity Act (Cap 145) for instance also sets up an Electricity Regulatory Authority (S. 4) which has powers to appoint

³⁹ Regulation 32 (5))

⁴⁰ Ibid.

⁴¹ Regulation 37

⁴² Regulation 35

⁴³ Regulation 36

⁴⁴ See the Electoral Commission Act (Cap 140)

“other officers and staff of the secretariat on such terms and conditions as may be specified in the instruments of appointment” (S. 21 (1)) and the Authority must “with the approval of the Minister, make regulations governing the terms and conditions of employment of the staff of the Authority” (S. 21 (2)).

The PSPS has a number of shortcomings that render it unsatisfactory. First of all, it excludes a number of public servants such as those in all public enterprises, support staff in local governments, commissioners of various commissions under the Constitution, Resident District Commissioners (RDCs), and employees of intelligence services as seen above. Secondly, it is non-contributory and relies on monies from the Consolidated Fund. As a result, pensions have been in arrears beyond Shs. 300 billion (by 2007 - RoU 2008:11). Thirdly, the scheme has a limited range of products/benefits. It does not cover health, education, insurance or invalidity benefits. In addition, the scheme has no mid-term or work life benefits. One must wait till old age to qualify unless retrenched or by going for voluntary early retirement. Above all, accessibility to the benefits is difficult with many bureaucratic hurdles. As such, although most public servants are entitled to pension, it is not conceived and managed in a manner that meets the internationally acceptable standards of a good social security system as elaborated above.

The National Social Security Fund (NSSF)

The NSSF was established in 1985 by the National Social Security Fund Act. Compulsory membership is for all employees in any firm, establishment or workplace that has five (5) or more employees. And equally, any employer with five or more employees must register as a contributing employer.⁴⁵ The NSSF has about 300,000 members

⁴⁵ See SS, 6 and 7 of the Act and S. I 222-I, The National Social Security Fund (Registration of Employers and Employees) Order

out of a working population of 11 million people (RoU 2007:1). Thus, even most eligible employees and employers are not registered with the NSSF. The NSSF provides only five benefits:

- a. *Age benefit*-attaining 55 years or 50 years and retiring from regular employment;
- b. *Withdrawal benefit* attaining 50 years and not being employed for a period of at least one year (S. 21);
- c. *Invalidity benefit* as a result of physical or mental disability of a permanent nature rendering the worker incapable of earning a reasonable livelihood (S. 22);
- d. *Emigration grant* for employees migrating permanently from Uganda (S. 23); and
- e. *Survivors' benefit* for dependent relatives and family members of a deceased employee that was a member of the fund S. 24).

The NSSF makes lump sum payments at old age or in any of the above situations. Workers contribute 5% and employers 10% of monthly emoluments (S. 11 & 12).

There are several conceptual and practical problems with the NSSF scheme. In the first instance, the NSSF is a provident fund and not a pension scheme and as such the lump sum payment may run out quickly and the beneficiary slides into destitution. This tends to defeat the purpose for which social protection arrangements are normally intended; ensuring income security in old age. Secondly, the benefits available are too limited. Well known risks and social needs like sickness, unemployment and problems such as HIV/AIDS were not anticipated and thus not cared for. Thirdly, the scheme deals with employees working for employers with 5 or more workers. This leaves out many firms and workplaces with less than five employees which are the majority in the country.

Finally, there is excessive government control. For instance, no investment can be made by the Fund before consulting the minister. (S. 30).

The Minister also determines the rate of interest on contributors' accounts (S. 35). Declared interest rates have been too low since 1985. It is only recently (July 2008) that the Fund declared it would now grant interest at 14% per annum, but thereafter the NSSF management has since reverted to very low rates (about 4% in 2010) much below the inflation rate.

As the Fund continued to grow from a few billion shillings to now over a trillion shillings, misuse and mismanagement have increased. In practical terms, both management and government have abused the Fund; misusing and/or misappropriating workers' savings. There have been many dubious and questionable investments and the management and administrative costs of the Fund are unacceptably high. The removal of the Fund's mandate from the Ministry of Gender, Labour and Social Development to that of Finance has irked both employer and employee members as it is suspected that government would like to use the money for political purposes or patronage.

For instance, in early 2008, the Fund bought land from Minister Amama-Mbabazi (who is also the Secretary-General of the ruling National Resistance Movement (NRM) at an inflated price with political assistance and/or the patronage of Ezra Suruma (Minister of Finance), yet both benefited from the sale as they invested the money in their private Bank, National Bank of Commerce. The Parliamentary Committee on State Enterprises, Commissions and Authorities probed the matter and issued a report. However, the Speaker of Parliament refused debate on the report, arguing that it should be handled by the Inspector General of Government (IGG) under the Leadership Code Act. Many projects (like the computerisation of the NSSF records) have been shoddy and management also continues to mismanage the fund and incur heavy

administrative costs. Recently the former Managing Director of the Fund, Chandi Jamwa was found guilty and convicted by the High Court of Uganda for causing financial loss to NSSF,⁴⁶ although he had also been indicted for abuse of office.

Trade unions and workers of all shades of political opinion are opposed to this misuse of their savings by the regime. At the end of the day, neither the PSPS nor the NSSF adhere to the internationally recommended principles especially on availability, adequacy, coverage and actual accessibility (see J.J. Barya 2009:21).

Private Social Protection Schemes

There are a number of private non-statutory social protection schemes managed by insurers and some large companies. These include private pension schemes, health insurance and education insurance. Among the existing schemes are those at Makerere University-Makerere University Staff Retirement Benefits Scheme, British American Tobacco Staff Pension Scheme, Stanbic Bank Staff Pension Fund and Bank of Uganda Staff Pension Scheme. These schemes are also problematic because they are unregulated. There are no minimum standards governing eligibility and conditions. More interestingly, the schemes usually operate side by side with the statutory NSSF arrangements. They therefore cover.

... individuals whose incomes and standard of living allow them to afford additional contributions for supplementary benefits over and above what is being provided under the basic mandatory arrangement. In a number of organisations, they are provided to senior staff only (RoU 2003: 35-36).

⁴⁶ See *Uganda vs. D. Chandi Jamwa*, High Court Criminal Session No. 87 of 2010.

Political Processes, Proposed Bills, Trade Union Influence and Policy on Social Security

Uganda, like the other EAC countries, except Tanzania and Rwanda, does not have a social security policy. From independence (1962) to 1985, it operated the colonial system of social security. In 1985 the NSSF Act was passed but due to political instability became operational only under NRM after 1986. Uganda has thus, recently had the PSPS, the NSSF and private schemes until when the social security debate led to the proposals for a social security/pensions regulator - the Uganda Retirement Benefits Authority Bill 2010, the Liberalisation of the Retirement Benefits (Draft) Bill 2011 and the (Draft) National Health Insurance Bill 2010.

The Uganda Retirement Benefits Authority Bill 2010

This Bill proposes to establish an independent regulatory authority which should be responsible for regulating the establishment and operation of retirement benefit schemes in Uganda in both the private and public sectors, protection of funds of retirement benefit schemes, supervising institutions that provide retirement benefit products and services and ensuring the stability of the financial sector through promoting the stability of the retirement benefits sector as a whole with a view of promoting long term capital developments. It is hoped that the authority will help promote transparency, accountability and ensure the integrity of retirement benefits schemes and the retirement benefits sector as a whole and also protect the interests of members and beneficiaries of these schemes while preventing contingent fiscal liabilities incurred by Government.⁴⁷ The Bill also provides for the licensing of custodians, trustees, administrators and fund managers. At the time of going into publication of this book the Bill had just been passed at the end of April 2011 but the President has not yet assented to it.

⁴⁷ See Memorandum to the Uganda Retirement Benefit Authority Bill 2010

The Liberalisation of the Retirement Benefits Sector (Draft) Bill 2011

About March 2011, the Ministry of Finance Planning and Economic Development (MoFPED) drafted a bill which is currently under discussion (but not yet gazetted) entitled the Liberalisation of Retirement Benefits Sector Bill 2011. The draft Bill aims at liberalizing “the retirement benefit sector” to remove monopoly over mandatory contributions; to provide for fair competition among licenced retirement benefits schemes; to provide for mandatory contribution and benefits; to consolidate and reform the law relating to retirement benefits; to convert the public service pension scheme into a contributory scheme; to repeal the Pensions Act, Cap 286; to repeal the National Social Security Fund Act Cap 222 and for related matters.”⁴⁸

This new draft Bill is quite controversial for a number of reasons. First, the whole idea of open liberalization without basic protection of reserving one public institution for mandatory contributions presents a big risk to contributors. S.3 (1) provides that “the retirement benefits sector in Uganda is hereby liberalized and all licenced retirement benefit schemes shall operate and compete for mandatory contributions in an open market ...” and under S. 3 (2) (a) “a single retirement benefits scheme shall not have monopoly over mandatory contributions made in accordance with this Act.” Secondly, the draft Bill proposes to repeal both the Pensions Act and the NSSF Act (S. 43 (1)) but without making adequate provisions to cover the existing public service pensioners and public officers with 15 or more years of service. Thirdly, while government proposes to guarantee “the safety of the basic mandatory contributions to encourage contribution towards retirement savings” the draft does not state how this will actually be done.

⁴⁸ Long Title, Draft Bill

On the other hand there are a number of positive proposals in the draft Bill that should be applauded. First there is proposed a mandatory registration with a licenced retirement benefits scheme for every employee in the formal sector (S. 7 (1)) and for every employer in the formal sector irrespective of number of employees to make regular contributions for his employees to a licenced retirement benefits scheme (S. 7 (2)). The proposed rates of contribution remain 10% employer and 5% employee (s. 10). Secondly the number and type of benefits proposed have been increased to include these mandatory benefits: age, survivors, invalidity, major medical and maternity, unemployment, self-education and home ownership (S. 19). Additional mandatory benefits proposed include: child education and injury at work (S. 20). Voluntary benefits include: Additional age benefits and basic health care benefits (S. 21).

Also proposed are midterm access to some benefits: self-education, child education, short-term unemployment and acquiring or constructing a house (S. 25).

In addition all benefits under the draft Bill are exempt from income tax (S. 37) and indexation of benefits is also proposed to be managed by the proposed Uganda Retirement Benefits Authority to ensure that the adjustment of retirement benefits is based on the prevailing economic circumstances so that the value of the benefits is not diminished by inflation (S. 38).

It is also proposed to reform the Public Service Pension Scheme (PSPS) to convert it into a contribution scheme (S. 44) while for the NSSF it is proposed to restructure it, among others, to cease being a provident fund and become a retirement benefits scheme, widen the scope of benefits, provide mid-term access and to improve members' returns (S. 52 (2)).

The (Draft) National Health Insurance Bill

The Ministry of Health in Uganda has drafted a National Health Insurance Bill intended to cover about 2 million Ugandans in the formal sector-expected to be funded by 4% employers' contribution and 4% of each employee's gross monthly salary. The rest of Ugandans are also supposed to be covered either under community health insurance schemes (mainly for the rural areas and the informal sector) or private commercial health insurance schemes. The draft Bill proposes to establish the National Health Insurance system with three schemes:

- a. The Social Health Insurance Scheme;
- b. Community Health Insurance Schemes;
- c. Private Commercial Health Insurance Schemes.

It is proposed that every resident in Uganda shall compulsorily be registered with one of the above schemes. It is further proposed that a board of directors be established to administer the scheme. The draft Bill also proposes the kinds of benefits that members of the scheme should enjoy.

The scheme has so far met resistance from employers, trade unions and workers' representatives, who consider it an additional burden in addition to NSSF contributions and income tax (PAYE-Pay as You Earn) which is about 30% of an employee's monthly salary. Both employers and workers also doubt government capacity and integrity to implement the scheme given existing grand corruption in government and failure so far to manage public health facilities. The debate over the Bill continues.

Since the early 1990s, Uganda has liberalised its economy and as a result of that liberalisation, privatisation of state enterprises and the general retrenchment of the state, the levels of unionisation have gone down. Some of the major casualties of privatisation were the textile industry, the co-operatives and all those workplaces where public enterprises employed big numbers of workers. As a result,

trade unions were deprived of numbers and bargaining power. However, following the liberalisation of freedom of association in 1993,⁴⁹ public servants hitherto not allowed to join trade unions formed and/or joined trade unions particularly civil servants, health workers and teachers.

The trade union movement in Uganda is not only weak in terms of membership but also as a result of political fragmentation and incorporation into the ruling party and government structures. For instance, all the 5 workers' members of parliament are also members of the ruling NRM, with one being a minister! Yet they are supposed to be workers' representatives. Equally, the leadership of the two main trade unions federations-the National Organisation of Trade Unions (NOTU) and the Central Organisation of Free Trade Unions (COFTU)-have all been incorporated into NRM structures and can, therefore, no longer speak and act for workers, autonomously from the government. In a recent work we concluded that workers members of parliament are more agents of NRM and the government among workers than representatives of workers and the trade union movement vis-à-vis government. They may therefore:

...raise issues related to workers' interests only in so far as such issues do not antagonize the government and the president. The return to multi-party politics has therefore, in the initial stages at least, further emasculated the trade union movement and put its leadership in a patron-client relationship with the state (J.J. Barya 2010: 97).

Nonetheless, issues of social security have not been completely ignored. The basic problem is that they are being handled in the context of a weak and politically compromised trade union movement. However, by taking an East Africa-wide approach a weak trade union movement may make considerable gains among several issues relevant to workers and the wider society, including the question of social security and social protection.

⁴⁹ The Trade Union Laws (Miscellaneous Amendment) Statute No. 10/1993

4

Tanzania Mainland and Zanzibar

Introduction

This chapter deals with social security in both Tanzania mainland and Zanzibar. The two have separate social security systems because social security under Tanzania's 1977 Constitution is a non-Union matter. The chapter therefore treats Tanzania mainland and Zanzibar separately. But Tanzania has a social security policy and an ageing policy both of 2003. It also has a plethora of laws compared to other EAC states.

Tanzania provides an interesting study regarding its politics, constitutionalism and human rights. Tanzania's constitution was enacted in 1977 and although amended several times to-date, it still states that "the people of the United Republic of Tanzania have firmly and solemnly resolved to build ... a society founded on the principles of freedom, justice fraternity and concord" and the constitution was enacted "for the purpose of building such a society and ensuring that Tanzania is governed by a Government that adheres to the principles of democracy and socialism".⁵⁰

In other words, there appears right from the word go a contradiction between the constitutional foundations of the Tanzanian state and society which are aimed at constructing a socialist society and the policies and state practices on the ground. Tanzania, like all other EAC countries, pursues a neo-liberal economic policy which is definitely a capitalist economic framework rather than a socialist one.

⁵⁰ Preamble, The Constitution of the United Republic of Tanzania, 1977

The constitution of Tanzania has not been amended to reflect this change. It, therefore, remains to be seen whether the constitutional provisions, the relevant laws on social security and the actual socio-economic policies being pursued constitute a coherent policy on social security and social protection broadly conceived.

Constitutional, Policy and Legal Framework

The issue of social security and social protection in Tanzania (Mainland and Zanzibar) should be looked at from the point of view of Tanzania having for a long time subscribed to the ideology and philosophy of socialism (*ujamaa*) while at the same time, since 2003 at least, it has a formal policy on social security.⁵¹

The Constitution

The Constitution of the United Republic of Tanzania which recognised multi-partyism in 1992⁵² nonetheless is still premised on the socialist ideology of Chama cha Mapinduzi (CCM). It still recognises that Tanzania is a state “which adheres to the principles of democracy and social justice” (Art. 8 (1)) as part of the Fundamental Objectives and Directive Principles of State Policy. In the same Objectives, the state is obliged to direct its policies and programmes to ensuring:

- a. that human dignity and other human rights are respected and cherished;
- b.
- c. that public affairs are conducted in such a way as to ensure that the national resources and heritage are harnessed, preserved and applied for the common good and also to prevent the exploitation of one person by another;
- d. that the national economy is planned and promoted in a balanced and integrated manner;

⁵¹ See URT 2003: The National Social Security Policy, Ministry of Labour, Youth, Development and Sports

⁵² The Political Parties Act No. 4/1992

- e. that every person who is able to work does work and work means any legitimate activity by which a person earns a living;
- f. that human dignity is preserved and upheld in accordance with the spirit of the Universal Declaration of Human Rights;
- g.
- h.
- i. that the use of national resources places emphasis on the development of the people and in particular is geared towards the eradication of poverty, ignorance and disease;
- j. that the economic activities are not conducted in a manner capable of resulting in the concentration of wealth or the major means of production in the hands of a few individuals;
- k. that the country is governed according to the principles of democracy and socialism (Article 9).

The same Objectives, underpinned by the desire to create a socialist society specifically refer to elements of social security. The Objectives state clearly that:

...the state authority shall make appropriate provisions for the realization of a person's right to work, to self-education and social welfare at times of old age, sickness or disability and in other cases of incapacity...the state authority shall make provisions to ensure that every person earns his livelihood (Art.11(1)).

The above is a general statement about certain elements, related to social security. The Tanzanian state also clearly recognises every person's right to self-education (Art.11(2)) and related to this end the government:

...shall endeavour to ensure that there are equal and adequate opportunities to all persons to enable them to acquire education and vocational training at all levels of schools and other institutions of learning (Article 11(3)).

However, in spite of the above provisions in Tanzania's constitution, the same constitution, goes ahead to undermine their importance.

According to the constitution, the relevant provisions, that is, Objectives and Principles, stated above, these “are not enforceable by any court”. And no court:

shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Part of this Chapter (Article 7(2)).

In Tanzania, therefore, at a constitutional level, the issue of social security although recognised as important, is clearly not justiciable. Whereas in the case of Uganda, justiciability of social security issues embedded in the National Objectives and Directive Principles of State Policy is a moot question and, after the 2005 constitutional amendment, could be said to be justiciable, in the case of Tanzania, it is clearly stated not to be justiciable.

Nonetheless, in 2003, Tanzania adopted a National Social Security Policy which, following Article 22 of the Universal Declaration of Human Rights of 1948, states that:

...efforts shall be made to enhance awareness and sensitization of the society regarding the importance and provision of social security services as a right (URT 2003:15-16).

The issue before us, therefore, is to what extent do current Tanzanian laws on social security and social protection recognise, guarantee and advance the same as a right. Furthermore, to what extent have the elements embedded in the policy been reduced to law and concrete programmes? We examine the policies first.

Tanzania’s Social Security Policy 2003

The National Social Security Policy of Tanzania adopted in 2003 has several elements. It conceives social security as:

...any kind of collective measures or activities designed to ensure that members of society meet their basic needs and are protected from the contingencies to enable them maintain a standard of living consistent with social norms.⁵³

⁵³ United Republic of Tanzania (URT) 2003:2

The National Social Security Policy recognises that there are both informal and traditional social security systems as well as the formal ones.⁵⁴ The policy also recognises that the formal social security system covers only about 5.4% of the total working population/work force.⁵⁵ The formal social security system has six major elements:

- a. National Social Security Fund (NSSF) under the National Social Security Fund Act No.28/1997; for employees of the private sector and non-pensionable parastatal and government employees; individuals who are self-employed are also eligible to join the scheme by making monthly contributions;
- b. The Public Service Pension Fund (PSSP) under the Public Service Retirement Benefits Act No. 2 of 1999 for central government pensionable employees;
- c. The Parastatal Pension Fund (PPF) under the Parastatal Pensions Act No. 14/1978 covering employees in public enterprises/ parastatals;
- d. The Local Authorities Provident Fund (LAPF) under the Local Authorities Provident Fund Act No.9/2006 covering employees of local governments;
- e. The National Health Insurance Fund (NHIF) under the National Health Insurance Fund Act No. 8 of 1999 offering health insurance coverage to pensionable employees of the central government;⁵⁶ and
- f. Political Retirement Benefits Act No. 3/1999.

The Policy document identifies a number of objectives that underpin it and states them as follows:

To widen the scope and coverage of social security services to all the citizens;

⁵⁴ Ibid: 5 - 7

⁵⁵ Ibid. 8

⁵⁶ See United Republic of Tanzania (URT) 2003: 6 - 7

- a. To harmonise social security schemes in the country so as to eliminate fragmentation and rationalise contribution rates and benefit structures;
- b. To reduce poverty through improved quality and quantity of benefits offered;
- c. To institute a mechanism for good governance and sustainability of social security institutions through establishment of a regulatory body;
- d. To establish a social security structure that is consistent with the ILO standards but with due regard to the socio-economic situation in the country; and
- e. To ensure more transparency and involvement of social partners in the decision making with respect to social security institutions.⁵⁷

The policy, therefore, identified the broad objective behind its promulgation as ensuring that:

...every citizen is protected against economic and social distress resulting from substantial loss of income due to various contingencies.⁵⁸

While the above broad objective seems limited to “loss of income” and does not address questions of structural poverty and, therefore, lack of income at all, the policy proposals advanced tend to deal with most of the other relevant issues.

The Tanzania National Social Security Policy puts forward fifteen (15) policy positions that it intended to deal with in the following ways:

Structure of the Social Security Sector

Provision of social security services in the country shall be structured as follows:

⁵⁷ United Republic of Tanzania (URT) 2003: 12

⁵⁸ Ibid. 13

- a. Social Assistance Programmes: The Government shall enhance the capacity to attend to the social assistance programmes that constitute services such as primary health, primary education, water, food security and social welfare services to vulnerable groups such as people with disabilities, the elderly and children in difficult circumstances on a means tested basis.
- b. Mandatory Schemes: Mandatory social security institutions that shall operate under the social insurance principles in accordance with minimum acceptable standards and benchmarks.
- c. Supplementary Schemes: Supplementary schemes shall be established to cater for different social services like health, pensions and other types of insurance over and above those provided by mandatory and social assistance programmes. These schemes shall be run by employers, private companies, professional bodies and community-based organisations (CBOs).

Coverage

- a. Social welfare services shall be improved and extended to enhance accessibility to disadvantaged groups, including people with disabilities, the elderly and children in difficult circumstances.
- b. A legal framework shall provide for all employees in the formal sector and devise means of extending coverage to the informal sector such as agricultural, mining, fishing and small businesses.
- c. There shall be an act to support the formation of mutual assistance initiatives by the non-governmental organisations (NGOs), CBOs and other groups operating at community level.
- d. Employers, financial institutions, professional associations, insurance companies, social security institutions and other organisations shall be enabled to establish supplementary schemes to provide social security benefits over and above those provided by mandatory and social assistance programmes.

Social Security As a Right

Efforts shall be made to enhance awareness and sensitisation of the society regarding the importance and provision of social security services as a right.

Inadequacy of Benefits Offered

Social security schemes shall have a standard minimum number of benefits offered and indexed to the current levels of earnings of contributors.

Portability of Social Security Benefits

There shall be regulated mechanisms established to enable portability of benefit rights when a member moves from one scheme to another.

Co-ordination

The social security sector shall be coordinated by the Ministry responsible for social security matters.

Reciprocal Agreements for Transfer of Benefits

Legal mechanisms shall be developed to provide for reciprocal agreements with other countries for transfer of social security benefits across nations.

Partial Withdrawal of Benefits

Legal mechanisms shall be developed to allow for withdrawal of part of the accumulated benefits; while the balance shall remain for long term benefits or premature termination of their employment.

Financing of Social Security Services

- a. Services under Social Assistance Programmes shall be offered on a means-tested basis and financed by the general tax revenue and other grants.

- b. Mechanisms shall be established to ensure that all salaried employees and individuals, who can afford to contribute to the mandatory schemes, do so to ensure enhancement of benefits.

Guaranteeing of Mandatory Schemes

- a. The Government shall continue to guarantee members' benefits in the established mandatory schemes.
- b. The Government shall ensure that social security schemes are managed efficiently.

Taxation on Contributions, Investment Income and Benefits

The government shall continue to review tax policies to ensure contributions, benefits and income from investments to enable mandatory schemes offer meaningful benefits to members.

Investment of Social Security Funds

Guidelines will be developed based on principles of safety, yield and liquidity.

Good Governance/Management

There shall be guidelines to ensure that all social security schemes are transparent and accountable to the members and the public at large.

Legal Framework and Minimum Standards

There shall be an act to govern and standardise operations of the social security sector. The law shall also provide for the establishment of a regulatory body that shall ensure smooth and efficient operations of the sector.

Liberalisation of the Social Security Sector

Social security institutions shall operate in a regulated liberalised market as follows:

While the existing mandatory social security institutions shall operate and compete among themselves Social Security Services under supplementary schemes shall be fully liberalized.

National Ageing Policy 2003

In September 2003, Tanzania adopted the National Ageing Policy which, among other things, noted that globalisation, growth of towns and the movement of people from rural to urban areas in search of jobs have changed the formal relationship in the family and society in general. In addition, the policy notes that “as a result of weakened traditional life, older people are no longer playing a vital role in the life of the community. Consequently, the young people do not show respect to older people and often times despise them”.⁵⁹ The policy promises the following:

- To recognise older people as an important resource in national development;
- To allocate enough resources with a goal of improving service delivery to older people;
- To involve older people in decision making on matters that concern them and the nation at large;
- To involve older people in income-generating activities;
- To prepare strategies and programmes for eliminating negative attitudes and age discrimination; and
- To provide legal protection to older people as a special group.⁶⁰

The policy observes that existing social security schemes cater for older people formerly employed in the formal sector. It, therefore, promises to rectify the situation by doing the following:

- A mechanism will be established to ensure that social security institutions direct their services to the informal sector.

⁵⁹ United Republic of Tanzania (URT) 2003 a: 3

⁶⁰ Ibid. 5 - 7

- Local government authorities and voluntary agencies will sensitise older people in the formal sector to save through Ward Banks, Primary Cooperative societies and savings and credit cooperative societies.
- Families will be mobilised in order to participate in income-raising activities.

The policy identifies four institutions to assist in the implementation of the policy with different roles. These include: the central government, local government authorities, villages and families as well as voluntary agencies.

The Current Law on Social Security

As we have seen above, the Tanzanian social security system, at least at the formal level has three major constituent sources: the constitution, the policy and the various laws. The constitution promises a socialist society, and a non-exploitative one, although the social security promises therein are not justiciable! Secondly, the policy on social security, put in place in 2003, has a clear vision of what should constitute social security and broader social protection but the laws in place before the policy was adopted have hardly been changed or repealed to reflect or attempt to implement the social security policy positions. Thus, the social security system actually in place, to some extent, contradicts the social security policy and ideals.

a. The Public Service Pension Fund:

The Public Service Pension Fund (PSPF) was set up under the Public Service Retirement Benefits Act 1999. The Act covers pensionable public servants and is a contributory pension scheme.

It includes benefits related to retirement age, survivorship and invalidity. It also covers benefits in respect of sickness and funeral costs and those related to marriage, maternity, emigration or withdrawal (S. 8).

Pension, gratuity and other benefits may be claimed: on attainment of the retirement age of 55 years; on transfer to other public service; on abolition of office, on compulsory retirement; on retirement on medical grounds; on termination in the public interest; or on ceasing to hold office pursuant to Article 72 of the constitution (S. 16).

Both the public servant/employee and the employer/government contribute. The employer contributes 15% while the employee contributes 5% of the monthly emoluments (Ss. 40 & 41).

b. The National Social Security Fund (NSSF):

The NSSF of Tanzania was set up by the National Social Security Fund Act No. 28 of 1997; having repealed earlier laws (the National Provident Fund Act 1964). It covers employees in the private sector and the non-pensionable government employees (S.2 and S.6) and “every person who is self-employed” (S.6 (2)).

The benefits provided for under the NSSF scheme are seven (7) and include:

- Retirement pension for permanent disability (Ss. 23-27);
- Invalidity pension for permanent disability (Ss. 28-32);
- Survivors pension payable to dependants, that is a spouse or children (Ss. 33-36);
- Funeral grants as reimbursement to the family for the expenses incurred for the burial of a deceased insured person (S. 38)
- Maternity benefit is available to insured person (she herself or through the husband if latter is the insured person) which includes prenatal and post-natal medical care and cash benefits (Ss. 44-45);
- Employment injury benefit which includes medical care and disability benefits (temporary and permanent) (Ss. 39-40); and
- Health insurance benefit. This benefit is payable to:

...an insured person, the spouse and four children of the insured if the insured person has contributed to the Fund for a minimum of three months of which three months of contributions were paid to the Fund in the three months immediately preceding the medical contingency (S. 41).

- The Parastatal Pensions Fund (PPF):

The Parastatal Pensions Fund was established in 1978 by the Parastatal Pensions Fund Act No. 14/1978. It originally covered only employees in public enterprises but now covers those in parastatals, private firms, the self-employed and those in the informal sector. Even those on contracts (not permanent terms) may join.⁶¹

The PPF regime is flexible as contributions are flexible. There is a shorter qualifying period for old age benefits - 120 months compared to 180 months for other funds. Employees contribute 5% or 10% while the employer contributes 20% or 10%.

The PPF offers the traditional pensions scheme with: old age benefit, disability benefit, death benefit, survivors' benefit, education benefit, gratuity benefit and withdrawal benefit. PPF also offers a lump sum or lump sum with annuities under the Deposit Administration Scheme.

There is no interest under the Traditional Scheme which operates under the defined benefits system.

- The National Health Insurance Fund (Act 8/1999):

The National Health Insurance Scheme (NHIS) was established after a 1990-1992 study and commenced operations on 1 July 2001. The scheme is compulsory for all public sector employees. It covers principal members, their spouses and up to four children and/or legal dependants. Where both spouses are employed in the public service, both have equal rights to register four different children/dependants. The scheme currently covers: registration

⁶¹ See Parastatal Pensions (Amendment) Act No. 25/2001

fees (fixed per visit per level of health facility), basic diagnostic tests, outpatient services (including payment for examinations and prescribed drugs), provided the hospital (public or private) is accredited and the drugs required are from the list of essential drugs.

The contribution rate is 6% per month of the employee's gross salary. Employees may access services from faith-based and NGO health facilities as well as a few private pharmacies. The fund is expected to operate with only 8% of the Fund's total income (S. 33 (b)).

From 2009, the NHIF has also been mandated to manage the Community Health Fund (CHF) services. The CHF is a voluntary scheme set up to assist those in the informal sector, mainly in the villages, to access health facilities by making a token contribution of between 5,000/= and 10,000/= annually. When a member pays such amount, then he/she and his/her household will be entitled to receive free medical services for one year. Under the CHF, which originally was administered by the local government authorities from district council to the village level, the government contributes an equal amount for each district council like the total members' contributions in that district annually. The CHF was introduced in 2001 by the Community Health Fund Act, Act No. 1 of 2001 and in 2009 a tripartite Memorandum of Understanding was entered into by the Ministry of Health, Ministry of Local Government and Regional Administration and the National Health Insurance Fund. Through this memorandum, the CHF was put under the management of the NHIF for three years up to 30th December 2012. The intention is to improve the administration of the CHF. Official records show that up to September 2010, the

CHF was serving 2.7 million Tanzanians in 99 district councils where the scheme is operating.⁶²

j. The Political Service Retirement Benefits Act 3/1999:

The Act No. 3/1999 was enacted for purposes of setting up the above Fund “to provide the granting of benefits and services to leaders upon cessation of services in a political office”.⁶³ It provides for benefits to former or retired political leaders: former President and Vice-President, former Prime Minister, Minister or Deputy Minister (Ss. 9-12) as well as former Speakers and Members of Parliament (Ss. 18-19) and Regional and District Commissioners (Ss. 23-24). The benefits include pension, gratuity or winding up allowance.

- The Local Authorities Provident Fund (LAPF):

This was established under the Local Authorities Provident Fund Act No. 9/2006 and provides for the payment of benefits to insured persons, payable under the Act. It repealed the Local Authorities Provident Fund Act No. 6/2000. The former scheme was a provident scheme with a defined contribution plan while the new one is mandated to have a defined benefit plan which is based on the contribution level of the insured person and the investment portfolio.⁶⁴

- The Judges (Remuneration and Terminal Benefits) Act 2007:

This law provides for the benefits for judges while in service and after cessation of employment for various reasons like death and removal from the High Court. The Act specifies the minimum benefits to which a person serving as a judge or who once served as a judge is entitled. The benefits which are contained in the schedules to the Act can only be amended by the president and only by way of increasing and not decreasing them. The benefits

⁶² www.inhif.or.tz

⁶³ Long Title

⁶⁴ See Local Authorities Provident Fund LAPF website

under the Act are charged from the Consolidated Fund and are exempt from income tax.

- The Social Security (Regulatory Authority) Act No. 8/2008

This new law submits all pension schemes to the Pension Funds Regulatory Authority. The Authority registers managers and custodians, monitors and reviews the performance of the social security sector, initiates and coordinates reforms and is to facilitate extension of coverage, including for informal groups. A Social Security Tribunal is set up for dispute resolution and appeals chaired by a Judge of the High Court. The social security system is, therefore, being liberalised to provide more private pension and social security services. The intended result is more efficient schemes, investments made in the interest of members and portability from one scheme to another.

Macro-Economic Policy Framework

Since 1985, Tanzania has been pursuing SAPs and among the conditionalities of the SAPs are: the liberalisation of domestic trade, liberalisation of foreign trade, privatisation of state owned enterprises, reduction of government expenditure, removal of barriers to foreign ownership and investment and financial sector reform.⁶⁵ The overall result was to adversely affect employment in that for both the government and public enterprises (as in Uganda) the process of privatising parastatals also led to huge job losses. As a result, there has been a proliferation of micro-enterprises (informal-sector activities) thereby increasing the number of organisations that do not comply with health and safety regulations,⁶⁶ among other things.

In other words, economic reforms led to a further undermining of social security while the social security policy and laws formulated in the last two decades were intended to enhance the social security situation of Tanzanians.

⁶⁵ Tungaraza, F.S.K: 194

⁶⁶ Ibid. 195

Coverage and the Informal Sector

All the formal social security institutions referred to above cover only about 6% of the population in the country in the formal sector. The majority of the population involved in the urban areas and more so in the rural agricultural economy are excluded.⁶⁷ The majority of the people still depend on the traditional and informal social security arrangements for their protection against hunger, sickness, old age, homelessness, unemployment, maternity care and injuries. Yet the traditional social security systems, based on family lineage, clan, neighbourhood or community have weakened over time due to urbanisation and industrialisation. These have led to “social and structural changes that have increasingly eroded the capacities of traditional and non-formal social security arrangements to provide social protection to members against social and economic contingencies”.⁶⁸

Assessing the Social Security System in Tanzania Mainland

We have seen that social security is not recognised in the Tanzania constitution as a justiciable human right through the Fundamental Objectives and Directive Principles of State Policy recognise social security as a right (though non-justiciable) in different articles. As a result, the laws and the policy in the arena of social security appear more as government largesse than provisions for social security rights. In this regard, the coverage, benefits, administration and related issues need to be seen in this context. Indeed, one may state that while a formal social security policy was put in place in January 2003, the Social Security (Regulatory Authority) Act of 2008 has been put in place and the Local Authorities Provident Fund has been reformed, objectives of the policy are far from being met.

⁶⁷ See URT 2003: 5, Tungaraza: ibid 185

⁶⁸ Ibid. 189

Tanzania has a multiplicity of schemes; some competing with each other, for instance, the NSSF as against the PPF. The different schemes are managed and controlled under different ministries. The regulatory authority was put in place in 2008 to try and harmonise the schemes and avoid conflict, among other reasons. Its overall effect is yet to be assessed.

Zanzibar

It should be emphasized that labour and social security matters are non-union matters according to Article 4 and Schedule I of the 1977 constitution. Therefore, Tanzania Mainland and Zanzibar have different social security regimes.

The Zanzibar Social Security Fund Act No. 2/2005 sets up a Board of Trustees of the Zanzibar Social Security Fund (ZSSF) which is tripartite in composition (S. 7). The Fund covers employees in both the public and private sectors and also self-employed persons (S. 2). The contributions to the Fund are 5% by the employee and 10% by the employer (S. 17 & the First Schedule).

The Fund provides the following benefits:

- a. Old age benefits;
- b. Survivors' benefits for dependants;
- c. Maternity benefits;
- d. Invalidity benefits;
- e. Medical care benefits; and
- f. Any other benefits approved by the Board (S. 26 (1)).

A member is entitled to receive a pension on attaining the pensionable age of 60 years or on medical evidence that the employee is permanently unable to work. Dependants of deceased members are entitled to gratuity as beneficiaries. A female member is entitled to maternity benefit once in every three years. The medical benefit claims 3% of the 15% contribution to ZSSF. Other members are also entitled to medical care benefit at 3% of the 15% contribution.

A member's medical credit may be used to meet his/her spouse's or children's medical bill (S. 29). A person not qualifying for pension receives a gratuity (S. 31).

It should be noted that old age benefits under the ZSSF Act comprises both gratuity and pension. The benefit is over 80% of what members have contributed. Maternity and medical benefits are not offered under the scheme. Retirement age is 60 years but one may voluntarily retire at 55 years and obtain the benefits. While Tanzania Mainland permits lump sum withdrawal Zanzibar does not.

5

Kenya

Introduction

The situation of social security in Kenya is quite mixed. Kenya has no formal social security policy. Its social security regime is more or less similar to that of Uganda though it has much more coverage than that of Uganda or any other EAC country. However Kenya, in its recent 2010 Constitution presents a more optimistic picture regarding prospects for social security. This Chapter presents the relevant provisions of the new Constitution which are generally progressive *vis-a-vis* the existing legislation that is relatively conservative.

Constitutional and Policy Framework on Social Security

Kenya promulgated a new constitution, through a referendum in 2010 after years of acrimony and backward and forward movements over constitutional reforms. Kenya does not have a formal social security policy. Before 2010 and under the old constitution fundamental rights and freedoms were provided for but not social security. The government has not domesticated relevant international treaties and conventions on the right to social security. Instead, a number of separate laws without “a clear, central co-ordinated policy locus” have been made over the years since independence covering certain categories of people and some aspects of social security (Hakijamii Trust 2007: 4-5). However, in spite of the lack of a policy on social security Kenya adopted a new constitution in 2010 that is cognizant of the right to social security and social protection broadly conceived.

Constitutional Provisions

The new Kenya constitution 2010 provides for National Values and Principles of Governance within the body of the constitution under Article 10 which among others include:

“...10 (2) (b) “human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized”.

In addition to the above broad values and principles, the constitution recognises workers’ rights to organise and engage in collective bargaining (Article 41 (4 & 5)) and, in particular, states that every worker has a right to:

- a. fair remuneration;
- b. reasonable working conditions;
- c. form, join or participate in the activities and programmes of a trade union; and
- d. go on strike (Article 40 (2)),
which rights are important in providing a framework for organising and advancing the right to social security, among other rights of workers.

Apart from the above general provisions, the new constitution provides for social security in more direct and specific ways by way of economic and social rights, rights of children and youth generally, minorities and persons with disabilities and the elderly.

Article 43 provides as follows:

43 (1) Every person has the right:

- a. to the highest attainable standard of health which includes the right to health care services, including reproductive health care;
- b. to accessible and adequate housing and to reasonable standards of sanitation;
- c. to be free from hunger, and to have adequate food of acceptable quality;

- d. to clean and safe water in adequate quantities;
- e. to social security;
- f. to education.

A person shall not be denied emergency medical treatment.

The state shall provide appropriate social security to persons who are unable to support themselves and their dependants.

The above article essentially sets out major elements of social security and social protection necessary for Kenyan citizens. The relevant rights are those of health, reproductive health and emergency health care, housing, food, safe water education and general social security.

Additionally, the constitution gives elaboration to the necessary social protection for children and youth and people with disabilities, minorities and the elderly.

Article 53, on children provides as follows:

- a. Every child has the right:
 - to a name and nationality from birth;
 - to free and compulsory basic education;
 - to basic nutrition, shelter and health care;
 - to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour;
 - to parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not; and
 - not to be detained, except as a measure of last resort, and when detained, to be held :

for the shortest appropriate period of time; and
separate from adults and in conditions that take account of the child's sex and age.

- b. A child's best interests are of paramount importance in every matter concerning the child.

Article 55 on youth generally provides as follows:

The State shall take measures, including affirmative action programmes, to ensure that the youth:

- access relevant education and training;
- have opportunities to associate, be represented and participate in political, social, economic and other spheres of life;
- access employment; and
- are protected from harmful cultural practices and exploitation.

Article 54 on persons with disabilities provides as follows:

- c. A person with any disability is entitled:

- to be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- to access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- to reasonable access to all places, public transport and information;
- to use sign language, Braille or other appropriate means of communication; and
- to access materials and devices to overcome constraints arising from the person's disability.

- d. The State shall ensure the progressive implementation of the principle that at least five per cent of the members of the public in elective and appointive bodies are persons with disabilities.

Article 56 on minorities and marginalised groups provides as follows:

“The State shall put in place affirmative action programmes designed to ensure that minorities and marginalized groups:

- participate and are represented in governance and other spheres of life;
- are provided special opportunities in educational and economic fields;
- are provided special opportunities for access to employment;
- develop their cultural values, languages and practices; and
- have reasonable access to water, health services and infrastructure.”

Article 57 on the other hand deals with the elderly and provides as follows:

The State shall take measures to ensure the rights of older persons:

- to fully participate in the affairs of society;
- to pursue their personal development;
- to live in dignity and respect and be free from abuse; and
- to receive reasonable care and assistance from their family and the State.

Therefore, Kenya’s new constitution is fairly progressive not only in as far as human rights go generally but as far as the right to social security, in particular, is concerned. The issue then before us is to what extent do the existing laws (as there is no policy) and programmes protect and advance the right to social security and social protection generally? We look at the relevant laws below.

The National Social Security Fund (NSSF)

The NSSF of Kenya was set up in 1965 to cater for the private sector social security. It is mandatory for all employees working in

any private sector firm employing five or more workers. By August 2005 Kenya's NSSF had about 3 million registered members with only about 1 million as active contributors.⁶⁹

The NSSF Act provides for benefits similar to those of the Ugandan NSSF Act, namely: age benefits, survivors' benefits, invalidity benefits, withdrawal benefits, emigration grant and such other benefits as may be prescribed by the Minister (S. 19).

The benefits are as follows:

- a. *Age benefits*-for any person who is 55 years and has retired from regular employment (S. 20 (1)).
- b. *Survivors' benefits* are granted and apportioned among the dependent relatives of a deceased member in accordance with the provisions of the law (S. 21).
- c. *Invalidity benefits*-payable to a member suffering from permanent total incapacity or partial incapacity of a permanent nature and is 50 years or incapable of earning a reasonable livelihood (S. 22).
- d. *Withdrawal benefits*-payable to a member who has attained 50 years and is no longer employed by an employer liable to make contributions (S. 23).
- e. *Emigration grant*-payable to a member who permanently emigrates from Kenya (S. 24).

The NSSF Act is limited in its application and the range of benefit it can offer. Firstly, it is limited to employees in formal employment and excludes casual workers and workers less than 5 in any establishment. Secondly, the unemployed, self-employed and under-employed are also excluded from the application of the Act. Thirdly, many vulnerable groups are not covered by the Act such as domestic workers, refugees and stateless persons whose number is big in Kenya and East Africa generally.⁷⁰

⁶⁹ The GDD Bills Digest 2005: 1

⁷⁰ Hakijamii Trust 2007: 9

More critically, the Fund makes provision for one-off lump sum payment as a provident fund and is not a pension arrangement, like in Uganda. This leaves the retiring, disabled or survivor beneficiaries vulnerable. The benefits offered to the members are limited and do not cover all the nine elements identified by ILO Convention 102.⁷¹

The National Health Insurance Fund

The National Health Insurance Fund (NHIF) was set by the National Hospital Insurance Fund Act No. 9/1998. It establishes a fund management Board and provides for contributions to and payment of benefits from the Fund.

The Act allows contributions to the Fund from persons in salaried or wage employment as well as those whose income is derived from self-employment (S. 15). It offers monthly premiums that are low (KShs. 30-KShs. 320) compared to conventional insurance scheme rates which are actuarially determined.⁷² The Fund has no provisions for exclusions: all medical conditions are covered, including maternity cases. There is additionally no limit as to the number of a beneficiary's dependants.⁷³ It provides for both in-patient and out-patient benefits.⁷⁴ The Act also attempts to have community participation in the management of the Fund by providing room for one representative of NGOs involved in health care services on the Fund Management Board.⁷⁵

The Fund has had a number of problems and limitations

Firstly, although the contributions to the health scheme are relatively low, the amounts are still beyond what most Kenyans can afford.

⁷¹ See *ibid.* 10; S. Chitembwe, 2007

⁷² Institute of Policy Analysis and Research IPAR 2005: 2

⁷³ Hakijamii Trust 2007: 6

⁷⁴ *Ibid.*

⁷⁵ *Ibid.* See S.4 (i) (ii) representative of the disadvantaged members of society (rural and urban)

This is why the coverage is only 20-30% of the population, mainly covering the formal sector; leaving out the rest of the population in rural areas and those in the informal sector in the urban centres.

Secondly, the penalty under S. 19(2) of the Act for those who do not pay on the due date is “...equal to five times the amount of the contribution”. This penalises the poor, the unemployed and casual employees that are registered as members as their income is in reality irregular, unlike that of those in formal employment.

Thirdly, a number of problems have hampered the proper, efficient and expected operation of the NHIF, namely: poor quality service delivery, inefficiency in collections, limited coverage as already seen above, bureaucratic obstacles and divided mandates (between Finance and Health ministries), a tedious claiming process, high transaction costs and fraud and abuse of the claims process.⁷⁶

Finally, accessibility to NHIF offices is a problem. Most areas of the country have no NHIF offices and those available are unevenly distributed. And in 2005 an attempt was made to address some of these challenges through the National Social Health Insurance Fund Bill but the Bill was vehemently opposed in parliament by the Minister of Finance claiming it would be expensive to maintain and the President of Kenya consequently refused to assent to the Bill.⁷⁷

The Pensions Act and Pension for Public Service Employees

The Kenya Pensions Act (Cap 189) provides for the grant and regulation of “pensions, gratuities and other allowances in respect of public service officers under the Government of Kenya”⁷⁸ much in the same way as the Pensions Act of Uganda.

⁷⁶ Institute of Policy Analysis and Research (IPAR) 2005: 1

⁷⁷ Hakijamii Trust 2007: 6 - 7

⁷⁸ Long Title

The most interesting aspect of this Act is that it clearly states that pension is not a right. Under S. 5, it is clearly spelt out as follows:

“S. 5 (1) No officer shall have an absolute right to compensation for past service or to pension, gratuity or other allowance; nor shall anything in this Act affect the right of the Government to dismiss any officer at any time and without compensation.

5 (2) where it is established to the satisfaction of the President that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld”

In addition there are more draconian anti-public service employees provisions in the Act.

S. 14(1) provides that “where any person to whom a pension or other allowance has been granted under this Act is adjudicated or is declared insolvent by judgment of a court, then the pension or allowance shall forthwith cease” but the president has powers to direct that the pension then he paid to the wife, children or dependants of the public officer (S. 14 (3)).

S. 15 (1) of the Act provides for the removal of pension in case of conviction, namely, that “where a person to whom a pension or other allowance has been granted under this Act is sentenced to a term of imprisonment by a competent court *for any offence*, if the President so directs, the Pension or allowance may cease as from such date as the President determines.”

Furthermore, on accepting certain appointments where the Kenya government is involved, the person’s pension or allowance ceases if the President so directs (S. 16).

Otherwise, pension is allowable for the widow or children of a deceased public officer only for 5 years after the death of the public officer (S. 17 (1) (b)).

In short, the act provides for service pension and commuted pension, service gratuity, marriage gratuity, injury pension, death

gratuity, dependants' pension, compassionate gratuity and annual allowance.⁷⁹

Finally, the Act places unconscionable, unjust and unjustifiable and discriminatory archaic conditions on dependants of an officer dying in the discharge of duty or other related cause for accessing the deceased officer's pension or other benefits. These conditions include: that the deceased's children should not be more than six (S. 19 (1)); the widow should be of good character (S. 19 (1) (v)); and in case of a female child, pension ceases on marriage under 21 years (S. 19 (1), proviso (iii)).

The Pensions Act is generally dictatorial and does not see pension as a right for Kenya public servants. It leaves too much to be desired.

It should be observed that because of the provisions of the new constitution of Kenya 2010, regarding social security, the above laws relating to social security and pensions in Kenya are not in conformity with the provisions and promise of this new constitution. It is, therefore, imperative that all laws relating to social security and social protection in Kenya be reviewed not only to align them with the new constitution but also to take such an opportunity while reviewing them to ensure that they are also in conformity, as much as is possible, with internationally accepted normative standards on social security and social protection.

The Retirement Benefits Authority Act, No. 3/1997

This Act establishes the Retirement Benefits Authority (RBA) to regulate, supervise and promote retirement benefits schemes and the development of the retirement benefits sector.⁸⁰

The Act is mainly regulatory and provides for the compulsory registration of retirement benefits schemes (S. 22), managers and custodians.

⁷⁹ See Ss. 6 - 19

⁸⁰ Long Title to the Act

Scheme Funds must be kept separate from “any other funds under the control of the trustees or manager” (S. 32 (2)).

The Authority has been in place for the last 13 years but an assessment of its role in promoting and regulating social security in Kenya has been described as follows, in terms of challenges faced:

...under-funding of social security schemes especially in the public sector, poor investment of scheme funds leading to poor returns for members, misappropriation of scheme funds due to members’ lack of adequate awareness, poor administration and record keeping leading to long delays in payment of benefits to members, excessive interference by sponsors in scheme affairs, denial of benefits to certain staff members on spurious grounds, etc., ...” (Hakijamii Trust 2007: 5).

Under the Act and Regulations made there under, the Authority has rules which require the following:

- Up to 50 percent of the trustees must be member nominated.
- Sponsors/trustees remit members’ contributions to the custodian within ten days of the deductions.
- Trustees to appoint separate Managers and Custodians
- The funds are then invested by the fund managers across a diversified range of investment instruments available in the market to maximize returns at the lowest risk possible.
- Schemes must ensure submission of quarterly contributions and investment reports.
- Schemes keep detailed and updated records of members and assets which are independently audited every year by an auditor in accordance with the regulations.
- Defined Benefits schemes must undergo actuarial valuations every three years.
- There should be no assignments of members benefits for debt/loan, judgement or for any other form of impropriety.

- Schemes rules should provide for immediate vesting of members contributions and vesting of employer's contributions within a maximum of one year.
- Payment of benefits within 60 days.
- Annual membership benefits statements for members.
- Annual general meeting for members.
- Schemes must ensure compliance with Retirement Benefits Authority (RBA) Investment Guidelines.⁸¹

This Act is, therefore, similar to the new one for Tanzania, the Social Security (Regulatory Authority) Act No. 8/2008, and the proposed one for Uganda - the Uganda Retirement Benefits Authority Bill 2010.

The Authority itself has identified the challenges it has faced in the last 13 years. These include low coverage of pension schemes which is currently at 15% of the total workforce in the formal sector. Most of those not covered are in the informal and the agricultural sectors. There is also a low replacement ratio of the retirement benefits income in relation to the average salary earnings during the working years. According to the Authority "data from surveys carried out by the Authority shows scheme members having replacement rates of only 20%".⁸² In Addition, life expectancy in Kenya has been increasing and with long life expectancies comes the increased risk of retired people outliving their retirement income. Inflation has also been reducing the real value of pension funds over time.⁸³

The experience of Kenya should benefit both Tanzania (which began one in 2008) and Uganda which has a Bill on the matter, in terms of the utility of such a Retirement Benefits Authority and what measures are necessary to make it effective.

⁸¹ Retirement Benefits Authority (Kenya) 2011: 7

⁸² RBA (Kenya) 2011: 9

⁸³ Ibid.: 8 - 10

National Policy on Older Persons and Ageing 2009

In September 2009, Kenya adopted a National Policy on Older Persons and Ageing.⁸⁴ The overall objective of the policy is to facilitate the integration and mainstreaming of the needs and concerns of older persons in the national development process. The policy aims at ensuring that older persons are recognised, respected and empowered to actively and fully participate in society and development.⁸⁵ It proposes, among other things, the establishment of credit facilities for the elderly as well as ensuring that there is food security and good nutrition for the elderly. This policy needs to be harmonized with the provisions on social security and the elderly people in Kenya's new Constitution of 2010.

Social Security in Kenya-An Assessment

The new constitution of Kenya envisages social security for all but the legal and policy frameworks in place so far do not really offer any such social security or social protection. The system offers some security only to those in formal employment who constitute only about 15% of Kenya's working population.⁸⁶ The rest of the population is not covered by the formal social security schemes. While in 2009 a National Policy on Older Persons and Ageing was adopted, it is not yet practically implemented.

It should be observed that in the Kenyan system there is no limit to the number of family beneficiaries in the Health Insurance Fund. It is feared that given the traditional (extended) African family the scheme may eventually become unsustainable. In Kenya the NSSF covers approximately 1.2 million Kenyans while the civil service and the army employees covered are about 400,000 and the occupational schemes cover about 300,000 with individual schemes covering about 10,000 employees. Because of the burden on government

⁸⁴ Sammy Cheboi 2009

⁸⁵ L.M. Mbithi & Mutinda Mutuku 2010: 8 - 9

⁸⁶ Hakijamii Trust 2007: 2, Retirement Benefits Authority (K) 2007: 9

relating to public service pensions, Kenya is moving towards contributory arrangements as opposed to relying on the government exchequer. It is also reported that the Kenya RBA has, through with difficulties mentioned above, been successful in regulating social security schemes and making them more compliant⁸⁷ with RBA regulations and requirements.

⁸⁷ Kituo Cha Katiba 2010: 14 - 15

6

Rwanda

Introduction

Rwanda, unlike the older EAC countries has a different legal system being more continental rather than common law and its laws are promulgated in form of Codes. This is the same situation in Burundi. Fortunately all its laws are in Kinyarwanda, English and French and are generally accessible. This Chapter analyses the constitutional and policy framework as well as social security laws in the country.

Rwanda, like Burundi, has had a general chequered history and social and political divisions especially from the 1950s based on the ethnic Hutu-Tutsi divide. Therefore, any social issue, including social security and social protection, should, among other things, be discussed taking this historical element into account. As a result of that historical divide, genocide took place in Rwanda in 1994 following the Rwanda Patriotic Front (RPF) invasion of Rwanda from Uganda. When, in 2003, a new constitution of the Republic of Rwanda was promulgated, it was prominently prefaced with the issue of genocide. In the preamble to the Constitution, it is stated *interalia* that

1. "...in the wake of the genocide that was organized and supervised by unworthy leaders and other perpetrators and that decimated more than a million sons and daughters of Rwanda;
2. resolved to fight the ideology of genocide and all its manifestations and to eradicate ethnic, regional and any other form of division ..."

and then affirming Rwanda's adherence to major human rights conventions,⁸⁸ the constitution of Rwanda was then promulgated.

⁸⁸ See the Preamble

We may now look at the major constitutional provisions that are relevant to social security and social protection as well as the policy framework in light of the above provisions.

Constitutional and Policy Framework on Social Security

Rwanda developed a National Social Security Policy in February 2009 and has a fairly clear picture in that policy on what social security in Rwanda should consist of under the motto of social security “coverage for all”.⁸⁹ But the policy document appears to be more advanced than the constitutional provisions! We deal with both below.

Constitutional Provisions

Chapter II of Rwanda’s constitution stipulates six (6) Fundamental Principles and top among them is “fighting the ideology of genocide and all its manifestations” (Art 9 (1)) and the “eradication of ethnic, regional and other divisions and promotion of national unity” (Art. 9 (2)). The nearest element related to social security here is “building a state committed to promoting social welfare and establishing appropriate mechanisms for ensuring social justice” (Art 9 (5)).

The rest of the constitution provides for certain elements related to social security, namely: education, health and a healthy and satisfying environment. Every person has a right to education which is free and compulsory at primary level, subsidised by the government (Article 40) and the right and duties relating to health. “The state has the duty of mobilising the population for activities aimed at promoting good health and to assist in the implementation of these activities” (Article 41) and “every citizen is entitled to a healthy and satisfying environment” (Article 49). As can be seen here, there are only general constitutional provisions and no specificities regarding social security and social protection in Rwanda. However, the policy of 2009 is more focused and concrete.

⁸⁹ Republic of Rwanda (RoR) 2009: 3

The National Social Security Policy 2009

The National Social Security Policy was drawn in February 2009. Its purpose was “to analyse the current social security programme in order to identify gaps in different areas and to propose how to improve the programme, with, as a central goal, the realization of the need to provide for all the Rwandan population adequate protection against the adverse consequences of various “life cycle events and risks”.⁹⁰

The policy analyses the weaknesses of existing social security schemes as at 2009 in Rwanda and notes that these can be grouped into four areas:

- a. Small coverage: More than 90% of the population is not covered as the existing social security schemes cover only those in formal employment.
- b. For existing social security benefits their financial sustainability is not assured.
- c. Long term financial imbalances in the schemes. The pension scheme is organised under a defined benefits model whereas a defined contribution model could serve better.
- d. Management of different schemes in scattered institutions which has not helped in developing professionalism, effectiveness and efficiency at minimum cost and maximum contribution to national socio-economic development.⁹¹

Having observed the above shortcomings, the policy proposes a vision of “social security coverage for all” by the year 2020, that is a vision of universal social security coverage.⁹²

The purpose of the policy is to achieve universal social security coverage by 2020 in the following terms:

⁹⁰ Republic of Rwanda (RoR) 2009: 3

⁹¹ RoR 2009: 10

⁹² See *ibid.* 3

- a. *Pension Branch*: Every resident in Rwanda must have a pension cover either by a public pension scheme or by a private one.
- b. *Occupational Hazards Branch*: This will remain mandatory for the formal sector with 100% coverage. It will be open to allow adhesion of all workers in organised groups of the informal sector, especially cooperatives; with a target to reach at least 70% coverage.
- c. *Health Care Branch*: The vision of Rwanda is to achieve the goal of health for all through universal health insurance.
- d. *Maternity and Sickness Branches*: This will be mandatory for all in the formal sector; similar to occupational hazards, intensive sensitisation programmes and appropriate incentives will contribute to promote voluntary adhesion of at least 70% for urban and rural informal sectors through organised groups
- e. *Unemployment Benefits*: This scheme will be introduced as soon as economic conditions will allow it.⁹³

The policy then proposes a new legal framework for the realisation of its objectives. These proposed legal reforms will include the following:

- a. Social security is governed by an organic law, which is the legal framework for all laws and regulations related to this sector.
- b. Each branch of social security is governed by its specific law.
- c. Each law will determine how management modalities are governed: by law, by presidential order or by ministerial order.
- d. For the pension branch of social security, a multi-pillar pension regime is created and is composed of the three following pillars: i) a defined benefits scheme, mandatory for all workers with a formal contract with an employer. This scheme is managed by Rwanda Social Security Board (RSSB); ii) a defined contribution scheme, part of the Provident Fund which also provides

⁹³ RoR 2009: 11 - 12

pre-retirement benefits as defined by the law. Adhesion to this pillar is also mandatory for all workers with a formal contract with an employer. This scheme is managed by RSSB; iii) a third pillar concerning complementary savings for retirement managed by the RSSB Provident Fund or by Qualified Private Pension Funds.

- e. Self-employed and workers in organised groups must adhere to at least one scheme of the third pillar.
- f. RSSB is governed by a specific organic law.
- g. Adhesion to a legally authorised health insurance scheme is mandatory for all residents in Rwanda: adhesion to RSSB health insurance scheme is mandatory for all civil servants; adhesion to Military Medical Insurance (MMI) is mandatory for all army staff; all other residents can choose any legally authorised scheme managed by private insurance companies, or mutual health insurance
- h. Schemes providing occupational hazards benefits, maternity leave benefits; sickness leave benefits, are managed by RSSB and mandatory for all workers with a formal contract; they are open to workers in organised groups such as cooperatives.
- i. Registration of employees and employers, collection of contributions, and payment of benefits in mandatory schemes are governed by the laws governing respective managing institutions - RSSB, MMI, mutual insurance and life insurance companies
- j. Members of cooperatives are allowed to adhere to RSSB schemes as a group, with the same rights and obligations as other workers
- k. Funding mechanisms, contribution rates and benefits for all mandatory schemes are determined by law; they are regularly adjusted as per actuarial studies to be conducted with a periodicity of a minimum of five years.

- l. contributions and benefits provided by the pension third pillar - both the Provident Fund and the private entities, are liberalised within the limits of the regulation by Banque Nationale du Rwanda (BNR) (National Bank of Rwanda) .
- m. The government is the guarantor for the contributions paid into the system managed by RSSB and the benefits to be paid out to contributors.
- n. The government shall protect the real value of savings over the long term.
- o. The Board of Directors (BoD) of RSSB is composed of representatives of the government, employers and employees. Members are appointed by presidential order following recommendation by competent authorities representing different groups.
- p. Under the overall coordination by the Minister in charge of Finance, regulations and supervision of Social security institutions with regards to financial management aspects is under the responsibility of the institution in charge of regulating non-bank financial Institutions (NBFI); regulations and supervision related to medical issues and to labour issues are ensured, respectively, by the ministry in charge of health for medical schemes, and by the ministry in charge of labour for labour-related schemes (pension, professional risks, maternity and sickness leave).
- q. In particular, best practices and respect of prudential norms in financial management of RSSB will be regularly audited by the institution in charge of non-bank financial institution regulation.
- r. Tax exemption of social contributions, benefits and investments are governed by laws related to respective branches with the objective to promote savings mobilisation, but in line with fiscal policy.⁹⁴

⁹⁴ See Republic of Rwanda (RoR) 2009: 25 - 27

The laws on Social Security in Rwanda

The main law on social security in Rwanda is the decree law of 22 August 1974 concerning the organisation of social security as amended by law No. 60 of 2008 of 10 September 2008 determining the responsibilities, organisation and functioning of Rwanda National Social Security Fund -in French. *Caisse Sociale du Rwanda*(CSR).

Decree Law No. 6 of 1974 as Variously Amended (Dated August 1974) Establishing Rwanda's NSSF

The NSSF of Rwanda or *Caisse Sociale du Rwanda* was established in 1974 and provides: old age pensions and death pensions, retirement benefits and other social security benefits to employees of the public and private sector as well as occupational hazards and disease benefits.⁹⁵

According to the Decree law of 1974, the NSSF of Rwanda was to administer two social security branches of pension and occupational risks. In 2001 the branch of health insurance was introduced and has three schemes: *La Rwandaise d'Assurance Maladie* (RAMA) for public servants, the Military Medical Insurance (MMI) for the military and *Mutuelles de Santé* (Mutual Health Insurance) for the general population, both rural and urban in which medical care is obtained through mutual associations.

The 1974 law, as amended, provides for old age pension at 65 years or at 55 on voluntary retirement. Disability pension is also paid where there has been a loss of 50% earning capacity within a period of at least 5 years of insurance coverage. Survivors' pension is payable to survivors of a deceased pensioner if the latter qualified for old age pension, a disability pension or had 180 months of insurance coverage at the time of death.⁹⁶

Here below we provided a detailed statement of social security and social protection in Rwanda.

⁹⁵ Republic of Rwanda (RoR) 2006: 6

⁹⁶ See ISSA: Country Profile for Rwanda, ISSA, Kigali 18-20 November 2008: 3

Social Insurance

Old Age, Disability, and Survivors⁹⁷

a. Coverage

It covers salaried workers including permanent, occasional, and temporary workers; professional and in-service trainees, apprentices, civil servants, political appointees and government officials.

There is also voluntary coverage for persons who were previously insured at least for 6 consecutive months and had mandatory coverage in the last 12 months and for the self-employed.

By the end of 2009, the total number of active members was about 300 000.

b. Source of Funds

Insured person: 3% of gross earnings minus transport allowances, and 6% of gross earnings for voluntary coverage;

The minimum monthly earnings for contribution and benefit purposes are equal to the legal minimum wage.

The maximum monthly earnings for contribution purposes are subject to a ceiling.

Self-employed person: 6% of income;

The maximum monthly income for contribution purposes is 104,000 francs.

Employer: pays 3% of gross payroll.

The minimum monthly earnings for contribution purposes are equal to the legal minimum wage.

⁹⁷ The author acknowledges the contribution and comments of Emmanuel Kayitare, Director Planning of NSSF Rwanda for the details on social security in Rwanda in the subsequent pages. See also SSPTW (Africa) 2009: Rwanda pp: 143-145, <http://www.ssa.gov/policy/docs/progresdesc/ssptw/2008-2009/africa>

The maximum monthly earnings for contribution purposes are subject to a ceiling.

Government: None. However, in the new social security policy adopted by the cabinet in February 2009, the government promises to make some contributions to enable members to enjoy meaningful pre-retirement benefits.

c. **Qualifying Conditions**

Old-age pension: From age 55 to age 65 (younger than age 55 if prematurely aged), with 15 years of insurance coverage. Employment must cease on getting a pension.

The pension is payable abroad only if there is a reciprocal agreement.

Old-age settlement: Age 55 (below age 55 if prematurely aged) and ineligible for the old-age pension.

Disability pension: A loss of 50% of earning capacity with 5 years of insurance coverage, including 6 months of contributions in the 12 months before the onset of disability. There is no minimum qualifying period for a non-occupational accident.

Survivor pension: Payable to eligible survivors if the deceased was a pensioner, met the qualifying conditions for an old-age pension or a disability pension, or had 180 months of insurance coverage at the time of death.

Survivor settlement: Payable to eligible survivors if the deceased did not meet the qualifying conditions for a pension.

Eligible survivors are the widow(er), children younger than age 18 (age 25 if a student, no limit if disabled), and parents (including adopting parents) in the absence of a surviving spouse and orphans.

d. **Benefit computation**

Old-Age Benefits

Old-age pension: The pension is equal to 30% of average earnings during the last 3 or 5 years (whichever is higher), plus 2% for each 12-month period of insurance coverage beyond 180 months.

The minimum pension is 50% of the legal minimum wage. The legal monthly minimum wage is 10,400 francs (2002).

Old-age settlement: A lump sum equal to average monthly earnings during the last 3 or 5 years (whichever is higher) multiplied by the number of years of insurance.

If the insured is entitled to two or more pensions (including work injury benefits), the highest pension is paid plus half the amount of the other benefits.

Benefit adjustment: Benefits are adjusted periodically by presidential decree (The last adjustment was made in April 2002.).⁹⁸

Permanent Disability Benefits

Disability pension: The pension is equal to 30% of average earnings during the last 3 or 5 years (whichever is higher), plus 2% for each 12-month period of insurance coverage beyond 180 months. For each year that a claim is made before age 55, the insured is credited with a 6-month coverage period.

The minimum pension is 50% of the legal minimum wage. As seen above, the legal monthly minimum wage is 10,400 francs (2002).

Constant-attendance supplement: Equal to 40% of the insured's pension.

⁹⁸ Information from Emmanuel Kayitare

Benefits are adjusted periodically by presidential decree. (The last adjustment was made in April 2002.)⁹⁹

Survivor Benefits

Survivor pension: 50% of the deceased's pension is payable to the widow(er).

Orphan's pension: 25% of the deceased's pension is payable for each eligible orphan; 40% for a full orphan.

Parent's pension (in the absence of other eligible survivors): 25% of the deceased's pension each.

The total survivor pension must not exceed 100% of the deceased's pension.

Survivor settlement: A lump sum equal to 1 month's pension for each 6-month period of insurance coverage is payable to the widow(er).

Orphan's settlement: A lump sum equal to 50% of the survivor settlement is payable to each eligible orphan. The total settlement paid to orphans must not exceed twice the survivor settlement.

Benefit adjustment: Benefits are adjusted periodically by presidential decree (The last adjustment was made in April 2002.).¹⁰⁰

Sickness and Maternity

The labour code requires employers to pay 100% of wages for sickness benefits for up to three months.¹⁰¹

The labour code also requires employers to pay 100% of wages for maternity benefits for up to 6 weeks. After six weeks of maternity leave, the mother may resume work and receive her full salary or else, have the right to 20% of her salary.¹⁰²

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ The Labour Code, Article 61, Law No. 13 of 2009 dated 27 May 2009.

¹⁰² The Labour Code, Article 66

Work Injury

a. **Coverage**

It covers employed persons (Voluntary coverage is not possible.).

Exclusions: The self-employed

b. **Source of Funds**

Insured person: None

Self-employed person: Not applicable

Employer: 2% of gross monthly payroll

Government: None

c. **Qualifying Conditions**

Work injury benefits: There is no minimum qualifying period.

d. **Categories of Benefits**

Temporary Disability Benefits

The benefit is equal to 75% of the insured's average daily earnings in the 3 months before the onset of disability. The benefit is payable until full recovery or certification of permanent disability, up to a maximum of 180 days.

Permanent Disability Benefits

Permanent disability pension: If totally disabled, the pension is equal to 85% of the insured's average monthly earnings in the 3 months before the onset of disability. Constant-attendance supplement is equal to 40% of the insured's pension.

Partial Disability

If the assessed degree of disability is 15% or more, the benefit equals a percentage of the full pension according to the assessed degree of disability; if the assessed degree of disability is less than 15%, a lump sum equal to 3 year's pension is paid.

Workers' Medical Benefits

Benefits include medical and surgical care, laboratory services, medicines, hospitalisation, dental care, eyeglasses, appliances, rehabilitation, and transportation.

Survivor Benefits

Survivor pension: 30% of the deceased's average daily earnings is payable to a widow(er).

Orphan's pension: 15% of the deceased's average daily earnings is payable for each orphan younger than age 18 (age 25 if a student, no limit if disabled); 20% for a full orphan.

Other eligible survivors: 10% of the insured's average daily earnings for each other eligible survivor.

The total survivor pension must not exceed 100% of the deceased's permanent disability pension.

Funeral grant: A lump sum equal to 100 times the legal minimum wage

Health Insurance in Rwanda

Medical or health insurance in Rwanda is administered by three schemes:

- Rwanda Health Insurance (RAMA)
- Military Medical Insurance (MMI)
- Mutuelles de Santé (Mutual Health Insurance Scheme)

The medical insurance cover as seen, covers public sector employees, including the military but private sector employees who are members of the NSSF of Rwanda can join voluntarily. The Mutual Health Insurance Scheme (*Mutuelles de Santé*) covers every member of the community except those covered by formal sector employees like RAMA, MMI and other private health insurance schemes (ISSA 2008: 7). The community based health insurance schemes are mandatory under the Law No. 62/2007

enacted on 30 December 2007. It involves payment of annual contributions of Rwandese Francs RWF 1000 per family member (about \$ 2 per year). Medical services covered comprise all those provided at the health centre, including drugs and other limited services provided at the hospital. Mutual Health Insurances have committees at district and health centre levels.

a. **Rwanda Health Insurance (RAMA)**

Coverage

RAMA covers all public sector employees but private sector workers who are members of Social Security Fund of Rwanda can voluntarily join. Based on 2009 statistics, there are about 84,103 registered members with 161,416 beneficiaries.¹⁰³ Compared to the number of workers in the formal sector, the percentage of workers registered with RAMA is 23%.

Financing¹⁰⁴

Contribution rate: 15% of basic salary.

Employers: 7.5%

Employees: 7.5%

Benefits

The benefits package includes the following: medical treatment, chirurgic care, dental care, test of radiology, lab tests, physiotherapy care, basic medical care, cost of hospitalisation and treatment, medicine, pre-maternity, maternity and post-maternity care and medical glasses.

The benefits offered by RAMA are limited to Rwandan territory and the existing legislation excludes anti-retroviral drugs prosthesis and plastic surgery from the list of benefits offered by the scheme. However, there are plans to revisit the existing legislation and widen the scope of acceptable benefits. To access

¹⁰³ RAMA Annual Report 2009

¹⁰⁴ For details regarding benefits offered by RAMA and how they are financed, see Law No. 27/2007 and Law No. 24/2001 of 27/4/2001

the benefits outlined above, the beneficiary is required to pay 15% of the bill.

b. Military Medical Insurance

Coverage¹⁰⁵

MMI covers military personnel but workers from the private sector can voluntarily join the scheme.

Financing

The financing is 22.5% of basic salary with the employer contributing 17.5% while the employee contributes 5%.

Benefits

Included are all medical expenses for the insured and his dependants but the services are limited to the national territory and the member is required to pay 15% of the total expenses.

The benefits package includes: vaccination, consultation, surgery, dental care, X-ray examinations, lab tests, physiotherapy, hospitalisation, pharmaceuticals (on the list approved by MMI), prenatal and post-natal care, prosthetics orthotics (value not exceeding the amount set by MMI), spectacles (value not exceeding that set by MMI) and dentures (value not exceeding that set by MMI).

The following are not covered by MMI: Occupational disease or accident, Contact lenses, Anti-retroviral drugs, and Plastic surgery if not restorative.

c. Mutual Health Insurance Scheme (Mutuelles de Santé)

This has been introduced as a type of health insurance that covers every member of the community except those with other insurances like RAMA, MMI and other private insurances. The general objective of this type of insurance is to assist grass-root communities and districts to establish health insurance systems

¹⁰⁵ For details regarding coverage, financing and benefits, see the Law No. 23/2005 of 12/12/2005

that will improve accessibility to health care, protection of households against financial risks associated with diseases and strengthening of social inclusion in health. It involves subscription as well as payment of affordable annual contributions. As seen above, individual annual contribution stands at 1000 RwF (Rwandese Francs). Medical services covered comprise all those provided at the health centre, including drugs and other services provided at the hospital.¹⁰⁶ Mutual health insurances have got committees at district level and health centres. The system has also been supported by Western donor funds such as the Global Fund on AIDS, Tuberculosis and Malaria covering insurance premiums for about 1.5 million vulnerable Rwandans but still, “Rwanda’s *mutuelles* system does not cover all health costs confronting poor people in this country of some nine (9) million people” (WHO 2008: 817-908). It is reported that by 2008, this community-based health insurance covered about 85% of the Rwandan population.¹⁰⁷

The law No. 62/2007 dated 30 December 2007 establishes and determines the organisation, functioning and management of the mutual health insurance schemes. The medical services covered under the schemes are: vaccination, consultations, medical surgery, dental care, medical radiology and scanning, laboratory tests, physiotherapy, hospitalisation, medicine that is on the list accepted by the mutual health insurance scheme, pre-natal, perinatal and post-natal care, ambulance fee and provision of prosthesis and orthosis not exceeding the value approved by the mutual health insurance fund (Article 30). There is established by law a National Guarantee Fund for the scheme and its funds consist of 5 sources:

¹⁰⁶ See Law No. 62/2007 of 30 December 2007 on establishing and determining organization, functioning and management of mutual health insurance scheme for more details.

¹⁰⁷ Community Based Health Insurance in Rwanda (CBHIR), 25 June 2008

- Grants from RAMA at 1% of its monthly income;
- Grants from MMI equivalent to 1% of its monthly income;
- Allocation of 13% of the ordinary annual budget of the Ministry of Health;
- Grants from each of the health insurance companies in the country at 1% of their monthly income; and
- Grants from donors (Article 42).

These funds are used to assist mutual health insurance schemes to ensure medical services are rendered to members of these schemes (Article 43).

d. **Private Companies**

Besides RAMA, MMI and Mutuelles de santé administered by the government, there are some workers registered with private sector companies. The private companies offering health insurance products include: Société Rwandaise d'Assurance (SORAS), Compagnie Rwandaise d'Assurances et de Réassurances (CORAR) and Air Ambulance Rescue (AAR).

The benefits offered by the schemes managed by CORAR and SORAS include consultation and all medical expenses. However, a co-payment of 15% is required to access the benefits. For SORAS, if the member undergoes treatment in other hospitals other than King Faisal Hospital, the co-payment is 10%.

For AAR, the benefits include payment of all medical costs incurred without any co-payment required.

On average, 12,928 employees are registered with private health insurance schemes.¹⁰⁸

¹⁰⁸ Information from Emmanuel Kayitare.

Social Assistance Programmes

The government of Rwanda, as outlined in its social protection policy, has considered social assistance as a means to upgrade people's living standards by enabling them to graduate from social assistance groups to self-sustained livelihoods. The main social assistance programmes in Rwanda are described below.¹⁰⁹

The Fund for Genocide Survivors (FARG)

The Fund for the support and assistance to the survivors of Tutsi Genocide and other crimes against humanity was established by law No. 02/98 of 22/01/1998 to provide assistance to victims of genocide and massacres perpetrated in Rwanda in 1994.

The Fund's operations are mainly financed by government to the tune of 6% of annual domestic income of state ordinary budget.¹¹⁰ Other sources include contributions from government institutions, contributions from cooperatives and associations as well as private sector bodies.

The resources of the Fund have been spent on four key programmes namely; education, health, shelter as well as social assistance.¹¹¹

The selection of beneficiaries to the Fund for all programmes is done at the cell level by the selection committee which comprises of 6 members of the Community Development Committee and 4 representatives of the Genocide Survivors. The lists are consolidated at the district level and are submitted to FARG for funding. Payments are made on the basis of the list of beneficiaries submitted and are

¹⁰⁹ Ibid

¹¹⁰ Law No 69/2008 of 30/12/2008 relating to the establishment of the Fund for support and assistance to the survivors of the Genocide and other crimes against humanity committed between 1st October 1990 and 31st December 1994 and determining its organization, powers and functioning, article 22.

¹¹¹ For more details on the four key programmes discussed below, see the paper prepared by MINECOFIN (Ministry of Finance) and MINALOC (Ministry of Local Government) on the strategies to improve the performance of the genocide survivors assistance fund (FARG)

either transferred to the district special account for FARG or paid directly to the suppliers.

Other Social Assistance Programmes.

Other social assistance programmes include: one cow per poor family programme (GIRINKA), Vision 2002 Umurenge Programme (VUP) - giving cash to extremely poor households), public works and financial services for the same category.

Social Security in Rwanda-An Assessment

The social security and social protection situation in Rwanda is quite interesting. On the one hand, there are no serious, specific and deliberate constitutional provisions on the matter. On the other hand, in 2009 Rwanda adopted a deliberate and considered National Social Security Policy in light of its Vision 2020 and other policy proposals regarding “poverty reduction”, investment policies and employment policy. Relevant laws are yet to be made to actualise the main objectives of the social security policy. However, the most important and significant element of Rwanda’s social security regime are the health insurance schemes. They attempt to cover the whole population, both the formal and informal sector as well as the rich, the middle class and the poor. Although under the health insurance schemes employees contribute, for the mutual health care schemes government also tries to subsidise health care costs through contributions as seen above from the national budget, donors and formal health insurance schemes themselves. The other EAC countries should closely study and monitor the Rwanda experiment on health insurance with a view of learning from its positive elements.

7

Burundi

Introduction

Burundi was the last country to join the EAC. This Chapter looks at the constitutional provisions related to social security which are very minimal as well as the relevant legislation. Burundi like Uganda and Kenya does not yet have a social security policy though one is being contemplated.

Constitutional Arrangements

The Constitution of Burundi does not provide much by way of social security. The provisions that are related to social security are very general.

Article 35 provides that the state grants the right to work and strives to create conditions that make the enjoyment of this right effective. It also recognises the right of everyone to the enjoyment of fair and satisfactory conditions and guarantees the worker fair compensation for his services or production.

On the other hand, Article 37 provides that any worker may defend as provided by law their rights and interests, either individually or collectively or through trade union action and that the right to strike is exercisable under conditions defined by law.

Then, in general terms, Articles 106 and 107 empower parliament to enact laws and control actions of government including “the labour laws, social security, ... trade union rights including conditions for exercising the right to strike” (Article 107 (9)).

Social Security Legislation

Burundi has three social security schemes, namely: *Institut National de la Sécurité* (INSS) (National Institute of Security),

Mutuelle de la Fonction Publique (MFP) and *Office National des Pensions et Risques Professionnels* (ONPR) (National Pension and Works Place Insurance Service).

Burundians covered by INSS and MFP are estimated at only 10% of the population¹¹² and parallel to the implementation of a national structure to co-ordinate and monitor the general provision of social services, the Burundi government has started to implement an ONPR, a Maternity Illness Insurance Body for the Informal Sector (INAMA) and *Fonds National de Solidarité* (National Solidarity Fund). The government is also developing a national social security policy while there are plans to implement the overreaching and general Social Security Code in the coming years.¹¹³

The Code of Social Security 1999 is common to all the social security and social protection schemes.

The INSS

The INSS is put in place by the law on Pension and Occupational Risks, Statute No. 1/11 of 29 November 2002 concerning the Reorganisation of Regulations of Work Allowances and Risks for Workers under the Employment Act and other Laws of that Category. The law has been implemented since 2003.

ONPR

The ONPR was put in place by the Restructuring of Pension Schemes and Work Risks of Civil Servants, Magistrates and Judicial Officers 2009 law. It also consolidated the earlier laws covering civil servants, magistrates and judicial officers. It covers the officers and their dependants (Article 1) including widows, widowers and children.

¹¹² Republic of Burundi c. 2009: p. 14, para 50

¹¹³ Ibid

The risks covered include old age, disability and death (Article 7). Old age pension is for a policy holder who has reached 60 years, has been registered for at least 15 years and should have had at least 60 months of insurance in the ten last years preceding the date of admission to pension (Article 9).

A civil servant, magistrate or judicial officer who becomes disabled before the normal age of admission to old-age pension gets disability pension if she/he has had at least 3 years of insurance and at least 6 months of insurance in the last 12 calendar months preceding the beginning of the disability (Article 19).

A survivor's pension is also available covering a spouse, an orphan or an ascendant (Article 22).

The law also covers professional/occupational hazards. The occupational risks scheme guarantees to civil servants, magistrates and judicial officers the provision of benefits, in case of an accident at work and during travel and in the case of occupational sickness (Articles 32-37). The benefits of the occupational risks scheme include medical care, disability allowance, disability pension and in case of death, the funeral expenses allowance and survivors' pension in case of death; medical, surgical and dental assistance, including x-ray examinations, laboratory tests and analyses, supply of pharmaceuticals and accessories, maintenance in a hospital or other health facility, provision, maintenance of prosthetic and orthopaedic appliances, supply and renewal of medical glasses, functional rehabilitation, vocational rehabilitation and reclassification of victims, transportation of the victim from the accident scene to a medical or health facility and to his/her residence (Article 38).

Code of Social Security 1999

Fundamental Principles

The Code of Social Security is underpinned by some fundamental principles, namely the following:

- Any person as a member of society has the right to social security; it is based on the satisfying of economic rights, and on the free development of his/her responsibility, through national effort and international cooperation (Article 1).
- Any person is entitled to an adequate standard of living to ensure their health, their well-being and that of their family, including the necessary food, clothing and housing; and also in case of illness, disability, widowhood, old age or in other cases of loss of their means of livelihood as a result of circumstances beyond his control (Article 2 (1)).
- Motherhood and childhood are entitled to special assistance and all children whether born in or out of wedlock shall enjoy the same protection (Article 2 (2)).

Interestingly the code of Burundi makes covenants of the ILO on social security ratified by Burundi superior to Burundi law. Article 3 provides that:

“any agreement of the International Labour Organisation relating to social security and ratified by Burundi is authoritative and prevails over a national legal provision of different content.”

Burundi had ratified thirty ILO conventions as at 14th October 2010¹¹⁴ but apart from the conventions related to workers' compensation, it has not ratified conventions related to social security. Thus, at the moment, for all intents and purposes it is the Code of Social Security 1999 and the laws discussed below that are important sources for social security arrangements in the country. The code is common to all social security and protection schemes which are supposed to abide by its provisions.

¹¹⁴ See International Labour Organisation Legislation (ILOLEX)

Scope

The code establishes rules on social security that covers all sectors of economic activity as well as professions operating in Burundi as well as the intended beneficiaries (Article 6).

Risks, Benefits Covered and Entitlement

The basic insurance schemes covered by the code include the following:

- Maternity insurance scheme for medical care, sickness and maternity benefits;
- Occupational risks scheme for work related accidents and occupational diseases;
- Pension plan for old age, disability and survivors' benefits; and
- Family benefits scheme (Article 8).

The people entitled to the basic schemes are provided for under Article 11 and they include:

- All workers subject to the provisions of the Labour Code;
- Public and political representatives;
- The military, government employees and local communities;
- Personnel of the various police forces;
- Civil servants, magistrates and judicial officers;
- Apprentices bound by a contract of apprenticeship;
- Interns who are linked or not by an employment contract, employees in a company or in a vocational school; and
- Members of the liberal professions and religious philanthropic works.

The following are entitled to all or part of the scheme or schemes under Article 12:

- Burundian workers employed by a company located in Burundi and who are detached from the territory of another

country to perform work on behalf of this company and provided that the period does not exceed six months;

- Workers employed by a foreign company located abroad and who are detached from the territory of another country to perform work on behalf of this company and provided that the period does not exceed six months;
- Staff of bilateral and multilateral cooperation, excluding those who perform a temporary mission in Burundi of less than three months;
- Students of higher education and students of primary and secondary education;
- Beneficiaries of pensions and annuities;
- Farmers, ranchers and fishermen grouped together in association;
- Artisans and traders; and
- Employees in informal employment (without salaries) in the urban and rural areas.

Finances and Accountability

The funds of the schemes are obtained from:

- Contributions;
- Increases obtained from delays in payment of dues;
- Investment income from funds;
- Donations and bequests; and
- Any other resources allocated by statute or regulations (Article 17).

Each scheme entails a separate financial arrangement and resources of one scheme cannot be allocated to cover expenses under another scheme (Article 18).

Specific Provisions for Risks and Benefits Covered

There are elaborate provisions for the four major risks covered, namely: the Maternity Health Insurance Plan, Occupational Hazards Scheme, Pension Scheme and Family Benefits Plan.

- a. *The Maternity Health Insurance Plan:* The above plan covers any morbid condition due to natural disease, a non-occupational accident, pregnancy, childbirth and their consequences. It is also responsible in case of interruption of work, daily sickness or maternity requirements for providing the necessary allowances (Article 31). The benefits do not cover non-salaried employees in urban and rural areas except for interruption of work allowance.

Medical care includes the following:

- Consultations with general practitioners (GPs);
- Elective surgery and specialties practiced by physicians;
- Dental surgery;
- Acts using ionizing radiation performed by the doctor or dentist and laboratory procedures;
- Acts performed by physician's assistants;
- Acts performed by the nurse;
- Costs of hospitalization and treatment;
- Costs of dressings and accessories and other supplies;
- Provisions of essential pharmaceutical products;
- Costs of prosthetic and orthopedic appliances;
- Provision and renewal of medical glasses; and
- Transportation expenses upon presentation of receipts (Article 33).

A number of conditions are provided for in the code regarding entitlement to benefits. To receive medical care, the insured must

meet the following conditions: be registered with the agency and have a registration card; and also be on the list of insured established monthly by the employer and sent to the social security body. (Article 35). For the dependants of the insured, the requirements also include a registration card and must also be on the list of the dependants of the insured established monthly by the employer and transmitted to the social security body (Article 36).

Medical care under the scheme is given by: the medical and paramedical personnel of health facilities of the government or private organisations; works or associations of a philanthropic or a religious nature approved by the Ministry of Public Health and government; and paramedical personnel authorised to prescribe certain drugs without a doctor in a medical unit of government or a private one, or works or association of a philanthropic or religious nature.

- b. *Occupational Hazards Scheme*: The occupational hazards scheme for the persons protected is the provision of benefits in case of accidents at work and commuting and occupational diseases (Article 47). An accident at work is any accident to a worker out of or in connection with work, whatever the cause (Article 48) as well as an accident to and from work when the journey is not interrupted by personal interests or is not related to employment. It also covers an accident during travel where the costs are borne by the employer (Article 49).

The occupational hazards scheme provides the following benefits:

- Medical care necessitated by injury caused by the accident whether one stops work or not;
- Daily allowance in case of temporary disability;
- Pension or disability allowance in case of permanent work disability - total or partial; and
- Allowance for funeral expenses and survivors' pensions in case of death.

- c. *Pension Scheme:* The pension scheme covers old age, invalidity and death. It also includes old age benefits and allowances, invalidity benefits and survivor benefits and allowances (Articles 65-66). The right to old age benefits starts at 60 years as long as one has been registered to a pension scheme for at least 15 years and has completed at least 60 (sixty) months of insurance during the 10 years preceding the date of entitlement to benefits (Article 67). One may also retire at 55 years and get old age benefits if he/she suffers from medical conditions determined by a licensed physician (Article 68). An insured person who becomes invalid before the age of entitlement is entitled to invalidity benefits as long as he/she has completed at least 3 years of insurance and has also completed 6 months of insurance during 12 calendar months preceding the onset of invalidity (Article 71 (1)). In case of death of a pensioner on old age pension, invalidity pension or early retirement pension and in the case of death of an insured person who at the time of death fulfilled requirements to qualify for a pension or invalidity or who has 180 months of insurance the survivors are entitled to survivors' pension.¹¹⁵
- d. *Family Benefits Plan:* The family benefits scheme covers expenses related to the birth of children of the insured. The benefit is the family allowance (Article 79). Any person entitled to the scheme receives family allowances for each dependant child in the register of births, marriages and deaths (Article 81). Each child qualifies for only one family allowance in the scheme (Article 82). The family allowance is fixed as a percentage of monthly earnings as a basis for the calculations of contributions. It is determined by the number of dependant children and their family life (Article 83).

¹¹⁵ Article 76

Social Security in Burundi-an Assessment

There are no clear provisions for social security and social protection under Burundi's constitution. Like in the case of Uganda and Kenya, Burundi has no social security policy though it was reported that there is a draft policy whose preparation was supported by the ILO and is expected to be adopted soon.¹¹⁶

It should be noted that employers in the private sector are obliged to handle health insurance for their employees. There are also mutual health institutions which are encouraged to participate in the health social security institutions. There are also private initiatives in this area supported by external partners.

Recently, the ONPR has been established to cover civil servants. Previously there was only one scheme catering for the military, police and contractual workers. Civil servants had limited benefits.¹¹⁷

The social security situation in Burundi is one of promise. There are many ideas and proposals in the public domain but most are tentative. It would be advisable that before Burundi moves forward on the proposals for a social security policy and other legislation proposed it first studies the experiences in the other EAC countries on the same issues.

¹¹⁶ Kituo Cha Katiba 2010: 27

¹¹⁷ Ibid.

8

Conclusion: Commonalities, Differences and Recommendations

Introduction

In this Chapter we summarise the commonalities and differences on social security and social protection in the five EAC countries (but six social security regimes because of Tanzania Mainland and Zanzibar). We also bring out certain principles and normative standards that should inform a satisfactory social security and social protection regime for the region. Recommendations are then made as to what common measures and interventions should be made in all the EAC countries aimed at achieving a substantively common East African social security standard.

Commonalities and Differences

The social security and social protection situation in the EAC countries is quite variegated. Nonetheless, a number of commonalities and differences may be clearly pointed out.

Right from the beginning, it should be observed in the first place that out that the five countries of the EAC operate in the same socio-economic context, namely, they are *all* poor underdeveloped countries with the majority of the populations living in the rural areas. Even those who live in urban areas, the majority have their work in the informal economy rather than the public service or formal economy which are covered by the various formal social security schemes in all the countries. Typically, the schemes include

a public service pension scheme, a private formal sector scheme (the NSSFs) and private schemes over and above the NSSFs.

Secondly, all the countries are operating under neoliberal economic policy frameworks. The market for several decades has been the mainstay of economic policies having been preceded by massive retrenchments in the public service as well as privatisation of public enterprises. Accordingly, the levels of employment in the public sector have actually gone down while employment created or maintained in the private sector is quite often of a degraded nature with temporary and casual labour becoming major features in the employment pattern. Most people employed in the private sector or the self-employed are not, therefore, covered by formal social security schemes. It could therefore be said that ideologically the commitment to a society based on principles of social justice is generally lacking in all the EAC countries, even in spite Tanzania's continuing constitutional reference to the ideals of socialism, social justice and no exploitation of man by man.

Thirdly, the constitutional provisions related to social security and social protection are quite different. The Ugandan, Burundian and Rwandese constitutions are not so explicit on the protection of social security while the Tanzanian constitution is framed within the ideological context of socialism. At the same time, in Tanzania, the Fundamental Objectives and Directive Principles of State policy that contain the relevant principles are not enforceable by any court. The recently enacted Kenya constitution of 2010 is understandably the most progressive on the issues of social security. It recognises the right to health, including reproductive health care, as well as rights to housing, food, safe water, education and social security, specifically. The constitution also recognises rights of children and youth, persons with disabilities and those of the elderly (Articles 43, 53-57). It remains to be seen how effectively these provisions on

social security will be applied through enactment of relevant laws and putting in place relevant policies and programmes.

Fourthly, none of the five East African countries has ratified ILO Convention No. 102 - Social Security (Minimum Standards) Convention 1952.¹¹⁸ This means that although the EAC countries recognise the importance of social security and social protection and have put in place some legislation to cover aspects of ILO Convention No. 102, the level and extent of coverage and the risks covered by law is still very limited. In addition, all the five EAC countries have limited social security coverage vis-à-vis the entire population. All of them cover less than 10% of the population except Kenya where coverage is relatively high compared to the others. There it is estimated at 15%.

Even the formal sector that is covered is only very partially covered and the depth of social protection is very shallow. This is because the 5-10% coverage excludes most employees in the public service and formal private sector on the one hand and on the other, the risks covered are limited. The public service pension schemes usually provide for an old age or survivors/dependant's pension but other elements such as medical care, housing, unemployment, education or maternity benefits are not covered.

Furthermore, most of the EAC countries have considered the issue of health coverage and insurance. But then, only Rwanda and Kenya have fairly well-conceived national health insurance schemes. Both are attempts at universal health coverage. It should be noted that for Rwanda though general coverage for the rural population is high accessibility and depth of coverage are still low. In Rwanda, it is estimated that health insurance coverage goes up to 85% while in Kenya it is estimated between 20-30%. In Tanzania, the health insurance scheme covers only public sector employees, their spouses

¹¹⁸ See International Labour Organisation (ILO): International Labour Organisation Legislation (ILOLEX), ilo.org.

and up to four children/dependants. The proposed national health insurance scheme for Uganda is modelled on the Tanzanian scheme and does not aspire to universal coverage.

As far as explicit policy on social security is concerned, only two counties (Tanzania, 2003 and Rwanda, 2009) have formal national social security policies. The other countries have no such policies. However, all the countries have in recent times been giving thought to social security and social protection issues and have either put on the table some policy options or bills for debate. The social security policies in Rwanda and Tanzania as well as a number of government and civil society documents in the other countries do point to some areas of common thinking (though with a number of differences) which could be used together with international normative standards to construct a common East African social security standard.

Towards a Common East African Standard on Social Security

Given the above assessment and different levels of development and interests on social security issues in the EAC, one could attempt to put forward major elements for constructing a common EAC standard on social security.

Principles

A number of principles should be borne in mind if a good, relevant and satisfactory social security system is to be put in place when all are well aware that traditional social security systems are no longer available.

- a. Social security as a right ought to be recognised in all the constitutions of EAC countries as well as in the EAC Treaty, the Common Market Protocol and related instruments.
- b. The contingencies covered should include all the nine (9) elements or branches stipulated in ILO Convention 102.

- c. Adequacy: The benefits must be adequate in amount or duration to ensure an adequate standard of living, healthcare, and so on.
- d. Accessibility and coverage: All persons should be covered by the social security system especially individuals belonging to the most disadvantaged and marginalised groups. This aspiration must be embedded in laws and policies though implementation would be gradual taking into account the available resources at any given time.
- e. Relationship with other rights: The right to social security is related to other rights and they reinforce each other. The state, therefore, needs to put in place measures to rehabilitate injured persons or those with disabilities, child care and welfare and family planning measures, in addition, for instance, to education and measures to ensure health care.¹¹⁹

In order to achieve the above, the EAC states have minimum or core obligations which include:

- a. Ensuring existence and access to a social security scheme providing minimum essential level of benefits to individuals and families to enable them have essential health care, basic shelter, water and sanitation, food and basic education;
- b. Adopt and implement a national social security strategy and plan of action by legislation, strategies, policies and programmes;
- c. Take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalised individuals and groups; and
- d. Monitor the extent of the realisation of the right to social security.¹²⁰

In order for any state to claim and attribute its failure to meet the minimum core obligations referred to above due to lack of resources, it should demonstrate that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority,

¹¹⁹ See UN General Comment No. 19

¹²⁰ Ibid

these minimum core obligations.¹²¹ This also means that all EAC countries should adopt social security and social protection policies that provide an all-encompassing framework for dealing with all the issues identified herein.

Proposed Common Measures and Interventions

From the existing constitutional, policy and legal frameworks in the 5 EAC countries, a number of common elements and interventions should be considered for all the countries as follows:

- a. A structure of the social security system including:
 - Mandatory schemes,
 - Supplementary schemes, and
 - Social assistance programmes.

The mandatory schemes ought to be strictly regulated as they would cover the main elements of a social security system.

- b. Coverage: A legal framework is needed to ensure coverage initially of all employees in the formal sector (public and private) and eventually the whole population if social security is to become a right rather than a mere component of social welfare programmes of governments.
- c. Employers, financial institutions, professional associations, insurance companies and social security institutions themselves ought to be enabled to establish supplementary schemes to provide social security benefits over and above those provided by mandatory and social assistance programmes.
- d. Social security schemes should have a standard minimum number of benefits covering core obligations as stipulated in ILO Convention 102 of 1952 and should be indexed to the current level of earnings in order to deal with effects of inflation and changes in the value of money.

¹²¹ UN General Comment No. 19

- e. Portability: There should be mechanisms to enable portability of benefits from one scheme to another and from one EAC country to another.
- f. There should be minimum and enforceable guidelines to ensure that all social security schemes are transparent and accountable to members and society at large.
- g. A regulator and a regulatory law: There should be a regulatory law in each country establishing a regulatory body that is credible, competent and accountable to ensure the smooth, effective and efficient operation of the sector.
- h. The medical schemes of Rwanda and Kenya that aspire to universal coverage should be studied and lessons learnt for the other EAC countries.
- i. The informal (rural and urban) sector being where the majority of the population works and lives needs special attention. Some aspects could be mandatory (like minimum contributions for health schemes, with some-exceptions) while others would be voluntary and tailor-made products could be designed and incentives could be introduced to attract informal sector workers, including tax incentives.
- j. NSSF Provident funds ought to be abolished as provident funds and transformed into pension schemes that are all contributory for the public sector and the formal private sector.
- k. The experiences of the Tanzania's Social Security Regulatory Authority established in 2008 and more so that of Kenya's Retirement Benefits Authority of 1997 should be studied by other EAC countries yet to set up social security regulatory authorities in order to learn from those experiences and so as to establish better and more effective regulatory bodies.

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