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The Right to Social Security in
International Law: *A Critical
Analysis of Uganda's Compliance
with her Obligations.*

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Abbreviations

ACHPR.....	African Charter on Human and Peoples Rights
ACHR.....	American Convention on Human Rights.
EU...	European Union.
ESECR	Convention on Economic Social and Cultural Rights.
CEDAW	Convention of Elimination of All forms of Discrimination Against Women.
ECHR.....	European Court of Human Rights.
ESC.....	European Social Code.
MLGSD.....	Ministry of Labour Gender and Social Development.
NSSF.....	National Social Security Fund.
NSF.....	National Savings Fund.
NPF.....	National Pensions Fund.
ICERD.....	International Convention on Elimination of Racial Discrimination.
I CRMW.....	International Convention on all Rights of Migrant Workers.
ICCPR.....	International Covenant on Civil and Political Rights.
ILO	International Labour Organisation.
STG.....	Social Security Stakeholders Transition Group
UDHR	Universal Declaration on Human Rights.
UN.....	United Nations.
UNHCR.....	United Nations High Commissioner for Refugees.

1 CHAPTER ONE

1.1 Introduction

”Everyone, as a member of society, has the right to social security...”

“Everyone has the right to.... Social security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

Articles 22 and 25(1) of the Universal Declaration of Human Rights

The introduction and confirmation of successive United Nations Charters and Conventions in the last half-century demonstrates the increasing acceptance of human rights as a basis for re-casting development policies. The Right Social has come to play a central part in discussions about economic and social development, and has been ratified by the great majority of governments in the world. Mounting acceptance throughout the world of human rights puts pressure on all countries to re-cast development policies and eliminates poverty. Much as this is more evident in developed economies its still a challenges for developing countries to afford the same for their citizens. For human rights advocates the question remains whether the right to social security is actually being enjoyed by citizens of these countries. This research has sought to review the international legal framework and Uganda’s compliance with her obligations to provide her citizens with social security. The research highlights the importance of social security in development policy formulation and provides in this respect some strategic recommendations for Uganda but could be applicable to other developing countries.

Social Security as a human right is synonymous with developed the world and is still a dream to most developing countries. For a state to afford this right to its citizens there must be good governance, adequate returns for the contributors, and projected and actual benefits for the intended beneficiaries.

It is imperative therefore that all the bottlenecks to enjoyment of the right to social security have to be addressed. This paper seeks to analyse Ugandans compliance with her domestic and international obligation in relation to social security.

1.2 Background

The Industrial Revolution led to a rapid change from the aggregation society to urban, Industrialised life characterised by wage-earning workers, brought with it a great deal of economic insecurity, especially for the old disabled and orphans. In 1883-84, Otto von Bismarck as then German Chancellor, established a social security system that since then has served as a model for social Insurance: workers and employers were to pay contributions in order to finance sickness insurance and workers compensation. Some years later, the schemes were complemented with an old- age insurance programme, partly through taxes¹. The Justification for Social Security or Insurance has varied from time to time and from state to state.²The need for such Legislation has been premised based on social justice or social equity as well as in terms of securing social and political stability³. However, in spite of the Bismarckian background to Social Welfare States, the concept ‘Social Security’ is quite recent, dating from American Legislation in 1935⁴.

When the President of the United States, Franklin D.Roosevelt, made his State of the Union Address to the US Congress on January 6, 1941, the so-called Four Freedoms Address he was the first politician to present a vision of World –wide social security based on human rights and freedoms. The freedoms of speech and expression, the freedoms of worship, the freedom from want the freedom from fear. His vision was endorsed in the Atlantic

¹ M.S.Gordon, *Social Security policies in Industrial Countries*, 1988, pp.134-137, A.H. Munnell, ‘Social Security’, in: *The Academic American Encyclopaedia*, (Electronic Version), 1993, Grolier Inc., Danbury, CT.

² M.Scheinin, *The Right to Social Security*,: A.Eide, et al (eds), *Economic Social and Cultural Rights. A textbook Second Revised Edition* pp. 211-221 at pg.211.

³ G.Alfredsson and A.Eide (eds), *The Universal Declaration of Human Rights: A Common Standard of Achievement*, 1999, pp, 453-488, at pp.454-455.see B.A.Andreasen Article22.

⁴ United States Social Security Act adopted on 14th August 1935.

Declaration⁵ made by President Roosevelt and Then Prime Minister of the United Kingdom, Winston Churchill in 1941 and repeated by in what was called the declaration by United Nations, a meeting of governments (many of them in exile).

This captured the imagination of people in the world during the war and laid a background for the preparatory work of the UN and the elaboration of a declaration of human rights that should have global applications. There was a growing recognition that the Political upheavals and the emergence of authoritarian regimes in Europe had been caused by the social and economic chaos, resulting from the great economic depression in the 1930's and the lack of adequate economic and social policies to address that chaos. Consequently, there was a need for a more cooperative approach to economic, social and humanitarian affairs at global level.

The Charter of the United Nations, adopted in may 1945,set as one of its three main purposes achieving, “international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and...promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion”.⁶ In 1948, these rights were spelled out in the UDHR .In its preamble; the Declaration refers to the Four Freedoms Address as a source of inspiration. The fundamental starting point of the Declaration is that human rights are for every one, every where in the world; every one is, “born free and equal in dignity and rights”⁷, It is against this background that Article 22, a right to Social Security was included in the UDHR.

⁵ The text of the Atlantic Charter is found in Ruth Russell, the *History of the United Nations* (Washington, DC: The Brookings Institution, 1958), p.975. See also B.Simma. *The Charter of the United Nations. A commentary.* 2nd Edition Vol.1 , p.34.

⁶ The United Nations Charter, Article 1(3). Available at www.un.org/aboutun/charter/, visited on 6. .25.07.

⁷ *Ibid* Article 1.

1.3 Statement of the Problem

The current social security and pension provisions in Uganda which have existed right from independence are no longer suitable considering the socio-economic situation in Uganda, the current system is also incognisant of a rights based approach to social security and or social assistance thereby missing out the human rights element of the right to social security. The system has reduced the contributors to beggars since they cannot easily access their hard earned pensions on time. There is a move towards pension reforms both in the Public service and NSSF, however little if emphasis any, is attached to the human rights aspects of pensions in the proposed reforms. The Pension categories can be divided into two systems, the Euro centric (formal social security, and the Afro centric (informal social security) Pension regimes are of different categories. *GostaEsping –Andersen*⁸, identifies four types of Pension regimes: (i) The liberal market bias, (ii) the *etatist bias*, (iii) corporatism bias, and (iv) social Security bias.

(i) The liberal market bias entails private pensions. Private pensions are divided into two categories

Individual pension contracts, and collectively negotiated occupational plans.

(ii) The second type is based on the conservative model of welfare states. It could be defined as propensity to grant civil servants special privileges.

(iii) The third type is a form of social insurance blending labour market attachment and financial contributions. It is subjected to actuarial logic.

(vi) The fourth one, social security bias, is measured as a percentage of an employee's period of and is usually paid as a lump sum. There is the informal form of social security, which i consider to be *Afro centric*, because it is prevalent in Africa.

Olivier and Dekker,⁹ define informal security “as the counterpart of formal social protection mechanisms”. There are two forms of informal social security systems, namely traditional support systems and self-organised

⁸ E.G-Andersen, *The three worlds of welfare capitalism*, Oxford University Press., Cambridge Polity Press & Princeton: Princeton University Press, 1990 .120 at 27.

⁹ *Olivier M and Dekker AHA” Informal Social Security”* in Olivier M *et al*, *Social Security. Legal analysis.*(Butterworth 2003 at 562).

systems. Informal social security arrangements are those self –organised informal safety nets, which are, based on *inter alia* membership of a particular social group or community including, but not limited to, family, kinship, age group, neighbourhood, profession, nationality, ethnic group¹⁰. Informal social security according to *Gsanger*¹¹, essentially rests on any one or any combination of four security pillars: *Individual provisions based on economic activities* (self-employed as peasants and subsistence), *membership of traditional solidarity networks*, *membership of co-operative societies* (self help groups, rotating savings and credit schemes (ROSCAS/SACCOS), Cultural associations and access to (non-governmental) public benefit systems (targeted transfers, donations, social service provided by voluntary organisations, churches, trade union among others)

Two forms of informal social security systems are identifiable, namely *private house hold based systems* (or kinships-based systems) and *member organization based systems* (or non-kinship-based system)

Following these classifications, Uganda has a system that is close to types two (the *etatist* bias), (iii) (corporatism bias) and (iv) (social security bias). Civil servants are in a scheme that is financed out of tax revenue, a variation of type two, the *etatist* bias, while private sector employees are under a compulsory contributory scheme administered by NSSF, a variation of type three and four, corporatism bias, and social security bias, respectively. Both the provident fund (NSSF) and the Civil Service pension systems were transplanted policies transferred from Britain to Uganda in 1963 and 1967 respectively. The NSSF was established in 1967 pursuant to an Act of Parliament, which was repealed by a new law in 1985, which made

¹⁰ *Devereux S* Making less last Longer: *Informal Safety Nets in Malawi* (Institute of Development Studies Discussion paper 373(1999) cited in Olivier. M and Kaseke E, Informal Social Security and Formal Social Security Developing an Intergrative Approach. Draft Working Paper at 3.

¹¹ *H. Gsanger* . Linking informal and Formal social security systems” Deutsche Stiftung fur Internationale Entwicklung, available at www.dse.de/ef/social/gsanger.html. Whereas gsangers observation is based on Kenya, the same is applicable in Uganda.

NSSF1985¹², which made NSSF an autonomous *dejure* body from the government, but *defacto* still heavily under government control. The pensions sector under the Ministry of public service has also undergone several change .The civil service now handles even pensions for the armed forces. There has been a discriminative kind of treatment between the NSSF scheme and the civil service pension scheme. Whereas, private sector employees contribute to their scheme public sector employees do not. It is contended that both employees contribute to their pension without any favouritism as it stands now.

Inspite of this short falls, the management of NSSF has been found to want that there is a need for a total overhaul of the entire pension regime in Uganda with more emphasis on human rights.

The gross incompetence, corruption, abuse of this institutions has triggered a need to revolutionalise the entire pension regime to cater for the changing socio –economic situation prevalent in the country, by inter alia adopting a human rights based approach to social security. The crux of this thesis is to treat social security and a human right, by invoking the origin of the social security, how it is considered at international and regional levels.

The thesis explores the legal regime in Uganda, and gives a critique thereof, the study further tackles a comparison and the practice in other countries in Africa with a view of drawing lessons, the study then brings out the necessary recommendations, and reforms that can be made so us the make the social security system responsive to the socio-economic needs of the people of Uganda and with an emphasis on a rights base approach. By so doing the study will determine whether or not Uganda is complying with her obligations under International law.

¹² The NSSF Act, 8 of 1985,available at<www.nssfug.org/pdfs/Act%208%201985.pdf>,visited on 05.06.07

1.4 Scope

The thesis is structured into five different chapters, Chapter One and Chapter Two contain the introduction to the concept of social security and the International and Regional legal regime on social security respectively. Chapter three covers social security in Uganda, the Uganda legal regimes for Public service and Armed forces, the National Social Security Fund, Private Protection Arrangements, Workers Compensation Acts, social security in the informal sector. Chapter four is a comparative study of social security in South Africa, Kenya, and Mauritius and lessons learnt, then conclusion. Chapter five is Conclusions and recommendations.

The scope of this thesis is limited to cover social insurance provisions and to some extent social aid through evolution of a sustainable and well managed savings schemes, plus government incentives and or funds to provides for age, sickness, maternity, injury at work, loss of employment, property acquisition, education for all citizens and residents in Uganda

1.5 Objectives of the Study

The objectives of this research were to: -

- (i) Discover the factual situation of in Ugandan in respect to the right to social security.
- (ii) To bring out the view that Social security is an established human right in International Law.
- (iii) To make a comparative study with other countries with similar development conditions with a view of drawing lessons for reform.
- (iv) To make a critical appraisal of the law and practice in Uganda, with a view of determining whether Uganda is in compliance with her obligations international law.
- (v) To draw conclusions and recommendations for appropriate reforms in the Social security sector within the human rights aspects in Uganda.

1.6 Methodology

The methodology used in this research was both quantitative and qualitative in nature. The research is mostly qualitative relying on the relevant literature available literature on the subject matter. The relevant literature in this study includes both primary and secondary sources of literature. The primary sources included the various international legal instruments like treaties which are regional or multilateral in nature, case laws, international guidelines, international models, reports by international organisations, case studies and other private research materials.

On secondary sources of reference was derived from various background papers, books, and academic or scholarly articles, various Internet sites were consulted for relevant up-to-date data and information. The secondary information includes textbooks, journal articles, seminar papers, online publications and other source available, which were of relevant to the research.

1.7 Research questions

- (i) Whether establish whether social security is a grounded human right like any others in International law.
- (ii) Whether the State Practice and the law in Uganda reflect the existence of the right to social security.
- (iii) Whether countries of the same level have been able to reform their system and what are the lessons that Uganda can learn
- (iv) Whether Uganda is Complying with her obligations International Law.
- (v) Whether there is need for reforms in the social security sector in Uganda.

1.8 Literature review

In coming up with this thesis the research entailed consulting available literature. Which shall hereinafter be reviewed.

M.S. Gordon, Social security in industrialised countries, has given the background to modern social security, he however does not explore informal social security, which existed in before the Advent of colonial rule in Africa, he also does not look at it from a human rights perspective, which gap this paper intends to address. *Sheinen, The Right to Social Security, in Eide et al*, gives the right to social security in international law, but limits it

to formal social security, without examining the informal social security systems, and does not suggest reforms and its extension to people in the Third World, Andreassen in *Gudmundur.A. et al.*, gives a background to social Security in the UDHR, But falls short of suggesting its extension to developing countries, but does not give the nature of states obligations.

Olivier M and Dekker AH A " *Informal Social Security*" in *Olivier M et al.*, Concentrate on informal social Security systems prevalent in Africa, but do not look at it from a human rights perspective and therefore fall short of the what this inquiry is about. *H. Gsanger* . Linking informal and Formal social security systems, this work attempts to link the formal and informal social security, it does not look at it from a human rights perspective, which this research seeks to bridge that *lacuna*. *E.Reynaud*, the right to social security- Current Challenges in International Perspective, has given a rights based approach to Social security, but is more general, and does not address the challenges to this right in developing countries like Uganda.

Devereux.S. looks at the informal social security extension in South Africa, though relevant and applicable to Uganda , does not look at it from a human rights perspective and does not look at the formal social security which is the focus of this thesis. *C.W.Okoboi*, looks at only the aspect of supervision but does not approach the problem from a human rights perspective which this paper seeks to tackle. The STG, group has proposed various forms of reforms but has been general, it has not focus on human rights aspects and the nature of state obligations, which is the focus of this paper. *Dimitri .V.*, In his work *role of Occupational Pensions Funds in Mauritius*, looks at it from the Economics point of view without any human rights iota, which falls short of what this paper intends to cover. *Kiriro wa Ngugi*, *Social health Insurance*, looks at health insurance, without necessarily addressing the entire social security system, and without a human rights focus, which is the crux of this research. *Tumwesigye D.L.*, considers in-depth the Impacts of HIV on social security, his work focus mainly on the activities of NSSF, it does not review the entire sector and lacks a human rights approach to social security and the states obligations which are the crux of this paper.

Having reviewed the above sources, this research will attempt to fill the gaps not covered by the consulted works. This being an introductory chapter, there are no concluding observations.

2 CHAPTER TWO

2.1 Introduction: Background to the Right to social security in the UDHR

When the final draft of the Declaration was debated in the General Assembly, it was stressed that the UDHR represented a “degree of progress over previous declarations of a similar nature” largely because it included rights to economic and social benefits¹³. Article 22 highlighted this virtue in general terms as an umbrella article on economic, social and cultural rights. The inclusion of this brand of rights into the International Bill of Rights was made mandatory right from the beginning. In his inaugural speech at the opening of the Commission on Human Rights, on 29th April 1946, the UN Assistant Secretary-General, Henri Laugier, urged the Commission to;

Study all the declarations of rights, which were born in the spirit of men and people on their march towards liberation. You will have to show that the political rights are the first condition of liberty but that today the progress of scientific and industrial civilization has created organisations which are inflicting on politically free men intolerable servitude, and that therefore, in the future the declaration of man is to be extended to economic and social fields.¹⁴

Laugier , further more asked the commission to develop a “permanent guide for men of good will” by establishing a “minimum of common principles” around which the reconstruction of post world war could be built .In the new world order, economic social and cultural rights would belong to these common principles hence the emergence social security as a human right¹⁵

¹³ Statement made by the 91st meeting of the UN General Assembly on 2 October 1948. See *B.A. Andreassen* in, *G. Alfredsson and A. Eide* (eds), *The Universal Declaration of Human Rights* ,pp 453-488 at p.453.

¹⁴ E/HR/6,p.2. The Commission of Human Rights, at this stage of its works was established by Economic and Social Council (ECOSOC) as a nuclear commission in order to prepare the work of the permanent Commission which stated its First Session in January 1947, see ECOSOC Official Records, first year, first edition, p.163f.

¹⁵. Principle NO. XXXII. The World Conference On Human Rights Vienna, 14-25 June 1993 Vienna Declaration and Programme of Action.

2.2 A Rights-Based Approach to Social Security

The World Conference on Human Rights¹⁶ reaffirmed the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

In order for the right to social security to have a meaning full impact, it has to be structured with the following elements, namely;

(i). The social security system should be intended to provide comprehensive coverage against all contingencies and life circumstances that threaten the income earning ability of persons and their ability to maintain an adequate standard of living. Like unemployment, ill health, disability, maternity, old age, and child support for impoverished care and survivor's benefits¹⁷.

(ii). The benefits must benefit all those in need of social security should be able to gain access to it without discrimination as to status race, immigration status or otherwise. This is the only way Social security can become a universally accepted human right.

Accessibility

(a) Physical Accessibility Coverage.

All persons should be *covered* by the social security system, including the most disadvantaged or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.

(b) Economic Accessibility - Affordability.

If a social security scheme requires contributions by employees or other beneficiaries, then contributions should be defined in advance. The direct and indirect costs and charges associated with making contributions must be *affordable*, and must not compromise or threaten the realization of other Covenant rights.

The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues. <www.ohchr.org/english/law/vienna.htm,> visited on 21.09.07.

¹⁶ *Ibid* 13.

¹⁷ E. Reynaud, The Right to Social Security – Current Challenges in International Perspective in Eibe Riedel (ed.) *Right to Social Security* (Berlin: Publisher, 2006), ch.1.

(c) Information Accessibility and Participation.

Beneficiaries of social security schemes must be able to *participate* in the administration of the system and it must provide for a right of appeal.¹⁸ The system should be established under national law and permit the individuals and organizations the right to seek, receive and impart information concerning social security issues.

(iii). The level of benefits provided under the various schemes should be adequate and appropriate. The particular benefit payable depends on the type of social security scheme and its rules (for instance under certain social insurance schemes the benefits received are, related to the contributions made).

However, the benefits provided under needs based social assistance programs should at least be sufficient to ensure that the recipient does not fall below a clearly defined minimum subsistence level or poverty line. This is the case with social welfare states like Sweden. The kind of benefits provided should also be appropriate to the kind of risk or contingency faced (like, maternity benefits, should be paid for a period appropriate to the demands of childbirth, sickness must be paid according to the nature of the sickness).

(iv). Social security programs should not discriminate unfairly against anyone on grounds such as race, sex, gender, sexual orientation, religion, political opinion, national or social origin, and birth or socio economic status. This includes both direct and indirect

(v). It is important that the Social security administration must be cognisant of the rules and procedures governing eligibility for social security, as well as the termination of benefits, must be reasonable and fair. Persons aggrieved by an adverse legal rule or administrative decision should have access to speedy, affordable and effective legal remedies for the breach of their rights. The enforcement is very relevant especially in African Countries where pensions are usually treated as a privilege and not a right.

¹⁸ Articles 71 and 72, ILO Convention 102 contain similar requirements.

2.3 Social Security as an Interdependent Human Right

The right to social security may, be seen as guaranteeing the material conditions for an adequate standard of living it serves to protect human beings from the life threatening and degrading conditions of poverty and material insecurity. It is possible also to derive a right to social security from a number of civil and political rights, such as the right to life, security of the person, the prohibition of torture and cruel or inhuman and degrading treatment or punishment. The monitoring bodies of the various human rights treaties have not yet interpreted these civil and political rights to incorporate a right to social security. Never the less, invoking a broader, substantive interpretation of these rights is a challenge for human rights activists and scholars today.

The right to equality in certain international human rights instruments protecting civil and political rights has also been applied to social security benefits. The right to equality protects against discrimination in social security systems on prohibited grounds. Discrimination may arise from the exclusion of certain groups from eligibility for benefits, or from the conditions that have to be complied with in order to qualify for benefits. This is manifested by a series of communications decided under the First Optional Protocol to the ICCPR. The Human Rights Committee (the supervisory body under the Covenant) has held that the non-discrimination clause in article 26 of the Covenant covers all spheres of state activity, not only those that fall within the scope of another right recognized in the Covenant, by implication therefore social security is covered a human right¹⁹.

¹⁹ Principle No.(v) .All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms, available at < www.ohchr.org/english/law/vienna.htm>. visited on 21.09.07.

2.4 Justiciability of social security as a human right

Through what known as the "*Dutch social security cases*," the Human Rights Committee has determined that article 26 of the ICCPR also applies to social and economic rights. These cases concerned Dutch unemployment insurance legislation that applied discriminatory conditions to married women. Thus, a married woman had to submit evidence proving that she was a breadwinner in order to qualify for unemployment benefits. A similar condition did not apply to married men. The committee held that this legislation violated article 26 by discriminating on the grounds of sex. It emphasized that article 26 did not "any State to enact legislation to provide for social security. However, when such legislation is adopted in the exercise of a State's sovereign power, then such legislation must comply with article 26 of the Covenant."²⁰ These cases demonstrate the patriarchal assumptions that informed the design of much similar social security. All grounds prohibited for discrimination in article 26 are applicable to social security programs, like race, colour, sex, language, religion, political or other opinion, national or social origin, birth or other status. In the case of *Gueye et al v. France*²¹, the Human Rights Committee found that French legislation discriminated on the ground of nationality in that it afforded lower pensions to retired Senegalese soldiers of the French army than to French citizens in an otherwise equal position. Nationality was incorporated within the concept of "other status" and thus gave rise to a violation of article 26.

²⁰ *Kaya Mercelle Berker v The Netherlands* No. 976/2001, paras. 10 & 11 CCPR/C/80/D/976/2001, available on line at www.unhchr.ch/tbs/doc.nsf/0/eb7956f8d39e8278c1256eb40046a697?OpenDocument, visited on 06.07.07

²¹ *Ibrahima Gueye et al v France*. Communication No. 196/1983 (3rd April 1989). UN Doc. supp. No. 40(A/44/40) at 189 (1989), available at <www.unhchr.ch/tbs/doc.nsf.accessed> on 8.09.07.

Among the civil and political rights that can afford significant protection to social security beneficiaries, include the right to due process in the determination of their social security rights. An array of cases from the ECHR has established the principle that the right to a fair hearing in article 6(1) of the Convention is applicable to social security benefits, including those with a public law character. Hence, in the *Schuler-Zgraggen*²² the European Court held that "today the general rule is that article 6(1) does apply in the field of social insurance, including even welfare assistance".

Contributory social insurance rights have received a measure of protection under the right to property. In *Gaygusuz v. Austria*,²³ the European Court of Human Rights determined that a violation of article 14 of the European Convention (the right to non-discrimination) had occurred in conjunction with article 1 of the First Protocol (the right to peaceful enjoyment of one's possessions). Mr. Gaygusuz, who was a legal resident in Austria, had received different treatment under the rules of the unemployment insurance fund he had been contributing to on the basis that he was not an Austrian citizen. The interpretation means that even non-citizens are entitled to the protection of the law.

In *Dietmar Pauer V Austria*²⁴, where the author a widower had been paid less because he was not a widow. The committee found that he had been discriminated against on the grounds on sex and the committee ruled that there was a violation of article 25 of the covenant and hence breached her obligations under article 2.

From the foregoing discussion it can be discerned from the jurisprudence of the human rights committee and other courts the fact that social security in a human right which is justiciable.

²² *Schuster-Zgraggen v Switzerland*, Judgement of 24th June 1993, Publications of the European Court of Human Rights, Series A, No.263 para 46, see also 1993 ECHR at 405.

²³ *Gaygusuz v Austria*, ECHR, 16 September 1996, 39/1995/545/631.

²⁴ *Dietmar Pauer v Austria* Communication No. 716/1996), CCPR/C/65/D/716/1996

2.5 The Legal Regime Providing for Social Security as a Human Right

The right to social security has been strongly grounded in international law. The human rights dimensions of social security were clearly present in the Philadelphia Declaration of 1944 which recognized ‘the solemn obligation of the International Labour Organization to further among the nations of the world programmes which will achieve ... the extension of social security measures to provide a basic income to all in need of such protection and comprehensive medical care²⁵. In 2001, the International Labour Conference, composed of states, employer representatives and workers representatives, affirmed that social security ‘is a basic human right and a fundamental means for creating social cohesion, thereby helping to ensure social peace and social inclusion’.²⁶

UDHR highlights Social Security as a vanguard to other social economic and cultural rights. It provides

“Every member of society has a right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”²⁷.

In addition to the above, other forms of social security are covered²⁸, thus; “Every person has the right to work, to a free choice of employment, to just and favourable conditions of work and to protection against unemployment”.

“Everyone person works has a right to just and favourable remuneration ensuring for him self and family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection”²⁹.

²⁵ Declaration concerning the aims and purposes of the International Labour Organization, Philadelphia, 1944, General Conference of the International Labour Organization, 26th Session, 10 May 1944, Section III, para. (f.), available at www.ilo.org, visited on 50.10.07.

²⁶ Resolutions and Conclusions concerning social security, International Labour Conference, 89th Session, 2001. available at www.ilo.org, visited on 18.08.07.

²⁷ The Universal Declaration of Human Rights (UDHR), Article 22.

²⁸ *Ibid* Article 25.

²⁹ UDHR, Article 23.

Every one has a right has the right to a standard of living adequate for health and well-being of himself and of his family, including food, clothing, housing and Medicare and necessary social services, and the right to social security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and Child hood are entitled to special care and assistance. All children whether born in or out of wedlock, shall enjoy the same social protection³⁰.

It is submitted therefore, that the framers of the UDHR did not define a minimum core of social and economic rights indispensable for the dignity and personal development of the individual³¹.

The ICESCR has a general clause providing for protection of social security.

In addition, provides for state parties to the Covenant to recognise the right of every one to social security including social insurance³². Article 10 protects the family and refers to social security benefits during maternity leave.

The most comprehensive instrument in on social security is the ILO Social security (minimum standards) Convention³³; this Convention has nine structures as follows;

³⁰ *Ibid*, Article 25, the right to 'social security' in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond ones control. In the early draft for the UDHR, this clause was in Article 22.B-A.Andreassen, *loc.cit* (note 3), and pp. 462-469.

³¹ *Ibid*, p.488.

³² International Covenant of Economic, Social and Cultural Rights (ICESCR), Articles 9, and 10, available at < www.ohchrc.org >, visited on 12.09.07

³³ ILO Convention No. 102 of 1952, *see* Maternity Protection Convention (revised), 1952 (No.103); Equality of Treatment (Social Security) Convention, 1962 (no.118); Employment Injury Benefits Convention, 1964 (No. 121); Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); Medical Care and Sickness Benefits Convention, 1969 (No. 130); Maintenance of Social Security Rights Convention, 1982 (No.157); Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); Part-Time Work Convention, 1994 (No. 175) and Recommendation 182 on Part-Time Work; Home Work Convention, 1996 (No. 177) and Recommendation 184 on Home Work <www.ilo.org/public/english/protectrion/secsoc/areas/legal/standard.html> visited on 10.09.07.

Medical care (part II), sickness benefit (Part III), unemployment benefit (Part IV), old age benefits part (V), employment injury benefit (Part VI), family benefit (Part VII), maternity benefit (Part VIII), invalidity benefit (Part IX) and survivors' benefit (Part X). This list is reiterated in the reporting guidelines under Article 9 of the CDESCR³⁴; this highlights the enormous task ILO has to perform in the field of standard setting for elucidation of obligations under the CDESCR. This shows the narrow focus of CDESCR on social security by only concentrating of income based and situation-based cash benefits for workers and their families.

Article 11(1) of CDESCR on the right to an adequate standard of living is rather more general in its scope in that it relates to social assistance and other need-based forms of social benefits in cash or in kind to any one without adequate resources.

The ICERD guarantees the right to social security and social assistance without discrimination on any ground³⁵. Other Instruments like CEDAW, deal with the right to social security in a broader perspective, by identifying several forms of social security that can be provided to women without discrimination. By, *inter alia* identifying the gender specific needs and eliminate barriers to enjoyment of these rights³⁶.

Whereas under the CRC, the responsibility for material well being of the child is incumbent upon his or her parents, state parties are obliged to provide material assistance and support for the realisation of such responsibilities and obligations³⁷.

³⁴ The reporting guidelines indicate that this clause relates to not only benefits in cash but also to medical and other benefits. See revised guidelines regarding the form and contents of the Reports to be submitted by State Parties Articles 16 and 17 of the international Covenant on Economic, Social and Cultural Rights, UN doc. E/1991/23, pp.88-110, also available at <[www.uhchr.ch/tbs/doc.nsf\(symbol\)/E.C.12.1991.1.En?open.document](http://www.uhchr.ch/tbs/doc.nsf(symbol)/E.C.12.1991.1.En?open.document)>, visited on 10.9.2007.

³⁵ The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Article 5(e) (IV), available at <www.ohchr.org/english/bodies/cerd/index.html>, visited on 10.09.07.

³⁶ *Ibid*, 26 .Articles 11(1)(e), 11(2) (b), and 13(a).

³⁷ Article 27 of the Convention on the Rights of the Child (CRC) , available online at <www.ohchr.org/english/bodies/crc/index.htm.visited>, on 17.09.2007.

The ICRMW has a provision that protects the right of all migrant workers to social security because of receiving equal treatment as the nationals of the country of residence. Further, more, migrant workers in a regular situation should enjoy certain rights to social security benefits and services³⁸. The Refugee Convention guarantees the right to social security of refugees even provides for compensation in case of death because of occupational hazards³⁹.

The ESC has provisions that extensively protect the right to social security. The wording of certain provisions is in *para materia* with the nomenclature in ILO Conventions. It explicitly refers to the ILO Convention No.2 as a minimum standard to be used under the ESC⁴⁰.

On a more positive note however, The Revised ESC provides for a higher standard than that of ILO, state parties are enjoined to 'raise progressively', the system of social security to higher level. Article 8, provides for the right of employed women to protection of maternity, Article 11, the right to protection of health, Article 13, the right to social and medical assistance, Article 14 the right to benefit from social welfare services, Article 15 the right of persons with disabilities to independence, social integration and participation in the life of the community, Article 16, the right of the family to social, legal and economic protection, Article 17, the right of children and young persons to social, legal and economic protection, Article 19, the right of migrant workers and their families to protection and assistance, Article 23 the right of elderly persons to social protection Article 30, the right to protection against poverty and social exclusion⁴¹. The revised ESC provides for a comprehensive protection of the right to social security. The

³⁸ Articles 27, 45 and 54 of the International Convention on the Protection of All Migrant Workers and Members of their Families (ICRMW), available at <www.ohchr.org/english/law/cmw.htm>, visited on 17.09.07.

³⁹ Article 24(1),(2). The Refugee Convention, 1967, available at <www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf>, visited on 21.09.07.

⁴⁰ Articles 12, (2). The European Social Charter (ESC), available at <www.coe.int/T/E/Human_Rights/Esc/>, visited on 17.09.2007.

⁴¹ Revised European Social Charter, available at <www.conventions.coe.int/treaty/en/treaties/html/163.htm>, visited on 17.09.07.

ratification of the European code of social security requires a higher standard than is required for ratification of ILO Convention No.102.

The ramifications of the revised ESC are twofold; firstly, it expands the protection of social security rights by introducing a higher level of protection in relation to Article 12, as well as by introducing certain new rights. Secondly, the supervision system has been improved drastically by the coming into force of the additional Protocol providing for the procedure of collective complaints⁴².

The Council of Europe has further increased protection by enactment of the European Code of Social Security⁴³. The Code underwent revision in 1990⁴⁴, The revised Code has raised the level of State obligations and like ILO Convention No.102 and the ESC, the code gives the states the liberty to choose from a variety of forms like, medical care, sickness cash benefits, unemployment benefit, old age benefit, work accident and occupational disease benefit, family benefit, maternity benefit, survivors and benefit, the codes have been intended to provide social protection to all manner of person, hence protection of the right to social security.

The European Convention for the protection of Fundamental Freedoms like the right to a fair hearing guaranteed under Article 6(1) has been extrapolated to cover social insurance form of social security, and to statute based social assistance benefits. In the same spirit, the Protection pursuant to Article 26 of ICCPR has, been extended to social security⁴⁵.

⁴² A.Eide *et al* (eds). Economic, Social and Cultural Rights, a Text book, 2nd Revised Edn, pp. 216-217, see further article by M.Scheinen chapter 12, and also section 3, in A.Rosas and M.Scheinen, 'Implementation Mechanisms and Remedies', Chapter 23.

⁴³ The European Code of Social Security and Protocol to the European code of Social Security 1964, available at, <www.itcilo.it/actrav/actrav-english/telearn/global/ilo/law/coecode.htm>, visited on 18.09.07.

⁴⁴ The European Code of Social Security (Revised) No.139. <www.conventions.coe.int/Default.asp>, visited on 18.09.07.

⁴⁵ . Art.26, the International Covenant of Civil and Political Rights (ICCPR), see article All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social

The Community Charter on fundamental rights of workers incorporated the worker's right to social security and the right to social assistance for those in need⁴⁶. The European parliament's declaration of fundamental human rights provides for social welfare to include both a provision on the rights of workers and other economically active persons to social security and the rights of those economically disadvantaged to social and medical assistance⁴⁷.

The Treaty establishing the European Community (Treaty of Amsterdam), took cognisance of both the European Social Charter and the Community Charter⁴⁸.

The Treaty of Amsterdam mentions social protection as one as one of the objectives of the European Union and its members pursuant to paragraph one thereof, under paragraph three, it provides for the harmonisation of social systems as an expected outcome of the Union. Similarly, the EU Charter of fundamental rights adopted in Nice also covers social security⁴⁹. The Union takes cognisance and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in loss of employment. This is in line with the traditional branches of social security. The American Declaration⁵⁰ on the rights and duties of man provides for the right to social security like unemployment, old age and mental or physical disability as specific situations in which the right is tenable⁵¹.

origin, property, birth or other status available at <www.ohchr.org/english/law/ccpr.htm>, visited on 18.9.2007.

⁴⁶ Article 10. Community Charter of the Fundamental Social Rights of Workers, available at <www.eurofound.europa.eu/areas/socialprotection/index.htm>, visited on 18.9.07.

⁴⁷ Article 19, Charter of Fundamental Rights of the European Union, OJ C 364, 18 December 2000, pp 1-22, available at, <www.europarl.europa.eu/charter/default_en.htm>, visited on 18.09.07.

⁴⁸ Article, 136. Treaty of Amsterdam (1997) <www.europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf+ARTICLE+136+TREATY+OF+AMSTERDAM>, visited on 18.9.07.

⁴⁹ *Ibid* 37, Article 34.

⁵⁰ Article 26. American Convention on Human Rights (ACHR), available at <www.hrcr.org/docs/American_Convention/oashr5.html>, visited on 18.09.07.

Interestingly, the ACHR provides for socio economic rights in rather a general manner, like a clause calling for their progressive realisation, without succinctly addressing the obligations of state parties.

The Additional Protocol to Convention to the ACHR in the Area of Economic, Social and Cultural Rights, takes cognisance of the rights to social security tailored along Article 16 of the American Declaration, it extrapolates it by including death of a beneficiary, work accidents, occupational diseases and childbirth as situations in which the right applies⁵².

Disappointingly, the ACHPR, has no explicit provision defining the right to Social security as an autonomous human right, aspects of social security can be discerned from other rights like, the right to health, the rights of the aged and disabled to special measures of protection and the individuals duty towards society⁵³. The African heads of State have not been fair to their citizens the way European governments have been.

2.6 The Monitoring Mechanisms of the Right to Social Security

This leg addresses monitoring under the UN and ILO. The crux of human rights protection and enforcement is the monitoring mechanism. There being no specific Convention on the right to social security. Different treaty bodies conduct equally monitoring of the Treaty obligations⁵⁴. Reporting by State parties is still the common mechanism of monitoring. The Additional protocol on Economic, Social and Cultural Rights, provides for a system of

⁵¹ Article 16, American Declaration of the Rights and Duties of Man,(June 2, 1998),available < www.hrcr.org/docs/OAS_Declaration/oasrights3.html .>, visited on 18.09.07. Note the Declaration is a non- binding document it is not a Treaty.

⁵² Article 9 , Additional Protocol to the American Convention of Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”. Adopted in San Salvador on 17 November 1988, (in force since 1999). Available at <www.mrforum.se/upload/files/2/MR-instrument/Additional%20Protocol%20to%20the%20American.> , visited on 18.09.07.

⁵³ Articles 16,18(4),29, and The African Charter on Human and Peoples Rights (Banjul Charter) available at< www.achpr.org/english/_info/charter_en.html .,> visited on 18.09.07. Adopted by the eighteenth Assembly of Heads of State and Government, June 1981 in Nairobi Kenya .

⁵⁴ *Ibid* 32 at p .220.

collective complaints⁵⁵. The Optional Protocol to CEDAW, which entered in to force on 22 December 2000, provides for individual complaints procedure in cases involving gender-based discrimination in the area of social security⁵⁶. This does not mean that the right to social security cannot be a basis on litigation on the domestic plane.

The Procedure under the ICCPR has been used even in cases on Social security where issues like the right to life, property, fair trial and prohibition of discrimination⁵⁷.

Once a country has ratified an ILO convention, it is obliged to report regularly on measures it has taken to implement it. Every two years governments must submit reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four priority conventions they may have ratified; for all other conventions, reports have to be submitted every five years, except for conventions that have been shelved (no longer supervised on a regular basis). Reports on the application of conventions may be requested at shorter intervals. Governments are required to submit copies of their reports to employers and workers' organizations. These organizations may comment on the governments' reports; they may also send comments on the application of conventions directly to the ILO⁵⁸.

2.7 Nature of State parties Obligations:

2.7.1 General legal obligations

Whereas the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also

⁵⁵ Available at www.ohchr.org/english/bodies/cescr/members.htm, visited on 19.09.07.

⁵⁶ Article 2, Optional Protocol to the Convention on the Elimination of Discrimination against Women (Adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, Human Rights Day entry into force 22 December 2000), available at <www.ohchr.org/english/law/cedaw-one.htm>, see details of the procedure at <www.ohchr.org/english/bodies/petitions/index.htm>. Visited on 19.09.07

⁵⁷ A.Eide. *et al*, Economic and Social Rights and Legal Rights Chapter 3 pp.29-54, A.Rosas and M.Sheinen, Implementation Mechanisms and Remedies, Chapter 23 pp.425-455.

⁵⁸ ILO Reports of Committee of Experts, available at <www.ilo.org/public/english/standards/norms/applying/committee.html>, visited on 19.09.07.

imposes on States parties various obligations, which are of immediate effect. States parties have immediate obligations in relation to the right to social security, such as the guarantee that the right will be exercised without discrimination of any kind (art. 2, para. 2) and the obligation to take steps (art. 2, para.1) towards the full realization of articles 11, paragraph 1, and 12. Such steps must be deliberate, concrete and targeted towards the full realization of the right to social security. The Committee has stated that the realization of the right to social security will ordinarily carry significant financial implications for States parties, but notes that the fundamental importance of social security for human dignity, and the legal recognition of this right by States parties means that the right should be given appropriate priority in law and policy, including the allocation of fiscal and other resources, and in international cooperation and technical assistance⁵⁹.

There is a strong presumption that retrogressive measures taken in relation to the right to social security are prohibited under the Covenant. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources. The Committee will look carefully at whether (i) alternatives were comprehensively examined; (ii) there was genuine participation of affected groups in examining proposed measures and alternatives that threaten their existing human right to social security protections; (iii) the measures were directly or indirectly discriminatory; (vi) the measures will have a sustained impact on the realization of the right to social security; (v) the individual is deprived of access to the minimum essential level of social security unless all maximum

⁵⁹ Draft General Comment No.20, on the Right to Social security(Article 9), Committee on Economic, Social and Cultural Rights, and Cultural Rights Thirty-Sixth Session, Geneva 1-19 May 2006.para.30, available at <www.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.CRP.1_En.doc>, visited on 05/10.07.

available resources have been used, including domestic and international;
(vi) review procedures at the national level have examined the reforms⁶⁰.

2.7.2 Specific legal obligations

The right to social security, imposes on states certain obligations like any human right on States parties, namely, obligations to respect, obligations to protect and obligations to fulfil⁶¹.

(a) Obligations to respect.

State Parties have an obligation to respect, which requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to social security. The obligation includes, inter alia, refraining from engaging in any practice or activity that denies or limits equal access to adequate social security; arbitrarily interfering with self-help or customary or traditional arrangements for social security; or interfering with institutions that have been established by individuals or corporate bodies to provide social security⁶².

(b) Obligations to protect

State parties have an obligation to protect. This requires State parties to prevent third parties from interfering in any way with the enjoyment of the right to social security. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. The obligation includes, inter alia, adopting the necessary and effective legislative and other measures to restrain, for example, third parties from denying equal access to social security schemes operated by third parties or others, imposing conditions or providing benefits that are not consistent with the national social security system; or arbitrarily interfering with self-help or customary or traditional arrangements for social security⁶³.

Where social security schemes, whether contributory or non-contributory, are operated or controlled by third parties, States parties retain the

⁶⁰ *Ibid* 53, para 31.

⁶¹ *supra*, para 32.

⁶² *Supra* 53, para 33.

⁶³ *Supra* 53, para 34.

responsibility of administering the national social security system and ensuring that private actors do not compromise equal, adequate, affordable, and accessible social security. To prevent such abuses an effective regulatory system must be established, which includes independent monitoring, genuine public participation and imposition of penalties for non-compliance⁶⁴.

(c) Obligations to fulfil

State parties have an obligation to fulfil; this requires States parties to adopt the necessary measures, including the implementation of a social security scheme, directed towards the full realization of the right to social security. The obligation to fulfil can be disaggregated into the obligations to facilitate, promote and provide⁶⁵

(d) The obligation to facilitate:

This requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation includes, inter alia, according sufficient recognition of this right within the national political and legal systems, preferably by way of legislative implementation; adopting a national social security strategy and plan of action to realize this right; ensuring that the social security system will be adequate, accessible for everyone and covers risks and contingencies, namely income security, access to health care and family support. Examples of such steps include establishing a contribution-based social security system or a legislative framework that will permit the incorporation of the informal sector⁶⁶.

States parties are also obliged to fulfil (provide) the right when individuals or a group are unable, for reasons beyond their control, to realize that right themselves within the existing social security system with the means at their disposal. States parties will invariably need to establish social assistance or other non-contributory schemes and/or provide support to those individuals and groups who are unable to make sufficient contributions for their own

⁶⁴ *Opcit*, 53, para 35.

⁶⁵ *Opcit*, para 36.

⁶⁶ *Opcit*, para 37.

protection together with mechanism for the progressive coverage of all risks and contingencies. The obligation to promote obliges the state party to take steps to ensure that there is appropriate education and awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities⁶⁷.

It is important that social security schemes target and cover low and medium income earners. Where there is limited capacity to finance social security, either from tax revenues or contributions from beneficiaries, priority should be given in the first instance to needs which are most pressing in the view of the groups concerned, and low-cost and alternative schemes could be developed to immediately cover those without access to social security, although the aim should be to incorporate the excluded into formal social security systems. [A policy and legislative framework could be adopted for the progressive inclusion of those working in the informal sector or who are otherwise excluded from access to social security.⁶⁸]

In addition to schemes to ensure income security and family support, States parties are also obliged to establish schemes to enable financial access to health care. In General Comment No. 14, the Committee stated that States parties have a special obligation to provide those who do not have sufficient means with the necessary health insurance and health-care facilities and noted the need for provision of a public, private or mixed health insurance system which is affordable for all. Coverage must include any morbid condition, whatever its cause, and pregnancy and confinement and their consequences, general and practical medical care together with hospitalization. The Committee notes the particular importance of the right to social security in the context of HIV/AIDS and other epidemics and the need to provide access to preventative and curative measures. Emergency

⁶⁷ *Opcit*, para 38

⁶⁸ *opcite*, para 39.

medical care should not be refused them by reason of a person's nationality or residency status⁶⁹.

The Committee also notes that some States parties have ratified ILO Conventions that provide for a system of prioritization for the coverage of various risks and contingencies. [For those States parties, the Committee will take into account these commitments.] However, the Committee will examine whether state parties have complied with other duties they may have with respect to the right to social security, including obligations of respect and protect, the immediate realization of the minimum essential level, and whether the state party has the capacity to take further steps towards the full realization of the right to social security⁷⁰.

2.7.3 International obligations:

Article 2, paragraph 1, and articles 11, paragraph 1, and 23 of the Covenant require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to social security⁷¹.

To comply with their international obligations in relation to the right to social security, states parties have to respect the enjoyment of the right in other countries. International cooperation requires states parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to social security in other countries. Any activities undertaken within the state party's jurisdiction should not deprive another country of the ability to realize the right to social security for persons within its jurisdiction⁷².

Steps should be taken by States parties to prevent their own citizens and companies from violating the right to social security in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in

⁶⁹ *Opcit*, pra 40.

⁷⁰ *Opcit*, para 41.

⁷¹ *Opcit*, para 42

⁷² para,43

accordance with the Charter of the United Nations and applicable international law⁷³.

The Committee recommends that states, subject to available resources, should facilitate realization of the right to social security in other countries, for example through provision of financial and technical assistance.

International assistance should be provided in a manner that is consistent with the Covenant and other human rights standards, and sustainable and culturally appropriate. The economically developed states parties have a special responsibility and interest to assist the developing states in this regard⁷⁴.

States parties should ensure that the right to social security is given due attention in international agreements and, to that end, should consider the development of further legal instruments. The committee also notes the value of establishing reciprocal bilateral and multilateral international arrangements for contributory social security schemes. With regard to the conclusion and implementation of other international and regional agreements, States parties should take steps to ensure that these instruments do not adversely impact upon the right to social security. Agreements concerning trade liberalization should not curtail or inhibit a country's capacity to ensure the full realization of the right to social security⁷⁵.

States parties should ensure that their actions as members of international organizations take due account of the right to social security. Accordingly, States parties that are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should take steps to ensure that the right to social security is taken into account in their lending policies, credit agreements and other international measures. States parties should ensure that the policies of international and regional financial institutions, particular those concerning the role of the private sector in social security and structural adjustment, promote and do not hinder the right to social security⁷⁶.

⁷³ para,44.

⁷⁴ Para, 46.

⁷⁵ Para,47.

⁷⁶ Para,49.

2.7.4 Core obligations

In General Comment No. 3 (1990) the Committee confirms that States parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the Covenant. In the Committee's view, at least a number of core obligations in relation to the right to social security can be identified, which are of immediate effect⁷⁷:

- (a) To ensure access to the minimum essential level of social security that is essential for acquiring water and sanitation, foodstuffs, essential primary health care and basic shelter and housing, and the most basic forms of education.
- (b) To ensure the right of access to social security systems on a non-discriminatory basis, especially for disadvantaged or marginalized groups;
- (c) To adopt and implement a national social security strategy and plan of action addressing the whole population; the strategy and plan of action should be devised, and periodically reviewed, on the basis of a participatory and transparent process; it should include information on right to social security indicators and benchmarks, by which progress can be closely monitored.
- (d) To monitor the extent of the realization, or the non-realization, of the right to social security;
- (e) To adopt social assistance or other programmes that protects disadvantaged and marginalized individuals and groups.

By the same token, it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned. Article 2 (1) obligates each State party to take the necessary steps "to the maximum of its available resources". In order for a State party to be able to attribute its failure to meet at least its minimum core obligations to a lack of available resources it must demonstrate that every effort has been made to use all

⁷⁷ Para, 49.

resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations⁷⁸.

The Committee wishes to also emphasize that it is particularly incumbent on States parties, and other actors in a position to assist, to provide international assistance and cooperation, especially economic and technical which enables developing countries to fulfil their core obligations indicated in paragraphs 42 and 46 above⁷⁹.

2.8 Nature of Violations

States parties are obligated ensure that they that they have taken the necessary steps towards the realization of the right to social security, in accordance with Articles 2 (2) and 3 of the Covenant as a way of complying with their general and specific obligations.. Under international law, a failure to act in good faith to take such steps amounts to a violation of that right.⁸⁰

The committee has noted that to determine which actions or omissions amount to a violation of the right to social security, it is important to distinguish the inability from the unwillingness of a State party to comply with its obligations in relation to the right to social security.

The Committee has stated that, where a State is unwilling to use the maximum of its available resources for the realization of the right to social security is in violation of its obligations under the Covenant. If resource constraints render it impossible for a State party to comply fully with its Covenant obligations, it has the burden of justifying that every effort has nevertheless been made to use all available resources at its disposal in order to satisfy, as a matter of priority, the obligations outlined above⁸¹.

⁷⁸ General Comment No. 3; para 11, <[www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CESCR+General+comment+3.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CESCR+General+comment+3.En?OpenDocument)>.

⁷⁹ supra 54, para 50.

⁸⁰ Article 26 of the Vienna Convention on the Law of Treaties 1969 available at www.untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf, visited on 10.09.07. see also Para 52 of draft General Comment N0.20.

⁸¹ Draft General Comment N0.20. on The Right to Social Security(Article 9), Economic social and Cultural Rights. Para.53 , available at <www.ohchr.org/english/bodies/cescr/docs/E.C.12.GC.20.CRP.1_En.doc> accessed on 10.10.07.

The committee further notes, that Violations of the right to social security can occur through *acts of commission*, the direct actions of States parties or other entities insufficiently regulated by States. Violations include, for example, the adoption of retrogressive measures incompatible with the core obligations, the formal repeal or suspension of legislation necessary for the continued enjoyment of the right to social security⁸².

The Committee has averred that, violations through *acts of omission* include the failure to take appropriate steps towards the full realization of everyone's right to social security, the failure to have a national policy on social security, and the failure to enforce relevant laws⁸³

2.9 Implementation at the National Level

This attracts Covenant obligations, and in accordance with article 2, para 1, of the Covenant, States parties are required to utilize “all appropriate means, including particularly the adoption of legislative measures.” Every State party has a margin of discretion in assessing which measures are most suitable to meet its specific circumstances. The Covenant, however, clearly imposes a duty on each State party to take whatever steps are necessary to ensure that everyone enjoys the right to social security, as soon as possible. Furthermore, any national measures designed to realize the right to social security should not interfere with the enjoyment of other human rights⁸⁴.

2.9.1 Legislation, strategies and policies:

To this end the Committee recommends existing legislation, strategies and policies to be reviewed to ensure that they are compatible with obligations arising from the right to social security, and should be repealed, amended or changed if inconsistent with Covenant requirements⁸⁵.

It's further augmented that, the duty to take steps clearly imposes on States parties an obligation to adopt a national strategy or plan of action to realize the right to social security. The strategy should: (a) be based upon human

⁸² *Ibid* 79,para 54.

⁸³ *Supra*,para 55.

⁸⁴ Article 2(1) , International Covenant on Economic, Social and Cultural Rights. Para.56.

⁸⁵ Para. 57.

rights law and principles; (b) cover all aspects of the right to social security and the corresponding obligations of States parties; (c) define clear objectives; (d) set targets or goals to be achieved and the time frame for their achievement; (e) formulate adequate policies and corresponding benchmarks and indicators. When formulating and implementing their right to social security national strategies, States parties should avail themselves of technical assistance and cooperation of the United Nations specialized agencies like ILO, UNESCO *et al.* Where a State party has a comprehensive social security system in place it must review it regularly to ensure that it is consistent with the requirements set out in this paragraph⁸⁶.

State parties are urged to respect, *inter alia*, the principles of non-discrimination, gender equality and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security must be an integral part of any policy, programme or strategy concerning social security⁸⁷.

The Committee has also recommended that national social security strategy and plan of action should also be based on the principles of accountability, transparency and independence of the judiciary, since good governance is essential to the effective implementation of all human rights, including the realization of the right to social security. In order to create a favourable climate for the realization of the right, States parties should take appropriate steps to encourage the private business sector and civil society to be aware of, and consider the importance of, the right to social security in pursuing their activities⁸⁸.

States parties may find it advantageous to adopt framework legislation to operationalise their right to social security strategy. Such legislation should include: (a) targets or goals to be attained and the time frame for their achievement; (b) the means by which the purpose could be achieved; (c) the

⁸⁶ Para.58.

⁸⁷ para.59.

⁸⁸ para.60.

intended collaboration with civil society, private sector and international organizations; (d) institutional responsibility for the process; (e) national mechanisms for its monitoring; and (f) remedies and recourse procedures⁸⁹

2.10 Conclusion

Uganda being a signatory by way of ratification to most International Instrument, is obligated to comply with her obligations under the two Covenants the ICCPR and CESCR, by giving effect to the Covenant through inter alia, domesticating the provisions of the covenants, ratifying the ILO minimum Convention N0.2 102 of 1952,taking immediate steps towards realisation of this rights by putting in Place, Legislative, financial, administrative and any other means for purposes of realising compliance with her obligations under International Law administrative and any other means for purposes of realising compliance with her obligations under International Law.

⁸⁹ para.61.

3 CHAPTER THREE

3.1 Introduction

3.1.1 Background to Social Security in Uganda:

Prior to establishment of National Social Security Fund (NSSF) for private sector, and the unfunded Public Service Pensions Scheme (PSPS) for civil servants, the provision and financing of social security in Uganda was largely traditional, informal and non-structured⁹⁰.

Traditional social insurance schemes covered the extended family systems, supplemented by voluntary societal contributions, had been the main source for the vulnerable persons like the elderly, orphaned children, widows, widowers, the disabled, destitute, incapacitated victims of disaster, needy and the sick⁹¹.

Since PSPS and NSSF apply to only person's informal employment. It means that ninety five per cent (95)⁹³ employed in the informal sector are not covered and therefore excluded from social protection⁹⁴. The only few providers have not addressed the issue of this sector which a majority of the Ugandan belongs.

The scope of the benefits is narrow and only focus on old age. The PSPS and NSSF have had problems, as the value of the money received does not march with the ever-increasing cost and standard of living⁹⁵

⁹⁰ Devereux. S. `Making less last Longer: *Informal Safety Nets in Malawi* (Institute of Development Studies Discussion paper 373(1999) cited in M. Olivier and E. Kaseke , (Even if this was the situation in Malawi, it is worth noting that the same could apply even in Uganda).

⁹¹ *Ibid* , 7.

⁹² *ILO Report on Pension Coverage*.Ninety per cent of World Excluded from Old Age Pension Schemes In many developing countries, the majority of people work in the informal sector or in rural regions that provide few or no benefits or worker protection of any kind, available at www.ilo.org/public/english/region/asro/bangkok/public/releases/yr2000/pr0007.htm..visited, on 18.09.07.

⁹³ STG Report pp 1-426,p.75.

⁹⁴ Uganda PovertyStatus Report(2003).

⁹⁵ K. K. Kiyingi see. Keeping pace with rising cost of living. Article in the Daily Monitor, October ,6,2007. Even in terms of social security, although the current interest from the national social security fund has increased from 3 to 7 per cent, it is unfair to make it mandatory because the interest rate does not reflect the real loss of money worth (purchase-power, available on line at< www.monitor.co.ug/business/bus10062.php,> visited on 06.10.07.

Whereas the PSPS is relatively beneficial, Government has not been able to clear the arrears in time. Pensioners have become destitute, and the emergence of HIV/ AIDS and generally reduced life span has not helped the situation, since beneficiaries cannot receive and enjoy their money during their lifetime

Both schemes have little provisions if any of health insurance, unemployment, and education; property/home, ownership a beneficiary faces nightmares accessing the money.

There are a few private social security arrangements that, are not covered under the formal legal structures; they are known as in house arrangements⁹⁶

3.1.2 The Legal Regime in Uganda:

The Legal regime in Uganda in to respect to social security found in a single document. Since it is not contained in a single legal document but it can be discerned by a critical analysis of different laws.

3.1.3 The Constitution:

There is no express provision in the Constitution of Uganda, recognising Social Security as a human right. However element of constitutional protection can be discerned.

The Constitution entitles a public officer to a pension commensurate with the duration of work. The pension is exempt from tax and it has to be paid promptly and regularly⁹⁷. This protection unfortunately does not extend to persons who are not employed by the public service, pursuant to Article 257 a civil servant is defined to mean a person employed by government in civil, but not political, military or other capacities as well as private and informal sectors. The pension regime is very narrow in scope in that more than ninety percent of the Population is excluded from pension.

⁹⁶ STG Report. pp 1-426,at .72.

⁹⁷ The Constitution of the Republic of Uganda 1995 (As Amended), Article , 254(1)-(3), available at<www.parliament.go.ug/index.php?option=com_wrapper&Itemid=78>, visited on 19.09.07.

The Constitution enjoins the state to make provisions for the welfare of the elderly person's⁹⁸. However, there has never been an attempt by the Ugandan state to provide for elderly persons. The state is further obligated to take practical measures to ensure provisions of basic medical services for the population.

However, the state in Uganda through privatisation of medical services is in fact denying people access to medical services. The general protection under the bill of rights, especially Article 21, which prohibits discrimination, can be relied upon if a person is discriminated against for purposes of accessing social security benefits. There has to be any precedent to that effect. The general provision of Article 28, which guarantees the right to fair hearing, can also be helpful in social security litigation⁹⁹. Article 33 enjoins the state to provide facilities and opportunities necessary for enhancement of women's welfare to enable them realise their full potential and advancement. Article 35 provides for the protection of the rights of persons with disabilities, which can include social security. Pursuant to Article 45, social security is enforceable, since the Article is to the effect that, the mere fact that a right is not specifically included in one of the Articles does not preclude one from enforcing and enjoying it. This blanket provision can be helpful in addressing the lacuna of the Law.

How ever, there are no judicial precedents that have resulted from litigations under this particular provision.

3.1.4 The Government public Service Scheme:

An Act to make provision for matters relating to the public service of the Government of Uganda, District Administrations and Urban Authorities, the

⁹⁸ *Ibid* 49, National Objectives and Directive Principles of State Policy of the State, Objective No (.vii),(xx).

⁹⁹ *Op cit* 49, see Articles 28,50, and 137 of the Constitution (generally on the right to fair hearing, right to bring a petition for enforcement of human rights including the right to social security and the right to petition the Constitutional Court for Interpretation of any matters including on social security).

Public Service Commission and, District Administrations and Urban Authority Service Committees and for other matters related thereto¹⁰⁰.

This scheme is tailored like the British (former Colonial Masters) system. It covers all civil servants with exception members of the Armed Forces and political appointees. The Act also excludes members of the Police force, below the rank of Assistant Superintendent. The retirement age is put at sixty years, however if a person has served for more than ten years, and he or she is aged forty-five years and above, then they can qualify for voluntary retirement¹⁰¹. Other qualifications include when ones office is abolished, it includes public interest after twenty years of service and on attainment of fifty-five years or continuous service for twenty years¹⁰², disability, and written consent of the president

The Civil service pension scheme is not free from criticism, the system is obsolete, it was transplanted from England without due consideration of the socio-economic dynamic prevalent in Uganda. The bureaucracy in the pension system makes it difficult for beneficiaries so access their, money. Matters are worsened by the fact that there is no express provision for enforcement of the right t social security in Uganda. It excludes a majority of Ugandans since it is restricted to only civil servants. Beneficiaries are not insured from inflation, this reduces the value of the money at the time the payment is made.

Further, because they are paid from the consolidated fund, they are subject to government deficits hence accumulated arrears that have not been cleared.

This also not cove the minimum needs like housing, invalidity, health insurance, education. It does not take cognisance of the fact the law life expectancy in Uganda.

¹⁰⁰ The Public Service Act , 18 of 1969.available a t <www.publicservice.go.ug>, visited on 19.09.07.

¹⁰¹. The Police Act, Section 15.cap 3003, Laws of Uganda(2000 revision).

¹⁰² The Pensions Act, S.4, cap 281, Laws of Uganda.

3.1.5 The Armed Forces Pensions Act

The Act provides for and regulates pensions in the armed forces¹⁰³. The management is been transferred to the ministry of public service. The scope covers all personnel, including officers of various ranks in the military.

The existing benefits include disability, early retirement benefits, retirement pensions, and survivor's pensions. Whereas the law is in place, the practice however only covers disablement and survivors' benefits. The Regulations of 1968 provide for establishment of a pensions Board, as well as payment and quantity criteria for persons and other benefits. These Regulations exempt taxation for the benefits of members of Armed forces¹⁰⁴.

Further, the National Resistance Army (NRA)¹⁰⁵, statute provides for the establishment and regulation of the army and other matters connected there with. The Statute mandated the minister of defence to make regulations on conditions of service including conditions relating to pensions gratuities and other matters connected there with. Pursuant to the above provisions, two regulations were consequently passed by the minister, which *inter alia* addressed the terms and conditions of service including retirement and other benefits of both Officers¹⁰⁶(Commissioned), and men/Women¹⁰⁷ (non commissioned).

A critical study of the pension regime governing the men and officers discloses a number of short falls that include the following.

The law provides for a limited number r of benefits like retirement and medical, it does not provides for other r pertinent benefits, like education, housing. Even where some benefits are mentioned, they are not provided to the members of the armed forces. The benefits can be attached to recover debts to government; this in essence worsens the prospects of this officer

¹⁰³ The Armed forces Pensions Act, 298,see (short title)

¹⁰⁴ The Armed Forces (Disability and Death Pensions and Gratuities) , Regulations, 1968.

¹⁰⁵ Section, 104 (2) , the National Resistance Army, (NRA) Statute N0.2 of 1992). This was law governing the Army in Uganda, before the promulgation of the 1995, Constitution, after 1995,the National Army is now called the Uganda Peoples Defence Forces (UPDF).

¹⁰⁶ The National Resistance Army (NRA) , (Conditions of Service) (Officers) Regulation N0.6 of 1993.

¹⁰⁷ The National Resistance Army (NRA) , (Conditions of Service)(Men) Regulation N0.7 of 1993.

and men/women from enjoying their money. Further the thirteen years of clean service required, is a hindrance in that those dismissed for what ever reasons however frivolous and vexatious they may be are not entitled to any benefits.

Further, more benefits forfeitable if not collected within one year, one cannot receive if he is convicted and is serving a sentence or has been deported, unless the president has pardoned him or her. This negates the entire letter and spirit of the law, which establishes social security as a right not to be trampled upon at the whims of individuals be they presidents or not. The fact that the benefits are funded from the consolidated fund has resulted to the raise in the burden on the part of government, that even the few benefits have not been met. The benefits are further not assigned which is violation of the right to property under the Ugandan Constitution¹⁰⁸ Home arrangement is only enjoyed while one is still a serving officer, after retirement, there is no arrangement. No wonder most retired soldiers are leading lives of destitute in Uganda. The restrictive nature, of the benefits is disadvantageous, in that they are not portable outside the armies pensions system. This coupled with all the problems associated with the public service pensions (see 3.2.2 above); worsen the problems faced by this service men and women.

3.1.6 Urban/Local Authorities Pension Schemes:

These are provided for under the Municipalities and Public Authorities Provident Fund Act¹⁰⁹. The Act provides for the setting up of Kampala City Council scheme. Another law worth mentioning is the Provident Fund (Local Government) Act¹¹⁰, it is similar to Cap 291, and however the president is the controlling Authority so it can be a recipe for presidential abuse. The two Acts provide for management of funds by boards and that funds are to be invested in securities permitted by money held on Trust. Funds are immune from attachment sand costs paid from the Funds. The Acts do not provide for the qualifications of the members of the Boards or social security forms to be covered. These were to be found in the regulations; unfortunately, they are not in force¹¹¹.

¹⁰⁸ Article 27, the Constitution of the Republic of Uganda, 1995(As Amended).

¹⁰⁹ The Municipalities and Public Authorities Provident Fund Act, (Cap 291).

¹¹⁰ The Provident Fund (Local Governments) Act, Cap 291.

¹¹¹ The draft Regulation under Cap 291, if adopted would have catered for the establishment of the Board, the Duration of the Accounts, the qualifications, durations, and types of schemes among others. This is still an aspiration.

The problem here is that schemes with insurance firms are not regulated, the products catered for are not may, and payment is only done after cessation of employment. Even if the contributor's accounts are not subject to attachment, they can be attached by the Local Authority to cover the contributor's debts at if the account is closed. This is likely to be abused, and it puts contributors' money at the risk of being squandered by corrupt officials it also restricts members from contributing to other schemes other than , those under the Cap 291 and 292.

3.1.7 Other Categories.

This denotes a category of persons that are not covered under the NSSF and the public service schemes but they are public servants. These include Member of Parliament, Resident District Commissioners, and members of various commissions, employees of various intelligence agencies¹¹².

3.1.8 The Refugee Act:

The enjoyment of the right to social security is extended the even refugees under the Act¹¹³. The Law however focus mainly on refugees living in gazetted areas. This law discriminate between the refugees in camps and those outside the camps. Resources are also not released by the Government, thus leaving the entire burden to UNHCR.

3.2 Private Formal Schemes (NSSF).

These are governed by the NSSF Act¹¹⁴The National Social Security Fund was established by the 1985 Act of Parliament to provide for its membership, the payment of contributions to, and the payment of benefits out of, the fund and for other purposes connected therewith

¹¹² Those categories not catered for under the NSSF and Public Service; though get some short-term gratuity from Public service, and or according to their respective contracts.

¹¹³ Articles, 28,29(1) (c),(d),32&33.The Refugee Act,2006, available <www.refugeelawproject.org/resources/legalres/refugeesact.pdf,> visited on 29.09.07.

¹¹⁴ The National Social Security Fund (NSSF), Act, N0.8 of 1985(Cap 222), The NSSF replaced the Social Security Fund, which had been established by Act 21 of 1967. The NSSF is a compulsory savings scheme that covers all employees in the private sector, including non- governmental organizations and Parastatal bodies that are not covered by the Government's Pension Scheme, also available at< www.nssfug.org,visited >on 20.09.07.

The scheme covers all employers who have five or more employees between sixteen and fifty five years of age¹¹⁵, with the exception of employees under the Government Pensions Act. Social Security Fund Act, a registered employer is required to pay contributions to the Fund for his\her employees every month during which he/she pays salaries.

The employer must deduct five percent from the employee's total gross monthly wage and add ten percent of the total gross monthly wage making a total contribution of fifteen for each employee¹¹⁶. The current coverage includes, invalidity, old age, emigrations, survivors' benefits and withdrawal¹¹⁷.

The criticism of NSSF is that, it does not even comply with the minimum benefits under ILO Conventions Number.102 of 1952, which lists benefits like invalidity, unemployment, injury, sickness, old age, death, provision of Medicare, provision of subsidies for families with children. The current Act vests too much power to the government, with powers to appoint the Board, The managing director, the deputy-managing director, the company secretary¹¹⁸. No investment decision can be made without the approval of the minister¹¹⁹. The qualifications of the board members have not been specified qualifications, yet the board in ordinary corporate governance is supposed to appoint management, but all this is left to the minister. The current board even does not have a workers representative¹²⁰; it is composed of mainly persons with no experience whatsoever in labour rights, the workers who contribute money are not represented. One wonders in whose interest they will be acting, is it the workers or the appointing Authority? If this is answered logically then it follows the way day follows night that the board members will certainly serve the interests of the appointing Authority.

¹¹⁵ *Ibid*, Sections.5 and 6.

¹¹⁶ *supra*, 51, Section 10.

¹¹⁷ *opcite* SS.14 -19 of the Act.

¹¹⁸ *opcite* S.2(2).

¹¹⁹ *opcite* 68, SS.29-34 NSSF Act.(This procedural requirement delays decision making especially on investment issues. The minister also determines the interest rates, while the law provides for a minimum of 2.5 percent, of recent it has been between 3 percent-5 percent, but all this is still below the inflation rates, making benefit inconsequential).

¹²⁰ < www.nssfug.org>, visit the website to see the composition and the profiles of board members.

The fact that the scheme covers jobs where the number of employees is more than five means that a bulk of Ugandans is not covered¹²¹. The fact that workers have not said has led to the mismanagement of the fund, decision that are being made out of greed or sheer recklessness on the part of the Board, are causing colossal losses of pensioners' hard earned money¹²².

The NSSF scheme does not address urgent needs like Medicare in light of the HIV/AIDS; pandemic that has ravaged the labour force in sub-Saharan Africa and Uganda in particular. Sick contributors cannot access their benefits for quality treatment¹²³.

3.2.1 Other Private / In-house Schemes.

Uganda has other Private Insurance schemes managed by insurers and in-house management by big corporations and universities.

The products offered include pensions, health insurance, and education. There is a regulatory body social insurance scheme. UIC regulates generally the insurance business¹²⁴.

3.2.2 National Insurance Corporation

The NIC, has come up with a number of products for some of the most vulnerable persons in the Ugandan Society,

¹²¹ C.W.Okoboi, Balancing the pressures from different Stake Holders, a world Bank Conference on aligning financial supervisory structures with country Needs ,available at, www.info.worldbank.org/etools/docs/library/232746/Okoboi_presentation.ppt,>, Visited on 20.09.07 .(see coverage of NSSF is 3 percent of the Population),eighty percent are employed in the Agricultural sector out of a population of twenty eight million, one hundred ninety five, seven hundred and fifty four people.

¹²²< www.english.people.com.cn/200705/14/eng20070514_374281.html, > visited on 21.09.07.Former labour minister Zoe Bakoko Bakoru has reportedly fled the country, escaping an arrest over corruption allegations in the botched U.S.D.225 Million of National Social Security Fund (NSSF) housing project. Buganda Road Magistrate Margaret Tibulya in February issued arrest warrants for Bakoko businessman Isabirye Mugoya and former NSSF managing director, Leonard Mpuuma after the trio defied court summons to respond to charges of causing NSSF to lose millions. , Bakoko faces charges of abuse of office. The prosecution claimed that while still a minister, she approved a private company to enter into a joint venture with NSSF, which caused NSSF to lose USD .4.7.Million).

¹²³ Tumwesigye D.L. , Social Security and HIV, The Experience of National Social Security Fund,Uganda,pp ,1-17,at p.4,available at,<www.nssfug.org/pdf/Social%20Security%20HIV%20AIDS.pdf>, Visited on 21.09.07.

¹²⁴ STG report (Social Security Group, Stakeholders (Report), pp. 1-450, p.33.

TISP is an investment linked life insurance policy product designed for Teachers and non-Teaching staff in schools who want maximum returns on their savings. The plan also provides financial protection for their families in the event of the policyholder's death as a result of accident. It is significantly a target savings plan that will enhance a healthy savings culture amongst Teachers and non-Teaching staff, the benefits include, Higher and guaranteed interest rate of five (5) per cent

The policy saves as security for loans, higher and guaranteed interest rate of 5%, the policy saves as se¹²⁵, High fund accumulation to meet future financial needs. NIC has a number of other products, like NIC Group Pension (Group Retirement, Deposit Administration Plan – DAP, NIC Death in Service Benefit, NIC Travel Health Insurance, NIC Personal Pension and Annuity-Plus Plan¹²⁶.

The critics argue that most teachers are paid miserably; they may not have the money fro insurance, further, most people are ignorant of the benefits of insurance. Further since it is not regulated depositor's money can easily be abused .It can be subject to abuse like Makerere University, withdrew money workers money from NIC and the money has been squandered by University officials¹²⁷, the University management has in deed Illegally been using the Depositors money to fund their operations, this signifies the level of abuse of private schemes.

3.2.3 In house scheme:

Some institutions operate this scheme among them are Bank of Uganda, and the various Public Universities

Makerere University operates a pension schemes for her employees, both Academic staff and non Academic, the eligibility criteria includes,

¹²⁵Teachers' Insurance Savings Plan, visited available at, <www.nic.co.ug/pg.php?p=Products&s=Pack&c=TISP,>,visited on 29.09.07.

¹²⁶ NIC,Products and Services, <www.nic.co.ug/pg.php?p=Products,>, visited on 21.09.07.

¹²⁷ *Atuhaire A.B et al* , NIC Furious Over Shs14b Makerere Pension Scheme, article in The Daily Monitor November 8,2005,,Uganda,available at< www.monitor.co.ug>,visited on23.09.07.see also www.globalaging.org/pension/world/2005/ugandauni.html,visited on 23.09.07see brief notes below,

“Makerere University and the National Insurance Corporation Limited (NICL), are involved in a bitter row that has put to risk billions of staff contributions to the company's life and pension scheme. The row follows the university's decision reached on October 18, to terminate the staff Deposit Administrative Plan (DAP) with NICL, a life insurance scheme worth US\$14 billion.”

Member who have attained the normal retirement age; or on early retirement from fifty-five (55) years after pensionable service of at least twenty (10) years; or on retirement on medical grounds other, benefits provided for under these Rules shall be payable to a member under any of the following circumstances.

When a member ceases to be employed by the employer before attainment of normal retirement age on such grounds as resignation and termination of service at the instance of the employer; or

Subject to Rule 29, on death in the service of the employer.

Part v, provides for the mode of payment, Regulation 33 provides for insurance of the scheme with a reputable insurance firm in the Country¹²⁸.

The problem with Makerere like any scheme is mismanagement, like abuse of rule 33, empowering the Employers to take personal Insurance; this even gives them the powers to withdraw from such an arrangement, which can be abused¹²⁹, the beneficiaries on retirement cannot get their pension promptly¹³⁰. The University establishment has blatantly squandered the pensioner's money¹³¹. Mr. *John Baptist Kakooza*, a Kampala advocates and

¹²⁸ Makerere University Retirement Benefits Scheme Rules, Rules No. Rules 1-46, available, <www.intranet.mak.ac.ug/.../general/Rules%20%20-scrutinized.doc?PHPSESSID=a77015e3b83abcd2bdcebf1f2a4fc032>, visited on 26.09.07.

¹²⁹ *Ibid* 37. (In an October 21, circular, Makerere University Secretary Sam Akorimo, says the university would terminate the scheme because NICL is shrouded in mystery and that the company may not be in position to pay the 10 percent agreed interest on the contributors' premiums.

The NICL directors have asked for an urgent round table with the stakeholders before Makerere terminates the contract to put the facts right.

"It is important that as contributors, we keep it in mind that the source of all the thrown away money, which possibly would increase with court damages and costs for breach of contract, which would themselves be substantial, is the members' contributions to the DAP," reads *Aliker and Bitature's* letter, copied to all Makerere staff.

¹³⁰ www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=131&newsId=589310http://www.sundayvision.co.ug/detail.php?mainNewsCategoryId=7&newsCategoryId=131.

Pension arrears at MUK. How? A letter commenting on the plight of a retired professor, who has never been paid his pension since his retirement from the University in 1994. (This summarises the predicament of this retired dedicated servants).

¹³¹ *Kibuka S, et al.*, "Makerere Staff Savings to clear Arrears", Article in the Monitor, 28, September, Kampala, available at www.monitor.co.ug, visited on 28.09.07 see also, www.allafrica.com/stories/200709271231.html, Visited, on 29.09.07.

"Makerere. University managers have taken Shs5.6 billion from the senior academic and administrative staff pension savings fund and used it to pay lecturers' salaries, including huge top-up allowances for top administrators.

The anomaly was on Wednesday unearthed by the Makerere University Academic Staff Association - the umbrella organisation for the lecturers - an issue that threatened to

former NSSF Corporation Secretary pointed it out when he said, “although the law provided for Makerere to deposit to the scheme, it was illegal for the university administration to tap on the staff retirement benefits”.

"It is illegal because pension funds are not allowed to be accessed before retirement," said Mr *Kakooza*. "Actually this is raiding pension funds and in that case a crime."¹³²

3.2.4 The Workers Compensation Act.

The Act¹³³ provides for compensation by employers for accidents

The law establishes some occupational health and safety standards. The

Workers' Compensation Act provides compensation under chapter II -

Compensation for Injury, based on monthly salaries, for workers injured or

killed at work Chapter III - occupational diseases. The MGLSD's

department of occupational health was responsible for enforcement of

occupational safety regulations.

In practice inspections are rare, primarily due to the lack of vehicles and funding for inspection trips. There were fatal accidents at several construction projects. The limited occupational safety regulations under the law did not prevent the dismissal of workers who refused to perform dangerous work; however, strong unions in certain dangerous industries protected such workers¹³⁴. The workers in most cases have to sue to recover this money.

3.2.5 Health Insurance for the Poor:

The ministry of Health under the National Health Policy (NHP)¹³⁵, and the

health sector Strategic Plan (HSSP)¹³⁶. Lay emphasis on finding alternative

health care financing for the majority of poor and vulnerable Ugandans.

undermine yesterday's graduation ceremony presided over by the Prime Minister, Prof *Apollo Nsibambi*, and the second last of his four-year reign as chancellor.”

¹³² *Ibid* 71.

¹³³ The Workers Compensation Act. , (No. 8 of 2000), (Chapter 225), Laws of Uganda.

¹³⁴ US. Department of State Country Reports on Human Rights Practices - [2005](#). Released by the Bureau of Democracy, Human Rights, and Labour March 8, 2006 Report on Uganda, available at www.state.gov/g/drl/rls/hrrpt/2005/61598.htm., visited on 01.10.07.

¹³⁵ The Republic of Uganda (1999). The National Health Policy (NHP9), Kampala. The Ministry of Health.

¹³⁶ The Republic of Uganda (2000). The 2000 Health Sector Strategic Plan (HSSP), Kampala. The Ministry of Health.

This is being implemented through tabling of the in Uganda Social Health Insurance Bill, which among others aims at improving the population access to Medicare equitable distribution of health resources throughout the Uganda, so as to provide all sections of the population effective access to the national essential health care package,

Achievement of a gender sensitive, responsive national health system through the mainstreaming of gender considerations in planning and implementation of all health programmes¹³⁷.

The plan will be implemented in peace meals; firstly, it will cover the worker sin formal employment, and then later trickles down to those in informal employment and the general population¹³⁸.

3.3 Conclusion

Uganda having acceded to most international human rights instruments, and others specifically dealing with social security, is obligated to domesticate as a step towards actualisation of this right. The Uganda government is encouraged to ratify ILO Convention 102, which sets the minimum types of benefits. The government must address the short comings in the social security sector, by among others, carrying out the general re forms, promoting a rights based approach to social security, amending the relevant laws including the constitution to provides for social security as a human right, increase regulations of the sector, liberalise, social security provision, inject resources in pro poor services like health Insurance schemes.

¹³⁷ < www.ilo.org/public/english/employment/gems/eeo/law/uganda/moh.htm .>, visited on 02.10.07.

¹³⁸ *Kiriro wa Ngugi* , Social Health Insurance. Interim Report, pp.1-6, p.1,para 11.available at<www.employers.co.ug/uploaded_files/1170422273SHI%20Interim%20Report%20Jan%202007.pdf>, Visited on 02.10.09.

4 CHAPTER FOUR

4.1 Introduction

The premise of this chapter is primarily a comparative study of other countries at more or less the same level like Uganda, with a view of finding out the steps that have been effected to reform the social security sectors, the chapter also aims at drawing lessons and conclusions as a basis of realising the necessary reforms that ought to be effect in a bid to revitalise the social security sector in Uganda. This chapter will look at the reforms in South Africa, Kenya, and Mauritius.

4.2 Social Security Reforms in South Africa:

The South African experience presents a new trend, by way of the regulatory mechanisms. The South African Financial Services Board (FSB) established pursuant to the coming into force of the FSB Act¹³⁹, is financed by the financial service sector itself, with out any government contribution¹⁴⁰. The FSB is mandated to supervise this sector and offer advises to the finance minister¹⁴¹.

FSB acts is required to act within the provisions of the regulatory frame works, and has jurisdiction over, insurances groups, friendly societies, unit trust companies, stock exchanges and financial control, and pension schemes among, others. However FSB is precluded from supervising mergers, takeovers, public issues, listing .The board also provides for qualifications of the Members¹⁴².

4.3 The Kenyan Experience:

The Pension regime in Kenya¹⁴³ is similar to the Ugandan one with the only difference being the Mandatory National Hospital Insurance Scheme (NHIS); this caters for the health and maternity problems of members. The Kenyan system is open to even members of the informal Sector.

There have been recent changes in the Kenyan systems, which include the following:

¹³⁹ S.2. The Financial Services Board (FSB) Act, 97 of 1990, available at <www.fsb.co.za,> , visited on 10.10.07.

¹⁴⁰ *Ibid* , ss.15a,16 and17.

¹⁴¹ *opcite*.S.3(a),(b).

¹⁴² *opcite*, S.5.

¹⁴³ The National Social Security Fund (NSSF) Cap. 258,<www.nssfkenya.com/docs/laws_of_kenya_nssf_act.pdf,> visited on 10.10.07.

- (i). Maternity benefits; this entitles beneficiaries to Kenya shillings 2500, for the first four deliveries including stillbirth.
- (ii). Funeral benefits upon the death a contributor to NSSF (Kenya), the Fund pays Kenya Shillings 2,500 as burial expenses.
- (iii). The contributors to NSSF Kenya will be receiving life long payments instead of one lamp sum.
- (iv). Self- employed. NSSF Kenya is to extend the coverage to the “*Jua kali*”(members of the informal sector) and the self-employed who have affixed base.
- (v). Pre- retirement benefits, NSSF Kenya will introduce new pre-retirement programmes to cater for specialised medical treatment and loss of earnings due to injuries¹⁴⁴.
- (vi). Regulations. The Retirement Benefits Act¹⁴⁵, establishes the Retirement Board Authority (RBA), as a body corporate with the mandate of regulating social Security in the Country¹⁴⁶.

The Act provides or the composition is as follows, the chairman appointed by the Minister from members who are non public officers, chief executive officer, Permanent Secretary in his ministry or his representative, the Commissioner of Insurance, the chief executive officer capital markets Authority, members, not being public servants appointed by the minister on account of their expertise in insurance law, banking, social security schemes or actuarial studies¹⁴⁷.

The functions of the board include, regulation and supervision of retirement and pension benefits schemes, the protections of the interest of members and sponsors of the pension sector, the promotion of development of the retirement benefits sector, to advise the minister on national policies to be followed with regard to retirement benefits schemes and to implement all government policies relating thereto, and finally to perform all such other functions related to the pension sector¹⁴⁸.

4.4 The Mauritius Experience.

4.4.1 Background:

Mauritius boasts one of the most advanced social security system in Africa. The Country a full ministry of Social Security, National Solidarity senior

¹⁴⁴ Ss.19-24 (part v).

¹⁴⁵ S.3 The Retirement Benefits Act, 3 of 1997(as amended)(Revised edition 2000, Incorporating the Retirement Benefits (amendment), Act, 1998). Printed and Published by the Government Printer Nairobi, available on line at www.rba.go.ke/pdfs/Retirement%20Benefits%20Act1.pdf, visited on 10.10.07.

¹⁴⁶ . S.5, RBA.

¹⁴⁷ S.6 RBA.

¹⁴⁸ S.5 ,RBA.

Citizens welfare and Reform Institutions ¹⁴⁹, to over see and administer pensions. The Countries pension system is divided into three tiers;

Level one:

Basic non-contributory pension and social aid . This entitles all citizens of over sixty (60) year's of age¹⁵⁰, the government also assists destitute and traumatised by providing funds in case of physical impairment, abandonment by spouse, imprisonment, sudden loss of employment and old age¹⁵¹.

Level Two:

Contributory benefits pensions and savings scheme, this scheme has three structures within this level namely;

The non-pension fund (NPF), these covers all the employers and employees of the private sector, the pension schemes for civil servants and public employees and the National Savings Fund introduced in 1995, as a means of covering inflation and reducing excess liquidity.

(i) This is mandatory scheme, which is compulsory for all private employer sand employees but optional for self-employed

(ii) The NSF is mandatory national savings scheme, and collects money only from employers.

For both NFP and NPF, the contributor's money is invested and there accounts are credits with dividends.

The scheme for civil servants however is non-contributory but funded.

Level Three:

Voluntary Retirement schemes: There are about one thousand (1000)¹⁵², such schemes that operate at the same plane with NPF and NSF.

Contributions: This are in three categories namely standard, with the employer contributing three (3) percent, the employee six (6) per cent, totalling to nine (9) per cent.

Higher Employee contributes five (5) per cent, the employer eight point five (8.5), totalling to thirteen point five (13.5) per cent.

¹⁴⁹ www.gov.mu/portal/site/ssnssite/menuitem.ccc8c746aa08f70e8f77861084d521ca/, visited on 16.10.07.

¹⁵⁰ Ss, 3 and 10 National Pensions Act (NPA), Act, 44 of 1976, available at www.gov.mu/portal/goc/ssns/file/natpensactnew2.doc, visited on 15.10.07.

¹⁵¹ S.8, Act, 44 Of 1976.

¹⁵² Dimitri V, The role of Occupational Pension funds in Mauritius. <www.worldbank.org/html/FinancialSectorWeb.nsf,> visited on 16.10.07

Prescribed the employee contributes three (3) per cent, the employer ten point five (10.5) per cent, totalling to thirteen point five 13.5 percent.

There is a ceiling contribution to a figure of Rupees 6,435 per month.

The NPF fall within the mandate of the ministry Social Security,

It has three organs namely;

(a) The Board¹⁵³ is appointed by the minister for social security and is represented by stakeholders.

(b) The Investment committee, this is responsible for all the investment decisions of the fund and is constituted by stakeholders and chaired by the Secretary of finance and an expert in finance an investment advisor and management.

(c) Mandate of the Board:

(i) The Board is expected of its own accord to advise the minister on any matter relating to Act.

(ii) The Board also advises the minister on any matter referred to it by the Minister¹⁵⁴.

In addition to the a fore said, the sector has the following objectives,

Paying anon contributory pensions for all, providing social aid and assistance, enhancing the welfare of vulnerable groups, advising government on issues pertinent to disabled, elderly and vulnerable, assistance of victims of natural disasters, to provide financial assistance for treatment both locally and overseas, to provide income support schemes for the poor to purchase rice and flour, to provide financial assistance to Non-Governmental organisations, to manage NPF (Contributory pension scheme) and NSF pension schemes respectively¹⁵⁵:

The non-contributory pension is meant for citizens of over sixty (60) years of age, and non-citizens who have been resident for over fifteen (15) years.

There is also a well-maintained documentation system where every national has an identity card number, which also doubles as social security number:

¹⁵³ S.35, Act 44 of 1976, available at www.gov.mu/portal/goc/ssns/file/natpensactnew2.doc..visited, on 16.10.07.

¹⁵⁴ S.32, Act 44 of 1976.

¹⁵⁵ Objective of the Ministry of social security, available at www.gov.mu/portal/site/ssnssite/menuitem.579d9dd8039a380e8f77861084d521ca/, visited on 16.10.07.

4.4.2 Authorised Investments:

The Mauritius authorities have designed investments strategies and guidelines for NPF providers, this include,

- (i) Up to fifteen (15) per cent of Fund value in the housing sector.
- (ii) Not exceeding fifteen (15) per cent as loans to the Central Bank of Fund value.
- (iii) Not exceeding ten (10) per cent as loans to the other organisations.
- (iv) Up to ten (10) per cent value in the Mauritius stock Exchange.
- (v) Not exceeding twenty five (25) per cent of the fund in overseas investments.
- (vi) Investments in Government stock the amount not exceeding fifty (50) per cent of the value.
- (v) Grant loans to institutions for development projects, this have to be guaranteed by the government and must have comparable yield to government bonds¹⁵⁶.

4.4.3 Advantage

Funding by the state of all non-contributory pensions, and all schemes, marching the contributions by fifty (50) per cent, contributing for civil servant sand guaranteeing when lent out.

4.4.4 A critique

Firstly the Civil service is not contributory; secondly owing to governments huge role the sector is not free from government interference.

¹⁵⁶ *Dimitri V.*, the role of occupational pensions fund in Mauritius . World Bank policy Research working paper number 3033, 2003, pp 1-33, p.26. available at, [www.worldbank.org/html/FinancialSectorWeb.nsf/\(attachmentweb\)/3033/\\$FILE/3033.pdf](http://www.worldbank.org/html/FinancialSectorWeb.nsf/(attachmentweb)/3033/$FILE/3033.pdf), > visited on 17.10.07.

4.5 Lessons for Uganda from the case studies.

The case studies are relevant in that certain lessons can be learnt there from, as follows;

- (i) It can be learnt that there is not specific approach for reform; each country can design what will best work for it.
- (ii) Investment decision must be made prudent, by balancing the need to make profits and the safety of contributor's money.
- (iii) There should be emphasis on management and good governance in social security issues. There is a move towards participation of stakeholders and free will of contributors to join the schemes of their choices.
- (iv) The expansion of social security protection to cover informal sector is becoming a modern trend.
- (vi) It is a common trend that basic mandatory contributions are restricted to National Institutions.
- (vii). Another observation is that funding and maintenance of social security has become burdensome to countries world over.
- (viii) There is a global trend towards liberalisation of social security. However, the role of the state is still relevant both in policy, regulation and planning the social security sector.
- (ix) There is also emphasis on regulation of the sector, using different strategies, either national regulator like South Africa, Mauritius or a multi sectoral approach like Kenya.
- (x) There is a move towards provisions of housing as a common phenomenon.
- (xi) There is a need to emphasise Professionalism from the lessons learnt from other countries, management must be composed of technically qualified and experienced professionals not politicians like in Uganda's case.

(xii) There is also a need to involve workers representatives as major stakeholders; it's pathetic that in Uganda, the entire Board of NSSF does not even have a workers representative.

4.6 Conclusion

The different case studies do not have a rule of thumb on whether social protection should be mandatory and voluntary for some. What is common however is that there is a trend that emphasises compulsory contributions for members of the formal sector and voluntary contributions for members of the informal sector.

5 CHAPTER FIVE: Recommendations:

5.1 Introduction

This chapter analysis the entire thesis, aspects that have been covered, like the right to social security, the position o this right in international, what position of the law and practice in Uganda, the comparative discourse, Uganda government is complying with her obligations. It will also cover the recommendations and finally a conclusion

5.1.1 Specific Recommendations.

The reforms necessary in the socials security sector in Uganda may be clarified as Legal and policy reforms, Institutional and Change in Administration and management.

5.1.2 Legal and policy Reforms.

There is need for an over haul the entire legal regime governing pensions, it is therefore suggested that as a manifestation of seriousness to her obligations in international law, the government should ratify ILO Convention 102, which provides for the minimum benefits, the government should also cause the amendment of the Constitution to include the right to social security expressly, which should then be given effect by way of justiciability, the government is also advised to reform the laws governing civil service and armed forces pensions, civil servants entering the service should be mandated to pay for their pensions like any other persons.

The constitutional protection of social security and pension rights should be extended to cover all citizen and residents without any discrimination whatsoever. The only constitutional protection is Articles 254 of the 1995 constitution, which only covers civil service employees, yet most Ugandans are not civil servants. A comprehensive law consolidating all the various

pieces of existing retirement scheme (the Mauritius model), social security institutions, should be enacted, which will be tailored in accordance with the necessary reform structures, the new law, therefore should among others provide for, registration licensing, funding, governance of all social security and pension providers, operators and other stake holders in Uganda, establish an independent regulator, her duties and responsibilities, three tier social security system, firstly, social assistance, disaster preparedness and guaranteed minimum pension for old age. The second tier should comprise basic mandatory benefits financed through defined contributions, the third, should consist of additional mandatory and voluntary benefits from optional savings.

The law should establish minimum standards for national providers of basic mandatory social security benefits and other providers should create an obligation for all citizens and residents to register and hold a national social security number.

5.1.3 Institutional Restructuring

The new regulator should be established for the entire social protection sector, this should be a strong, well-funded organisation, independent from government and players in the sector, the South African model can be considered. The regulator, be taken as a single specialised non-bank financial regulator to cover pensions, insurance, capital markets, and other social security and pension bodies. The duties of the regulator should include registration and licensing of providers, by considering their ability to meet minimum criteria for such business like, competence, legal status, competencies in handling funds, the regulator, should regulate investments, by setting limits for the nature and portfolio of investments that fund can venture into, this will be aimed at protecting members money as well as getting Economic returns from their contributions, standard setting is another area, which will ensure compliance with law by all licensed operators, minimum expected returns, liquidity limits ,and qualifications of the players., the regulator will be the law enforcement agency, with powers

to prosecute and ensure compliance by employees, employees and providers, the regulator should set sound financial management policies inform of accounting, financial reporting obligations, audited reports, policy and financial disclosure, issuance of national social security numbers, public education and mass mobilisation, levying of penalties against defaulter, administration of social assistance fund, creating mandatory subscription for all eligible persons in Uganda, make provisions for unfettered portability of contributions and accrued benefits between providers an, operators, employers and other stake holders, amend taxation laws to boost incentives for increased savings, defining the scope of the benefits and stating the basic mandatory benefits, defining, and providing for social assistance, it's funding and administration, provide of panels of investment experts and or registered fund managers and their qualifications, expertise, and or experience ,provide for state guarantees in when investing, provide for minimum pensions and any other matters that may be agreed upon from time to time after due consultation with stake holders.

5.1.4 Administrative and Management.

The problems affecting the social security sector in Uganda go beyond Legal and Institutional, to administrative. There should a right-based approach to social security. The government does not consider social security as a human right, contributors, should have a say on management, the new forms should make it compulsory for a workers representative to be in the Board, unlike the current management of NSSF, in which there is no single worker's representative.

5.1.5 General Recommendations.

Liberalisation of the sector .For the pension sector to be efficient, there is need to liberalise the sector, by removing the monopoly status of NSSF. A three course system be set, the first being for social assistance, disaster / crisis assistance to victims of natural disasters. The second one is to cater

for basic mandatory and lastly a course to cater for additional mandatory and voluntary benefits. The basic mandatory should include, age, survivors, invalidity, major medical, surgical and maternity, insurance for unemployment, further education, home/property ownership, burial in case of loss of a defined relative.

The additional mandatory benefits should include, child education, injury at work whether formal or informal, Voluntary benefits may include, additional age benefits, basic health care, home / property ownership, self-education/ further education, any other benefits that the regulators may deem fit.

.It also recommended that the country introduce a universal identification system, where every citizen or resident should be issued with such a social security number, that can be used for accessing other services and benefits.

The social security number will be used for contributions by even members of the non-formal sectors, this is the situation in Mauritius, and the Scandinavia.

It is recommended that regular indexation be carried out so that benefits remain with economic value, the payment should be in accordance with the prevailing Social- Economic situation prevailing at the time.

Provision of Investment guidelines .In order to avoid the mismanagement of the pension funds by the Managers / service providers, the regulatory authority should provide a comprehensive and clear investment guidelines, covering *inter alia*, a comprehensive and clear criteria, for investments including the percentage of the funds, qualifications for members ships of the governing bodies, qualifications of managers, allowable investments, approved benefits that may be paid, this will reduce the mismanagement of pensioners money.

Health benefits be included .It is recommended that the issue of health would be included especially in light of the HIV/AIDS scourge¹⁵⁷, the contributors should be allowed to access their money for Treatment, and for other r chronic conditions like diabetes, cancers, and any other health complications, there must not be any discrimination whatsoever on sero status and other grounds.

Regulation by an independent body. It is recommended that the pension sector be regulated by an independent body, composed of professionals, which will regulate and control the activities of the sector. The current system should be over hauled, since it only caters for two categories, NSSF for private sector, and public service pension for civil service.

The pension industry in Uganda is currently experiencing a regulatory lacuna. There is need for a multi pillar competitive system as opposed to a single pillar system. This will effectively contribute towards diversifying the economic as well as demographic and political risks within the pension sector¹⁵⁸.

It is further recommended that in the absence of coverage, for the Informal sector, benefits should be extended, through putting in place suitable voluntary schemes approved by the regulator be put in place by the providers, they should be voluntary, their should be no minimum, owing to the fluctuating earnings, the amounts must be determined by agreement between the members and the providers, coverage has to be done in phases commencing with organised informal sectors, like market vendors, Hawker,

¹⁵⁷ *J.Maumba*, “Free our money in NSSF”, Letters to the Editor / October 21 - 27, 2007, Sunday Monitor, para (vi) *see* details How will you (NSSF) have helped members to save for the future when you are crippling their children/dependants? It has been reported that some members are now deliberately infecting themselves with HIV/Aids so as to qualify for early beneficiary status. If this is really true then we have lost. Life is no longer worth living

available at < www.monitor.co.ug/sunday/letters/index.php>, visited on 20.10.07.

¹⁵⁸ *OWINYI. M.*, “Time to regulate pension savings”, The Sunday monitor, Monday, October 22, 2007,available at< www.monitor.co.ug/sunday/business/bus10213.php>, visited on 20.10.07.

cycle transporters “*boda- bodas*”, lorry transport employees, fishermen, wheel barrow transporters “*gadi -gadi*”, all through their associations, government is encouraged to top up the funds contributed by the informal sector, the benefits should be (need based) include, micro health insurance, housing, school fees, burial among others, in all this a rights based approach has to be considered.

Coverage for all for all Formal employees, it is recommended that

The contribution should be made mandatory for all persons in formal employment without any special treatment. Every person in formal employer-employee relationship should make regular social security contributions to a licensed provider or operator at appoint of receiving payment (deducting from the source). Every employer regardless of the number of employees and any self employed person must register with a licensed provider, every employer should be obligated to deduct and remit to a licensed provider of the employees choice a mandatory contribution, any registered person who is not in formal employment may voluntarily register with any provider of his/her choice.

It is recommended that public service pension schemes for civil servants, the Armed forces, and police be funded and should form the core of a second national provider, public servants should be given equal treatment with all other citizens and residents, the non funded system should be replaced with a contributory social security system while gradually eliminating pensioners and near retirees under the present (non-funded) pension regime.

The present public service pension regime should form the core of the second tier, but should not exclusively be for public servants, but must be open and compete with other providers in the markets. Current civil servants should given an option to change or remain, if they have qualified say after

fifteen (15) years, then they should be paid their benefits. All new entrants to the service should be made to pay their contributions to the new scheme and government like any other employer should also start making her contributions.

Until the new provider is in place all new entrants should contribute to a suspense account that should be opened with the Central Bank, but funds would be transferred in future to respective service providers of the contributors choice. Public servants should be given the liberty to join a provider of their choice. The Government is encouraged to review the salaries of public servants considering the proposed employee contributions so as to ensure equity between the previous and the new pension regime .All non citizens employed by the governments in the public service or the military), should contribute unless there are exceptional circumstances like a reciprocal agreement taking care of their social security.

The schemes must have the relevant documentation like trust deeds filed with the regulators, rules public available to all members, membership information book lets on any matters like investments, policies for insured schemes be availed, and regular reports of the schemes performance and publications of statements of accounts. These documentations should meet the set standards that will be put by the regulator. This will give the contributors *locus standi* in case of a violation.

It is further recommended that, a stakeholder Board be established, this should be a Board of Directors of some sort, or Trustees for the national providers. The Board should be representative of stakeholders, interests but not limited to contributing employers and employees as well as government. As well as all licensed private schemes must comply with the set standards set by the regulator; this will serve to protect the interests of contributors.

There must be an Alternative dispute resolution mechanism, before recourse to courts, like an Administrative Tribunal, Arbitrator.

Finally, it is recommended that, NSSF, be transformed into a pension provider capable of responding to the market demands and to compete favourably. NSSF, be turned to a licensed service provider, should include other benefits and go beyond the four benefits it's currently providing, should provide for mid term benefits. Government interference should be minimal and should be limited to appointment of the Board of directors, which in turn should appoint management. The new structure should provide for a stakeholders Board, should provide for a panel of investments experts, and should improve on contributor's returns by raising the interest rates to the market value prevailing. Should adapt to the necessary Legal reforms in a liberalised market environment.

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