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**SOCIAL SECURITY LAW AND POLICY REFORM IN  
TANZANIA WITH REFLECTIONS ON THE SOUTH AFRICAN  
EXPERIENCE**

**BY**

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DOCTOR OF PHILOSOPHY  
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UNIVERSITY OF CAPE TOWN.  
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Co-supervisor: Associate Professor Bonaventure Rutinwa**

## DECLARATION

I declare that this thesis submitted for the degree of Doctor of Philosophy at the University of Cape Town has not been previously submitted by me for a degree at this or any other university, that it is my work and that all referenced materials in it have been duly acknowledged.

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Tulia Ackson

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## ABSTRACT

Social security provisioning in Tanzania is grossly inadequate. This is true when one considers the fact that social security schemes, disappointingly, cover less than 6 per cent of the total labour force and offer unacceptably low levels of benefits. Other issues are the lack of coordination between the fragmented social security schemes and across countries, and the non-observance of good governance principles in the administration of social security schemes.

The aim of this study was to investigate these problems by adopting a human rights approach, of which the South African Constitution of 1996 serves a credible example. South Africa has constitutionalised socio-economic rights, on the basis of which the right to social security is justiciable in the courts of law. The Tanzanian Constitution of 1977, on the other hand, merely considers social security as one of the directive principles of social policy, which are not enforceable in the courts. South Africa has been used as a point of reference for a number of recommendations made in this study, including that Tanzania should consider constitutionalising social security rights in order to deal with the problems identified.

In relation to the problems stated above, the study tried to answer the following questions: whether the current social security system provides adequate coverage for the people it purports to cover and whether the social security benefits are adequate. Other questions included the issues of uncoordinated social security schemes in the country and across borders, and the non-transferability of social security benefits.

The findings of this study show that social security law in Tanzania is inadequate and unable to fulfil the primary purpose of social protection, that is to say, the protection of the population from the social risks which may befall them and which make them unable to provide for their needs. This is because, firstly, the number of people covered by the existing schemes is very low as the Tanzanian social security system follows the (International Labour Organisation's) formal employment-based social security approach. In this respect, it is recommended that extension of coverage should be prioritised and that this should preferably be done through the establishment of specialised schemes for the excluded groups instead of expanding the scope of the current schemes which were initially tailored to cover formal sector employees.

Secondly, social security benefits offered by the existing social security schemes in Tanzania are inadequate, both in terms of numbers and quantum. While the number of benefits offered is informed by the narrow list of the ILO *Convention on Social Security (Minimum Standards)* of 1952, the low levels of benefits are caused by lack of indexation of benefits in payment, and the deficient use of solidarity principles such as income redistribution and intragenerational and intergenerational equity. The study recommends clear recognition of these factors if adequacy of benefits is to be guaranteed in social security provisioning. Besides this, the study emphasises the need to ensure that good governance principles are incorporated in social security law.

A number of recommendations have been made. These include the fact that there is need for the extension of coverage to the excluded, provision of adequate social security benefits to those who are covered, amalgamation of and/or coordination between the fragmented social security schemes and the adoption of good governance principles, which would embrace the participation of stakeholders in decision making, and would ensure transparency and accountability in the administration of social security.

DEDICATION

*To my long suffering husband, James Andilile Mwainyekule,*

&

Our parents,

*The late Ackson Mwansasu and Nkundwe Nsasu, and*

*James Mwainyekule and Betina Kibinga,*

For their love and unrelenting prayers for our success...

University of Cape Town

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Protocol on the Facilitation of Movement of Persons in the SADC adopted in 2005.

SADC Social Charter of Fundamental Social Rights of 2003.

Southern African Development Community Treaty of 1992.

Universal Declaration of Human Rights of 1948.

United Nations Convention Relating to the Status of Refugees of 1951.

## LIST OF ABBREVIATIONS

BCLR	Butterworths Constitutional Law Reports
CAP	Chapter
CARICOM	Caribbean Community
CC	Constitutional Court of South Africa
CHFs	Community Health Funds
CHODAWU	Conservation, Hotels, Domestic and Allied Workers Union (Tanzania)
CO.	Company
COIDA	Compensation of Occupational Injuries and Diseases Act of 1993
DSE	Dar es Salaam Stock Exchange
EAC	East African Community
ECHR	European Court of Human Rights/European Convention on Human Rights
ECR	European Court Reports
EU	European Union
GDP	Gross Domestic Product
GEPF	Government Employees' Provident Fund
GN	Government Notice
ICFTU-AFRO	International Confederation of Free Trade Unions – African Regional Organisation
ILO	International Labour Organisation/Office
ISSA	International Social Security Association
LAPF	Local Authorities Provident Fund
LRT	Law Reports of Tanzania
LTD.	Limited
MISC.	Miscellaneous
NHIF	National Health Insurance Fund
NSGRP	National Strategy for Growth and Reduction of Poverty
NSSF	National Social Security Fund
PAYGO	Pay-as-you-go
PBFPT	Property and Business Formalisation Programme for Tanzania (MKURABITA)

PFA	Pension Funds Adjudicator
PPF	Parastatal Pensions Fund
PSPF	Public Service Pensions Fund
PSRB	Political Service Retirement Benefits
PUT	Pensioner's Union of Tanzania
SA	South Africa
SCA	Supreme Court of Appeal (South Africa)
SADC	Southern African Development Community
SEWU	Self-Employed Workers Union (South African)
SMEs	Small and Medium Enterprises
SSS	Social Security System (Philippines)
TAZARA	Tanzania – Zambia Railway Authority
TLR	Tanzania Law Reports
TzPPA	Tanzania Participatory Poverty Assessment
UMASIDA	Mutual Society for Health Care in the Informal Sector in Dar es Salaam (Umoja wa Matibabu Sekta Isiyo Rasmi Dar es Salaam)
URT	United Republic of Tanzania
UWAMBE	Association of Retirees in Mbeya (Umoja wa Wastaafu Mbeya)

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## CHAPTER ONE

### INTRODUCTION AND BACKGROUND TO THE STUDY

#### 1.0 INTRODUCTION

Social security systems exist in almost every society. Tanzania and South Africa are not exceptions. The concept of social security in the two countries has been influenced by traditions and customs, colonialism, the International Labour Organisation (ILO) standards, and, in the case of South Africa, apartheid.

In traditional society, social security referred to the welfare of each individual person. Welfare was ensured by placing the responsibility of taking care of the needy and the indigent on the able-bodied. During the colonial period, social security was considered to be a "right" for the colonialists and a "privilege" for the indigenous minority who were working for the colonialists. In South Africa, social security meant protection against social risks according to one's race. Today, according to the ILO *Convention on Social Security (Minimum Standards)* of 1952,<sup>1</sup> social security is for employees in the formal sector through public measures.<sup>2</sup> This study argues that not all the formally employed are covered by the existing social security systems in the two countries, and that social security should also encompass private and individual measures.

This is a study of Tanzanian social security law. The study starts from the premise that current social security law in Tanzania is inadequate to protect the citizenry and needs to be reformed. This need is based on the fact that the Tanzanian government has both national and international obligations to guarantee people's social protection. The study uses the South African experience of social security issues to reflect on the problems facing Tanzania. The identified lessons will be used to inform the legal reform endeavours which are underway. It is therefore argued that for a better informed reform process, consideration should be given to what other jurisdictions have done in respect of social security and to the challenges and problems that other jurisdictions have faced in the course of social security provisioning.<sup>3</sup>

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<sup>1</sup> ILO Convention No. 102.

<sup>2</sup> More discussion about different approaches to social security is provided in chapter two of this thesis.

<sup>3</sup> See C. Fenwick and Kalula, E., "Law and Labour Market Regulation in East Asia and Southern Africa: Comparative Perspectives", *The International Journal of Comparative Labour Law and*

This chapter introduces the study generally by looking at the historical development of social security provisioning in Tanzania as the focus country and South Africa as an example. This is done by considering the development of social security from the traditional social security schemes to the formal social security systems. Consideration is also given to social security laws which existed at different times in the course of safeguarding social security administration.

This chapter also explains the significance of the study, the scope and delimitations of the study, the definition of key terms used and the research questions investigated. It also describes the methodology used in the data collection process and provides an overview of other chapters. The reason for South Africa being chosen as a role model is explained in this chapter. An overview of the social security systems in the two countries follows.

### 1.1 BRIEF OVERVIEW OF SOCIAL SECURITY SYSTEM IN TANZANIA

Social security in Tanzania has a long history from the pre-colonial era to the present. Before colonialism, traditional social security arrangements ensured that all members of the society were cared for. The elderly, children, the disabled and the indigent were entitled to support from the society as a whole. African socialism, as Nyerere argued, was manifested in the traditional social security coverage.<sup>4</sup> In pre-colonial societies social exclusion for any reason, apart from execration as a punishment for antisocial behaviour, was never experienced.<sup>5</sup> Nyerere argued further that:

[a]part from the anti-social effects of the accumulation of personal wealth, the very desire to accumulate it must be interpreted as a vote of no confidence in the social system. For when a society is so organised that it cares about its individuals, then, provided he is willing to work, no individual within that society should worry about what will happen to him tomorrow if he does not have wealth today. Society itself should look after him, or his widow, or his orphans. This is what traditional African society succeeded in doing. Both the rich and the poor individual were completely secure in African society...nobody starved, either of food or of human dignity, because he lacked personal

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*Industrial Relations*, Vol.21/2, pp. 193-226, Summer, 2005, at p. 194. See also Watson, A., "Legal Transplants and Law Reform" *the Law Quarterly Review*, Vol. 92, January, 1976, pp 79 – 84, at p. 79.

<sup>4</sup> J.K. Nyerere, *Freedom and Unity/Uhuru na Umoja*, A Selection from Writings and Speeches 1952 – 1965, Oxford University Press, Dar es Salaam, Nairobi, Lusaka, Addis Ababa, 1966, (Reprint 1970), Essays No. 37, pp. 162 et seq., at p. 164.

<sup>5</sup> A. Bossert, *Traditional and Modern Forms of Social Security in Tanzania: an Examination of the Conditions of their Development*, University of Augsburg, German, 1987 at p.6.

wealth; he could depend on the wealth possessed by the community of which he was a member.<sup>6</sup>

The introduction of a cash economy by the colonial powers, the Germans and the British, from 1885 to 1918 and from 1918 to 1961 respectively, and the attendant legal systems undermined traditional social security arrangements. This can be exemplified by the introduction of the concept of private property which was a foreign concept in the traditional social security arrangement as interdependence was more practised than individualism.<sup>7</sup> The money economy went hand in hand with the emergence of modern social security which depended on the creation of funds for social security. This impaired the effectiveness of traditional social security which could not provide money for modern services like medical services. As Dau sums up; “[a]s societies became more industrialised and dependent on wage employment, it was no longer possible to rely upon the traditional system of social security.”<sup>8</sup>

This phenomenon can be exemplified by the enactment of social security laws in cases of illness and accidents for the employed minority. Among others, these included the *Native Authority Ordinance* of 1926,<sup>9</sup> and the *Employment Ordinance* of 1957.<sup>10</sup> The urban poor and the population in the rural areas, who largely remained at subsistence production levels, were not considered capable of participating in most contributory social security schemes. At the same time, there were no alternative schemes devised to service their needs. Legislation like the *Master and Native Servants’ Ordinance* of 1923<sup>11</sup>, the *Provident Fund (Government Employees) Ordinance* of 1942,<sup>12</sup> the *Provident Fund (Local Authorities) Ordinance* of 1944,<sup>13</sup> and the *Workmen’s Compensation Ordinance* of 1949<sup>14</sup> covered only employees and

<sup>6</sup> Nyerere, *loc.cit.*

<sup>7</sup> See the case of *Gwao bin Kilimo v Kisunda bin Ifuti* Civil Revision No. 1 of 1938 where the Court stated that “...even if the existence of a native law allowing the seizure of a father’s cattle in compensation for theft of cattle committed by his son were proved, it would not justify the attachment of a father’s property in execution of a civil judgement against his son...”

<sup>8</sup> R.K. Dau, *Extending Social Security Coverage: Social Security Coverage through Micro-insurance Schemes in Tanzania*, A paper presented at the Meeting of Directors of Social Security Organisations in English speaking Africa, organised by the International Social Security Association, held in Banjul, the Gambia, 7 – 9 October 2003, at p. 2. See also Shivji, I. G., *Law, State and the Working Class in Tanzania*, James Currey Ltd, London, 1986, at p. 165.

<sup>9</sup> Repealed by *Native Authority Ordinance (Repeal) Act*, 1963, Act No. 14 of 1963.

<sup>10</sup> Cap 366 of the Revised Laws of Tanganyika, repealed by the *Employment and Labour Relations Act*, of 2004, Act No. 6.

<sup>11</sup> As amended in 1954 and repealed by section 161 of the *Employment Ordinance* of 1957.

<sup>12</sup> Cap. 51 as amended in 1962.

<sup>13</sup> Cap 53 repealed by s. 36(1)(b) of the *Local Government Service Act* of 1982, Act No. 10.

<sup>14</sup> Cap. 263 of the Revised Laws of Tanganyika, as amended in 1963.

workers in the formal sector, thus excluding the majority who did not fall into the two categories.

Since independence, Tanzania has gone through a number of economic approaches. The most significant are the centralized-planning phase and the transition to a market economy that is still under implementation.<sup>15</sup> These changes are not unique to Tanzania because several other African states have experienced the same changes. Examples of these countries include Egypt, Ghana, Guinea-Bissau, Mozambique and Algeria which, in broad terms, went through centralised governance as was the case in Tanzania.<sup>16</sup>

Under the centralized-planning system, concerns about social security were minimal. This is because the Government, as part of the socialist orientation of its policies, assumed the role of providing for people who were excluded from the ambit of the schemes covering the formal sector. Hence children, the indigent, the disabled, elderly people or any person afflicted with an infirmity were provided for by Government-funded schemes in the form of free provision of health, education, and food subsidies.<sup>17</sup> This lasted from 1967, when socialism began, to 1985 when socialism, one could say, was publicly buried.

The shift to a free market economy has brought new challenges. The Government has, through various reform measures, relinquished its former responsibilities to provide for people and secure them against the risks of old age, orphaning, infirmity due to illness, indigence and the like.<sup>18</sup> These reforms were caused by, among other things, the structural adjustment programmes which were imposed by the World Bank and the International Monetary Fund.

The formal sector is currently covered by various schemes. These include the National Social Security Fund (NSSF),<sup>19</sup> which covers only employed persons in the

<sup>15</sup> H. K. M. Msalangi, *The Impact of Structural Adjustment Programmes (SAP) on Social Security in Tanzania*, Parastatals Pension Fund (PPF) Fifth Clients' Seminar, 28 – 30 September 1994, A.I.C.C Arusha, Tanzania, at p. 4.

<sup>16</sup> See C. Sandström, *Exporting Marx Instead of Smith to Africa*, accessed through <http://www.lewrockwell.com/orig6/sandstrom2.html>, on 8 October 2006. See also Panford, K., *African Labor Relations and Workers' Rights, Assessing the Role of International Labor Organisation*, Greenwood Press, United States of America, 1994, at p. 5. See further Shivji, I. G., "Introduction: The Transformation of the State and the Working People," in Shivji, I. G., (ed), *The State and the Working People in Tanzania*, CODESRIA, Dakar, 1986, pp. 1-15, at p. 3.

<sup>17</sup> Msalangi, *op cit*, at p. 6. See also Kannan, K. P., *Social Security, Poverty Reduction and Development: Arguments for enlarging the concept and coverage of social security in a globalizing world*, International Labour Organisation, Geneva, 2004, at p. 14.

<sup>18</sup> Msalangi, *op cit*, at pp. 6-7.

<sup>19</sup> Established under the *National Social Security Fund Act of 1997*, Act No. 28 of 1997.

private sector, as well as the Parastatal Pensions Fund (PPF),<sup>20</sup> which covers employees in the government parastatals and the private sector not covered by the NSSF. Other schemes include the Political Service Retirement Benefits (PSRB),<sup>21</sup> the Public Service Pensions Fund (PSPF),<sup>22</sup> the Government Employees' Provident Fund (GEPF),<sup>23</sup> and the Local Authorities Provident Fund (LAPF),<sup>24</sup> which cover only the formal sector for the relevant employees specified under these laws.

The existing social security schemes do not take into account the Constitutional amendments that have been made, including the 1984 amendments which enshrined peoples' rights and freedoms.<sup>25</sup> Among other rights, Article 14 of the Constitution provides that every person has the right to life and protection of his/her life by the society in accordance with the law. On the basis of this constitutional right, one can ask in accordance with which law, since social security laws are fragmented and are discriminatory in terms of coverage. This is one of the challenges that Tanzania is facing in its legal reforms. This study explores what can be done to establish a better social security system for the improvement of the lives of excluded Tanzanians who constitute the majority.

Moreover, a lack of policy guidelines is another feature of the Tanzanian market-oriented social security system. The new approach has been to allow members of the public individually to arrange their social security by purchasing suitable products from the market. Providers of social security products have emerged and compete to provide such products to those who are able to purchase them. These providers include the health insurance and old age pension providers. However, policies have recently been introduced which indicate that the Tanzanian Government is committed to social security reforms. These include the *National Social Security Policy* of 2003 and the *National Strategy for Growth and Reduction of Poverty (NSGRP)* of 2005.<sup>26</sup>

<sup>20</sup> Established under the *Parastatal Pensions Act* of 1978, Act No. 14 of 1978.

<sup>21</sup> Established under the *Political Service Retirements Benefits Act* of 1999, Act No. 3 of 1999.

<sup>22</sup> Established under the *Public Service Retirement Benefits Act* of 1999, Act No. 2 of 1999.

<sup>23</sup> Established under the *Provident Fund (Government Employees) Ordinance* of 1942, Cap 51 of the Revised Laws of Tanganyika.

<sup>24</sup> Established under the *Local Authorities Provident Fund Act* of 2000, Act No. 6 of 2000.

<sup>25</sup> See the United Republic of Tanzania Constitution of 1977 as amended from time to time.

<sup>26</sup> United Republic of Tanzania, *National Strategy for Growth and Reduction of Poverty (NSGRP)*, Vice President's Office, June 2005. Accessed through <http://povertymonitoring.go.tz/downloads/new/commstrat.pdf> on 25 August 2005.

There is as yet no clear framework to regulate social security. This has been acknowledged by the Government and measures have been taken to establish state-based social security arrangements. For example, the Community Healthy Funds (CHF),<sup>27</sup> the LAPF, the National Health Insurance Fund (NHIF)<sup>28</sup> and the NSSF have all been established by the Government. Despite the fact that these are considered to be state-based social security schemes, they do not cover a range of people, including the atypically employed and those working in the informal sector. Only those who are in formal employment can become members of these social security schemes, save for the Community Health Funds, which cover persons who are capable of contributing to the fund.<sup>29</sup>

Despite these measures, the recent approaches are showing several weaknesses. As noted earlier, most of the current social security schemes are focused on the formal sector, excluding atypical employees and those engaged in the informal and agricultural sectors. These persons must be serviced by the commercial companies that sell products that provide retirement funds, health services, education for children, support during periods of unemployment and the like. A survey of the market shows that most of the companies engaged in selling social security products are either foreign companies or brokers for foreign insurance companies.<sup>30</sup>

The survey also indicates that the products on offer are very costly. For example, one of the health insurance companies sells a product covering the average family of five members, comprising 2 adults and 3 children under the age of 18 years, for US\$2,050 per annum,<sup>31</sup> which equals Tshs.1,878,415. However, the average earnings of a person per year are less than Tshs. 600,000.<sup>32</sup> Another health insurance company requires differentiated premiums ranging from Tshs.600,000 to 960,000

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<sup>27</sup> Established under the *Community Health Fund Act* of 2001. Act No. 1 of 2001.

<sup>28</sup> Established under the *National Health Insurance Fund Act* of 1999. Act No 8 of 1999.

<sup>29</sup> See ss. 3 and 7 of Act No. 1 of 2001. See further chapter three of this thesis.

<sup>30</sup> For instance MEDX Tanzania is a South African-based company and AAR Health Services is Kenyan-based.

<sup>31</sup> See AAR brochure for AAR Health Services (Fees & Benefits), April 2001.

<sup>32</sup> By 31 December 2001, the exchange rates were US\$100 equivalent of Tshs.91,630.00. Exchange rates obtained through

<http://www.bot-tz.org/archive/financialmarkets/exchangerates/showexchangerates1.asp> on 22 November 2006.

annually per member.<sup>33</sup> These premiums required by the health insurance companies show that only the very affluent can afford such cover.

A brokerage company offering retirement schemes, education for children and health cover charges a premium of US\$12,000 per month for a person ready to contribute for a period of 20 years.<sup>34</sup> Even a relatively affluent person cannot afford to pay 12 million Tanzanian Shillings per month, but such amounts show the extent to which unregulated companies can sell their products without due regard to affordability.<sup>35</sup> Citizens are not protected against malpractices that are rapidly increasing because the market is dominated by a few providers who easily collude to maintain astronomical prices in order to reap huge profits. The amounts also show that the majority of Tanzanians will remain without any form of social security if social security is not regulated.

Another problem with Tanzania's recent approaches to social security is the inadequacy of social security benefits. The employees in the formal sector, for whom the current systems seem to cater, are not well protected. The benefits are not commensurate with the basic needs of the beneficiaries upon the occurrence of social risks they are purported to be protected against.<sup>36</sup> Inflation, economic changes and the realities of the cost of living for beneficiaries are not taken into account when disbursing the benefits. Poverty, as one of the indicators, continues to affect people severely. The so called "legally well protected" in the formal sector are not spared either.

Non-transferability of social security benefits at national, regional and international level is another problem that is hindering social security development in the country. As noted earlier, there are several schemes existing in Tanzania which cover different groups of people in different sectors. Whenever an individual changes employment, say from the public to the private sector and vice versa, the

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<sup>33</sup> See STRATEGIS Insurance (Tanzania) Ltd. Brochure, 2005. Information also based on personal interview with a company official, who preferred to remain anonymous, interview conducted in January 2006, in Dar es Salaam.

<sup>34</sup> For instance see Zurich International Life, *Vista Retirement Benefits Package*, 2004, at p. 11.

<sup>35</sup> See A. D. Kiwara, "Health Insurance for the Informal Sector in the United Republic of Tanzania" in van Ginneken, W. (ed), *Social Security for the Excluded Majority: Case studies of Developing Countries*, ILO, Geneva, 1999, pp. 117-143.

<sup>36</sup> The minimum pension benefits range from Tshs. 52,800 to Tshs. 10,000 per month while the average estimates for basic needs for a family of 5 members require between Tshs. 120,000 and 180,000 per month. (By 27 September 2006, US\$100 was equal to Tshs. 123,542). See Kanywanyi, J. L., *National Social Security in Tanzania; Why, for Whom, by Whom, for What?, A General Socio-Economic Review of the Policy, Law and Practice from Colonialism to Ujamaa and Beyond*, A Paper presented in March 2005 at the University of Dar es Salaam in Honour of Mwalimu J.K. Nyerere, at p. 44.

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contributions to as well as the years spent at the former scheme are not transferred to the latter scheme to which the employee will belong. Migrant workers coming to work in Tanzania or Tanzanians going to work in other countries face similar problems.<sup>37</sup> Such workers cannot carry their benefits with them because of the lack of transferability measures. This means, for a Tanzanian, the contributions and time spent will be left behind while for a foreigner time spent in his/her country of origin and the contributions accumulated will not be taken into account in Tanzania.<sup>38</sup>

Apart from non-transferability of benefits in Tanzania, there is also the problem of the fragmentation of social security schemes. Each of the existing social security schemes is regulated by different ministries and offers different types and levels of benefits. In some instances schemes are established to cover the same groups of people. For example, both the NSSF and the PPF cover the private sector. This has led to competition between the schemes in order to attract new clients.<sup>39</sup> Competition amongst the schemes has, among other things, impaired extension of coverage, caused inadequate benefits, and furthered the fragmentation of the Tanzanian social security system.

The current approaches have ultimately led to a lack of good governance in the existing competitive schemes. Each scheme has its own benchmarks for good performance, governed by different bodies without clear measures for disciplining the mismanagement of public funds. Lack of good governance has resulted in the low coverage of people, as members lack confidence and look for ways to avoid contributing. Also, lack of good governance precipitates inadequate benefits as members are no longer motivated to contribute and the financial base of the scheme shrinks. The non-transferability of benefits and widespread fragmentation are also the result of lack of good governance due to unhealthy competition, hostility and rivalries.

Inflation and an increase in the cost of living are other obstacles. When the Government abandoned the provision of social support, including free or subsidized health care and other services, the ordinary citizen's burden increased drastically. This

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<sup>37</sup> A detailed discussion on coordination is provided in chapter two of this thesis.

<sup>38</sup> For a foreigner from a country where unilateral measures are in place to cover their emigrants, like the Philippines, loss of social security benefits is minimized. See Cruz, A. T., *Portability of benefit rights: Portability of benefit rights in response to external and internal labour mobility: The Philippine experience*, International Social Security Association, Thirteenth Regional Conference for Asia and the Pacific, Kuwait, 8 – 10 March 2004.

<sup>39</sup> It should be noted that competition is normally allowed in private schemes, like the Chilean privatized social security system.

is due to the fact that Tanzania has no well established and strong consumer protection organisation that is capable of influencing the Government to adopt policies that are necessary to achieve a balance between corporate profiteering and the rights of people not to be manipulated and taken advantage of.

The social security market also faces the threat of the HIV/Aids pandemic. The buyers of the market products are highly vulnerable to this pandemic. The market tries either to avoid servicing people affected by the pandemic, or charges are unnecessarily very high when it comes to servicing people infected with HIV/Aids.<sup>40</sup> For instance, MEDX Tanzania Ltd. expressly prohibits HIV/Aids patients from joining their scheme, while AAR charges extra fees over and above the usual rates for "chronic conditions," and HIV/Aids is considered one of them.

At one level, therefore, there is the problem of a social security approach that is discriminatory, leaving out the majority of Tanzanians. At another level there is the problem of the absence of regulation.

This research considers the problems identified above that beset the Tanzanian social security system. This study also sets out recommendations for the current legal reforms that are taking place in Tanzania.

Having considered social security in Tanzania, we now turn to the South African social security system which in normative terms is far better than the Tanzanian one.

## 1.2 BRIEF OVERVIEW OF SOCIAL SECURITY SYSTEM IN SOUTH AFRICA

The history of South African social security is different from the Tanzanian experience. It goes as far back as before the 17<sup>th</sup> Century when the local communities lived in their own way<sup>41</sup> and were dependent on each other.<sup>42</sup> This was common among the agricultural communities as opposed to the hunting and gathering

<sup>40</sup> Personal interview with Andrew Magnut, from United States of America who came to explore the possibilities of his Insurance Company investing in Sub Saharan Africa. The interview was conducted on 11 August 2004 in Dar es Salaam, at the Faculty of Law, University of Dar es Salaam.

<sup>41</sup> E. M. L. Strydom (ed), *Essential Social Security Law*, JUTA Law, Lansdowne, South Africa, 2001, at p. 18. See also <http://www.9zuluandshaka.htm>, last accessed on 30 March 2005.

<sup>42</sup> D. Mason, *South Africa*, Phoenix, London, 2003, at pp. 13. For a modern South African history, see Thomson, L., *A History of South Africa*, Jonathan Ball Publishers, Johannesburg and Cape Town, 2006.

communities.<sup>43</sup> Individualism was not practised because of the harsh conditions of nature which required a collective means of tackling them.<sup>44</sup> The chiefs at this time were endowed with legislative authority, judicial authority, war and peace-keeping responsibilities and other paternal powers like taking care of their subjects in times of famine and other calamities.<sup>45</sup>

From the foregoing it can be said that, apart from the family or house structure which took care of its members, it was the chief who was regarded as the highest social security institution in the event of famine, war and the loss of means of livelihood.<sup>46</sup> The house as a single unit could provide sufficient social security to its members through cattle rearing and agriculture. The social risks which could be taken care of by the house unit included hunger, sickness, maternity, old age, invalidity and child care. It was only in circumstances that were beyond the capacity of the house that the family unit would be involved. The chief was regarded as the social security institution of the last resort.<sup>47</sup>

This shows that to a great extent these social security institutions provided sufficient social security to all the members of the communities. This way of life came to an end when the chiefs were involved in several wars, either for the expansion of their kingdoms or fighting the enemies of the kingdoms.<sup>48</sup> The explorers were among the enemies who intruded upon the local communities by the 17<sup>th</sup> Century and the chiefs had to react by fighting to protect their power and people.<sup>49</sup> This went hand in hand with the introduction of the cash economy, which gradually replaced the traditional economy. The decline of the traditional economy resulted in the disintegration of traditional social security systems.

In 1652 the Dutch East India Company sent its people to explore the possibilities of establishing what would be called a rest stop for the sailors of the trade

<sup>43</sup> Mason, *op cit*, at p. 12 where it is stated that kinship ties were weak because of the nomadic way of life and the children, the elderly and the indigent were being abandoned for "they were unable to keep pace with the rest of the band."

<sup>44</sup> The Committee of Inquiry into a Comprehensive System of Social Security for South Africa, *Transforming the Present-Protecting the Future*, Consolidated Report, March 2002 at p. 32. See also Theal, G. M., *History of South Africa [1486 – 1691]*, Swan Sonnenschein, Lowrey, & CO, London, 1888, at pp. 7 and 22.

<sup>45</sup> See <http://www.9zuluandshaka.htm>, last accessed on 30 March 2005. See also Mason, *op cit*, at p. 15. See further Muller, C. F. J., (ed), *Five Hundred Years: A history of South Africa*, Third Revised Edition, Academica, Pretoria, 1981, at pp 89-96.

<sup>46</sup> *Ibid*. See also Mason, *op cit*, at p. 15.

<sup>47</sup> *Ibid*.

<sup>48</sup> Theal, *op cit*, at pp. 22 and 136.

<sup>49</sup> See <http://search.netscape.com/ns/boomframe.jsp?query=apartheid+history+inSA&PAGE=1>, last accessed on 25 March 2005. See also Theal, *op cit*, at p. 116.

ships.<sup>50</sup> The Dutch introduced their own way of living which in every respect was different from that of the indigenous South Africans. The Dutch started large scale farming of fruit gardens, tobacco, grain, and wheat which required considerable manpower.<sup>51</sup> Because the Dutch were few and did not want to enslave the blacks, they had to import workers as slaves from Indonesia, Madagascar, India and the west coast of Africa.<sup>52</sup> The economic set up at that time led to even indigenous people looking for jobs on the Dutch farms. This was based on the fact that, among other things, the slaves had better social protection than black Africans because they were dependent on wages and they had social security against the social risks which could befall them.<sup>53</sup> The social risks protected against included illness and death. Comprehensive social security was available only for the Dutch who were also referred to as Boers or Afrikaners despite the fact that "in the middle of the seventeenth Century no distinction whatever appears to have been made between people on account of colour."<sup>54</sup>

By the 19<sup>th</sup> Century South Africa was colonised by the British, following several wars which were waged against the Dutch in South Africa.<sup>55</sup> These wars destabilised the then existing social security system as the focus was on fighting the British. At this time, those who were dependent on wages faced a shortage of food and medicine.<sup>56</sup> Death was also the prevalent risk as people were forced to participate in the war and many lost their lives.<sup>57</sup> Also, use of concentration camps by the British killed a number of people.<sup>58</sup> The Boers lost this war.<sup>59</sup>

Nonetheless, in 1910, the British granted independence to a new Union of South Africa, which partly returned some powers to the Boers.<sup>60</sup> As such, the politics of South Africa were shaped by the rulers, the British and Afrikaners, who were

<sup>50</sup> *Ibid.* see also Theal, *op cit*, at pp. 35, 84 and 89. See further Evans, M., *South Africa*, Franklin Watts, London, 1987, at p. 6.

<sup>51</sup> Theal, *op cit*, at pp. 35, 84, 89, 91, and 359.

<sup>52</sup> *Ibid.* See also <http://www.mixedfolks.com/africa.htm>, last accessed on 7 April 2005. See also Theal, *op cit*, at p. 102.

<sup>53</sup> Strydom, *op cit*, at p. 18. See also Theal, *op cit*, at p. 362. See further <http://search.netscape.com/ns/boomframe.jsp?query=apartheid+history+inSA&PAGE=1>, last accessed on 25 March 2005.

<sup>54</sup> Theal, *op cit*, at p. 86.

<sup>55</sup> Evance, *op cit*, at pp. 6-7.

<sup>56</sup> See [http://husky1.stmarys.ca/~wmills/course322/12Boer\\_war.html](http://husky1.stmarys.ca/~wmills/course322/12Boer_war.html), last accessed on 25 March 2005.

<sup>57</sup> See <http://www.answers.com/topic/genocides-in-history>, last accessed on 7 April 2005.

<sup>58</sup> See Evans, *op cit*, at p. 7.

<sup>59</sup> L. Marquard, *The Story of South Africa*, Faber and Faber Ltd., London, 1966, at pp. 74-90.

<sup>60</sup> Evans, *op cit*, at p. 7.

whites:<sup>61</sup> The political parties for the two rulers were the South African Party and the National Party respectively. It should be noted here that the people who occupied South Africa by this time included black Africans, the British, the Afrikaners, Asians, the Malay, Indians, Chinese and the Coloureds.<sup>62</sup> In 1934 the South African Party and the National Party united in order to reconcile the differences between themselves and formed the United Party.<sup>63</sup>

However, the two parties' ideologies on the provision of social security were different. While the South African Party advocated universal social security, the Nationalists did not want black South Africans to be covered.<sup>64</sup> The union broke up in 1939 when the United Party aligned itself with the United Kingdom in the Second World War.<sup>65</sup>

The effects of the split of the union were evident after the Second World War when the Nationalists introduced discriminatory laws based on race.<sup>66</sup> This was the beginning of the apartheid era which lasted until 1994.<sup>67</sup> Under the apartheid era, social security provision depended on race and was based on full employment.<sup>68</sup> Because of the fact that employment was also based on race, comprehensive social security belonged to the whites. The only exception was social security in respect of old age. As the *Committee of Inquiry into a Comprehensive System of Social Security for South Africa* (Taylor Committee of Inquiry) notes, the Government provided for, among other things, a universal welfare net for the elderly in the form of old age

<sup>61</sup> The Whites comprised the English speakers and the Afrikaners. See Cross, T., "The Afrikaner Takeover: Nationalist Politics and the Colonisation of South Africa's Parastatals, 1948 to 1960," *The Societies of Southern Africa in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*, Vol. 20, Collected Seminar Papers No. 48, University of London, Institute of Commonwealth Studies, 1994, pp 121 – 131, at p. 121.

<sup>62</sup> R. Ridd, "Creating Ethnicity in the British Colonial Cape: Coloured and Malay Contrasted", *The Societies of Southern Africa in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*, Vol. 20, Collected Seminar Papers No. 48, University of London, Institute of Commonwealth Studies, 1994, pp51 – 61 at p. 53 - 54. See also the *Population Registration Act* of 1950, Act No. 30 repealed by the *Population Registration Act Repeal Act*, 1991, Act No. 114 of 1991.

<sup>63</sup> See <http://search.netscape.com/ns/boomframe.jsp?query=apartheid+history+inSA&PAGE=1>, last accessed on 25 March 2005.

<sup>64</sup> C. Meth and Piper, S., *Social Security in Historical Perspective, A Second Carnegie Inquiry into Poverty and Development in Southern Africa*, Carnegie Conference Paper No. 250, Cape Town, 13 – 19 April 1984 at p. 7. See also Strydom, *op cit*, at p. 19.

<sup>65</sup> *Ibid.* The Afrikaners returned to their National Party and the British continued the United Party. See also <http://www.anc.org.za/ancdocs/history/misc/verkuyl.html>, last accessed on 25 March 2005.

<sup>66</sup> *Ibid.* See also Meth, *op cit* at p. 14. The whites were the most privileged, followed by the coloureds then Asians and the black Africans were the last in the classification. See further the *Population Registration Act* of 1950.

<sup>67</sup> See <http://search.netscape.com/ns/boomframe.jsp?query=apartheid+history+inSA&PAGE=1>, last accessed on 25 March 2005.

<sup>68</sup> Taylor Committee of Inquiry 2002, at p. 15. See also Meth, *op cit*, at p. 9.

pensions.<sup>69</sup> Universal welfare for the elderly, however, was stunted on racial discrimination.<sup>70</sup> Racial discrimination meant that black South Africans were marginalised and most of them excluded from the social security system, while Whites were fully protected against social risks.<sup>71</sup> As Liffmann notes:

The apartheid regime catered for the protection of the white community against contingencies by way of social insurance, and where it failed, by means of social assistance.<sup>72</sup>

The social security of blacks was dependent on their membership of trade unions, both registered and unregistered.<sup>73</sup> This means that trade unions were the institutions which took care of the social risks that befell black South Africans.

After 1994 efforts were made to include the formerly excluded races in the social security system. The efforts included access to work-related benefits and social insurance institutions.<sup>74</sup> However, these efforts have to some extent proven futile because the majority of the population in need of social security interventions do not get the help they need. This is because the present social security system does not cover all the people or groups who otherwise should be considered as one of the vulnerable groups of people. The groups which are excluded include children over the age of fourteen, people with disabilities that are not medically based, people who live below the poverty line, and non-South African nationals.<sup>75</sup> However, it should be noted that, through the case of *Khosa & others v. The Minister of Social Development and others*, a distinction has been made between temporary and illegal non-South African nationals as against permanent residents; while the latter are entitled to both

<sup>69</sup> Taylor Committee of Inquiry 2002 at p. 21.

<sup>70</sup> F. Lund, "Social Security in South Africa: The Link Between Welfare and Development" *The Societies of Southern Africa in the 19<sup>th</sup> and 20<sup>th</sup> Centuries*, Vol. 20, Collected Seminar Papers No. 48, University of London, Institute of Commonwealth Studies, 1994, pp144 – 157 at p. 146 – 54. See also Meth, *op cit* at p.14 and 17.

<sup>71</sup> Lund, *op cit*, at p. 30. See also Meth *op cit*, at pp. 3 and 7.

<sup>72</sup> R. Liffmann, "Scope of Application" in Olivier, M. P. *et al*, (eds), *Social Security Law. General Principles*, Butterworths, Durban 1999, pp 21 – 60, at p. 21.

<sup>73</sup> H. Arthurs and Hepple, B., *Constitutionalization of Labour Rights*, Papers presented at the University of Cape Town, 23 February 2004, Institute of Development and Labour Law, Occasional Paper 1/2002 at p. 1. For the situation in Tanzania, see ss. 2(b) and 40(f)-(i) of the *Trade Unions Ordinance* of 1956, Cap 381.

<sup>74</sup> Taylor Committee of Inquiry 2002 at p. 21. See also Thompson, *op cit*, at pp. 260-263.

<sup>75</sup> Taylor Committee of Inquiry 2002 at p. 31. The age of excluded children was formerly seven years.

social insurance and social assistance, the former are excluded from social assistance.<sup>76</sup>

Another problem which was inherited by the new post-apartheid government is the problem of coverage for the few people who are employed in the formal sector, and the exclusion of the majority who are self employed or in the informal sector or the atypical workers.<sup>77</sup> As noted by Kalula, social protection is limited to the formal employment sector, excluding atypical workers, home workers, casual and part-time workers.<sup>78</sup>

Moreover, the current social security system assumes that unemployment is a temporary condition, which is often not the case,<sup>79</sup> because there are people who may never find employment and will therefore never fall within the social security net.<sup>80</sup> Other problems include the fact that the current social security system assumes that those who are employed have sufficient social security.<sup>81</sup>

The foregoing discussion shows that the problems of coverage and inadequacy of social security benefits are prevalent in the South African social security system, although different in some respects from the Tanzanian problems. The main differences lie in the measures that are put in place to address the problems.

The Taylor Committee of Inquiry 2002 noted the challenges that are facing the South African Government in relation to social security. These include the breaking down of the wage-income relationship, the impact of HIV/Aids, the exacerbation of poverty and inequality, the fact that public service users are from previously disadvantaged groups which reinforces apartheid-style prejudice, the inability of the poor to pay for the delivery of key services, the increase of poverty-related crime and social instability, and the recognition of social development and social investment as barriers to economic growth and economic development.<sup>82</sup> Another challenge is the

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<sup>76</sup> See the case of *Khosa & others v. The Minister of Social Development and others*, CCT 12/03, para 59. See also the case of *Mahlaule & others v. The Minister of Social Development & others*, CCT 12/03. Both cases are also reported in 2004 (6) BCLR 569 (CC).

<sup>77</sup> E. Kalula, *Present at the Creation or Another False Start in Africa? Labour Market Regulation, Social Protection and the Future of Labour Law in Southern Africa*, Inaugural Lecture, 30 July 2003, New Series no. 229, at p.4.

<sup>78</sup> *Ibid.* at p 5-6.

<sup>79</sup> See Meth, *op cit*, at p. 7.

<sup>80</sup> Kalula, *op cit* at p. 12.

<sup>81</sup> *Ibid.* See also Meth *op cit* at p. 7.

<sup>82</sup> Taylor Committee of Inquiry 2002, at p. 32.

vulnerability of the Constitutional Court which refers to the fact that the Court has been giving judgements which have budget implications for the government.<sup>83</sup>

### 1.3 RESEARCH QUESTIONS

Social security is one of the fundamental human rights as stated by the *Universal Declaration of Human Rights* of 1948. Article 22 of the Declaration provides that every person has the right to social security. Both Tanzania and South Africa subscribe to the human rights principles enshrined in this Declaration by virtue of the Bills of Rights that are enshrined in their Constitutions. Tanzania and South Africa are also signatories to the *International Covenant on Economic, Social and Cultural Rights* of 1966.<sup>84</sup> Article 11(1) of the Covenant provides that States Parties are obliged to recognise social protection as a right of everyone and that they should take appropriate steps for the realisation of this right. While in South Africa social security is guaranteed by the Constitution as one of the fundamental rights, Tanzania considers social security as one of the directive principles of state policy.<sup>85</sup>

The major difference between the two countries' social security provisions is that social security is justiciable in South Africa in courts of law, while in Tanzania, directive principles are constitutional norms that are not enforceable.<sup>86</sup> It follows therefore, that in South Africa any person affected by the problems of exclusion, inadequacy of benefits, non-transferability of benefits, fragmentation and lack of good governance can seek assistance from the court. In a similar situation, in Tanzania, people who are affected by the above social security problems are not protected by the Constitution. However, these problems may be dealt with by courts through

<sup>83</sup> See the cases of *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC) and *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC).

<sup>84</sup> Tanzania ratified the Covenant on 11 June 1976 and South Africa Signed the same on 3 October 1994.

<sup>85</sup> See Chapter Two of the Constitution of the Republic of South Africa of 1996 and Part II of Chapter One of the Constitution of the United Republic of Tanzania of 1977. Article 11 (1) of the Constitution of the United Republic of Tanzania of 1977 provides that "[t]he state authority shall make appropriate provisions for the realisation of a person's right to work, to self education and social welfare at times of old age, sickness or disability and in other cases of incapacity...". However, the quoted Article is not enforceable by virtue of Article 7(2) of the Constitution which states that "[t]he provisions of [Part II of Chapter One] are not enforceable by any court. No court shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Part of this Chapter." See also Scheinin, M., "Economic and Social Rights as Legal Rights," in Eide, A., et al,(eds), *Economic, Social and Cultural Rights*, 2<sup>nd</sup> ed., Kluwer Law International, Netherlands, 2001, pp. 29 – 54.

<sup>86</sup> *Ibid.*

difference avenues which are not necessarily specific for social security. For instance, exclusion from social security schemes may be enforceable through article 13(1) of the Constitution of the United Republic of Tanzania of 1977 which prohibits any forms of discrimination. A lack of good governance like misappropriation of social security funds may lead to criminal prosecution by virtue of section 315 of the *Penal Code* of 1945<sup>87</sup> which criminalises misappropriation and fraud by directors and officers of corporations. Also, careless investment, as one of the indicators of bad governance, may amount to actionable negligence.<sup>88</sup> The questions that arise from these problems are as follows.

The first issue is whether the current social security system provides adequate coverage for the people it purports to cover. Coverage is looked at in terms of the groups of people and the social risks covered, and the social security benefits available. It is argued that the current social security system in Tanzania covers a small minority of people who work in the formal sector. This tendency excludes other groups of people who would otherwise be covered. The excluded groups include the informal sector, casual labourers, home-workers, sub-contractors and atypical workers. This exclusion is a result of the fact that current social security legislation does not take into account the changes in the nature of employment relations.<sup>89</sup> The problem of exclusion is exacerbated by the fact that the employment standards legislation, the *Employment Ordinance* of 1957, does not recognise these groups as employees.<sup>90</sup>

The current social security system is also narrow in coverage with regard to the social risks that are covered and the benefits offered. In several social security schemes, for instance, sickness is excluded although it is more prevalent than many other risks.<sup>91</sup> Other excluded risks include agricultural risks like crop failure and calamities like famine. The question that needs to be asked is why social security

<sup>87</sup> Cap 16 of the Revised Laws of Tanganyika.

<sup>88</sup> See the "Editorial Comment: Disrespect for the law breeds seeds for lawlessness" *Tanzanian THISDAY*, Monday, 6 November 2006.

<sup>89</sup> See M. Olivier, "Introduction," in Olivier, *et al*, (eds), 1999, *op cit*, pp. 1-6, at p. 4. See also Kaseke, E., "Social Protection in SADC: Developing an Integrated and Inclusive Framework- A Social Policy Perspective" in Olivier M. P. and Kalula, E. R., (eds), *Social Protection in SADC: Developing an Integrated and Inclusive Framework*, CICLASS, RAU and Institute of Development and Labour Law, UCT, 2004, pp 1 – 11 at p. 3.

<sup>90</sup> See s. 2 of Cap 366 of the Revised Laws of Tanganyika. Repealed by the *Employment and Labour Relations Act of 2004*, Act No. 6 (not yet in force).

<sup>91</sup> Kaseke, "Social Protection in SADC: Developing an Integrated and Inclusive Framework – A Social Policy Perspective" in Olivier and Kalula, (eds), 2004, *op cit*, at p. 3.

schemes cover so few people and so few risks. Coverage is also compounded by other problems such as inadequacy of social security benefits offered, non-transferability of benefits, fragmentation of social security schemes and poor governance.

The second issue is therefore whether the social security benefits are adequate. Social security administrative bodies or legislation have tended to provide conditions and formulae which are applied during the disbursement of social security benefits. In most cases these formulae do not take into account the inflation rate which is bound to increase on a daily basis.<sup>92</sup> The benefits do not correspond to the actual risks that the beneficiaries face. This contrasts with the principle of indexation which states that contributors are entitled to benefits which reflect the real value of their contributions.<sup>93</sup> Referring to retirement benefits, Gillion argues that the indexation principle means that "retirees are entitled to a share of the general growth of productivity as well as protection against inflation."<sup>94</sup> The second question with which this study is concerned is why the benefits are inadequate.

There is a problem of coordination at two levels in the Tanzanian social security system. The first level is in-country coordination and the second level is coordination across borders. In Tanzania there are no established measures to ensure the portability of benefits both within the country and across borders. Problems of portability within the country occur when a member of one social security scheme changes employment and the employers contribute to different schemes. The problem is that whenever an employee changes employment, for instance, from the government to the private sector or vice versa, the contributions made during the former period of employment cannot be transferred to the social security scheme of the later period of employment. Portability of social security benefits should ideally occur where the employee crosses the border of one country to another. The third question which this study examines is why there are problems with the transferability of social security benefits, both within the country and across borders. With the current trends of globalisation and the increase in people looking for better-paid jobs, this problem is considered serious as people lose their entitlements without justification.

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<sup>92</sup> For instance see s. 24 of the *National Social Security Act* of 1997.

<sup>93</sup> C. Gillion, "The development and reform of social security pensions: The approach of the International Labour Office," *International Social Security Review*, Vol. 53 No. 1, 2000, pp. 35-63, at p. 40.

<sup>94</sup> *Ibid.*

Coordination problems across borders indicate the absence of bilateral and multilateral agreements in respect of the portability of social security benefits acquired. Tanzania has no single bilateral agreement in force with any country. This affects both Tanzanians working in foreign countries and migrants working in Tanzania. Though South Africa also faces a similar problem, there are a few existing bilateral agreements in relation to social security.<sup>95</sup> Coordination problems affect the coverage of both nationals within the country and migrant workers across borders, because the existing social security schemes tend to exclude the groups that the legislation does not cover, thereby enlarging the number of excluded groups. The questions that need examining are why we have uncoordinated social security schemes in the country and across borders, and why the benefits are non-transferable.

Tanzania is a member of the Southern African Development Community (SADC) and the East African Community (EAC).<sup>96</sup> SADC is a regional initiative for economic development that has adopted a protocol for harmonisation of national laws which by necessary implications include social protection laws, among other things.<sup>97</sup> The members of SADC are obliged to create an enabling environment for the realisation of the objectives of the SADC *Social Charter of Fundamental Social Rights* adopted in 2003. The objectives of the Charter as enumerated in Article 2 include promoting labour policies, practices and measures which will facilitate labour mobility, and promoting the establishment and harmonisation of social security schemes.<sup>98</sup> Consequently, Tanzania, as a member of SADC, is compelled to fulfil the obligations under the SADC Treaty and other SADC legal instruments. Likewise, due to its membership of the EAC, Tanzania is obligated to uphold the principles of social justice in respect of citizens of other member states.<sup>99</sup> Tanzania is therefore required

<sup>95</sup> Details about these agreements are provided in chapter five of this thesis.

<sup>96</sup> SADC was established under the SADC Treaty of 1992 and the EAC was established by the EAC Treaty of 1999.

<sup>97</sup> See Article 7 of the *SADC Protocol on the Facilitation of Movement of Persons* of 2005. Accessed through <http://www.queens.ca/samp/migdocs/protocol.html> on 4 June 2006. By 2007 it was only one country that ratified the Protocol.

<sup>98</sup> See also K. Malherbe, "The Co-ordination of Social Security Rights in Southern Africa: Comparisons with (and possible lessons to be learnt from) the European Experience," *Law, Democracy & Development*, Vol. 8 No. 1, 2004, pp. 59 – 84, at p. 69.

<sup>99</sup> See Articles 3(3)(b) and 7(2) and 120 of the EAC Treaty of 1999. For the meaning of social justice, Kaseke states that social justice would entail "the need to extend social security coverage to those who are currently not covered by any social security legislation." See Kaseke, E., *Rural Social Security Needs: The Case of Zimbabwe*, Journal of Social Development in Africa, School of Social Work, Harare, Zimbabwe, 1995, at p. 36.

to attend to the problem of coordination, starting from the national level, but also including the regional and international levels.<sup>100</sup>

Fragmentation is the fourth problem that is investigated by this study as one of the issues affecting the Tanzanian social security system. Every scheme operates within its own domain, under different laws and regulations, covering different (sometimes overlapping) groups, selecting different social risks and offering different levels of social security benefits. This is caused by, among other things, lack of regulation. The questions are why this fragmentation exists and what its effects are.

The fifth issue is the lack of good governance which affects the confidence of contributors and would-be contributors. As Bailey argues, “[t]he institutional weakness of social security institutions ... limits the role that they can play in extending coverage.”<sup>101</sup> Political interference, lack of personal liability for the misappropriation of social security funds and careless investment are all indicators of a lack of good governance. The ministers responsible for the social security schemes are empowered by legislation to give directions to the administrators of the schemes, and it is doubtful that there will be good governance while there is political interference. It is argued that administrators of social security schemes cannot be easily disciplined where the directors-general are presidential appointees.

With regard to careless investment, loans are given to politicians with no interest charged or clear repayment agreements.<sup>102</sup> Investments are made in ventures where realising profit is unlikely. For instance, the NSSF built houses in Kinyerezi after being requested to do so by the government.<sup>103</sup> The question is whether there is any guarantee that the houses built would yield the expected profits. The NSSF has also built houses in Dodoma on the assumption that in the near future many people will move to Dodoma as it has become a capital city. Recently, NSSF and PSPF

<sup>100</sup> Although Tanzania belongs to the EAC and SADC regional bodies, reference is made to SADC with limited mentions of EAC where necessary. This is because South Africa, which is a reference country, belongs to SADC and also for the purposes of narrowing the focus of this study.

<sup>101</sup> C. Bailey, *Extending Social Security Coverage in Africa, Global Campaign on Social Security and Coverage for All*, ESS Paper No. 20, International Labour Office, Geneva, 2004, at p. 17.

<sup>102</sup> One of the schemes gave personal loans to the former Prime Minister and former Minister of Finance who were in the 2000-2005 government. See also “All can get loans from PPF, seminar told” *Tanzanian Guardian*, Thursday, 23 June 2005.

<sup>103</sup> See M. Olivier and E. Kaseke, *Tanzania Employment-Based Social Security Reform Proposals (Draft Report)*, Report of the Technical Committee on Social Security: Report to the Tanzanian Labour Law Reform Task Force, Labour Law Reform Phase II, April 2005, at p. 21. See also International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), *Social Security Systems in English-Speaking Africa: Principles, Difficulties and Perspectives*, Paper presented at the Conference on Enhancing the Trade Union Role in Social Security Systems in English-speaking Africa Countries, Nairobi, Kenya, 15 – 17 September 1999, at p. 14.

bought high-priced buildings from Quality Group Limited and it is doubtful that the money invested will be recovered.<sup>104</sup>

Mismanagement of public funds is another feature of the Tanzanian social security system. Public funds are used to purchase expensive airtime on televisions and space in newspapers to congratulate political leaders publicly.<sup>105</sup> It is argued that this is done mainly because administrators have selfish motives and anticipate political favours. Another example of lack of good governance is the lack of site inspection by the administrators and members of the schemes. Investment in real property requires site inspection. In the absence of such an inspection, there is no guarantee and assurance that the funds purported to be used for erecting buildings will be used for that purpose. The amount can easily be inflated to show that a large amount has been invested while this is not the case.<sup>106</sup>

This study investigates the research questions by using the South Africa experience to reflect on the current social security systems in Tanzania. Lessons will be sought from the South African social security system in respect of extension of social security coverage, adequacy of social security benefits, coordination of social security schemes, fragmentation of social security schemes and issues of good governance. In essence, the investigation of these problems leads to the identification of challenges faced by the Tanzanian government when it comes to providing social security and making reforms. The reasons for conducting this study follow.

#### 1.4 SIGNIFICANCE OF THE RESEARCH

The significance of this study aligns itself with the problems identified. The problems are narrowness of coverage, inadequacy of social security benefits, lack of coordination, fragmentation of social security schemes and lack of good governance.

<sup>104</sup> See "How Kapuya defended the deal between Quality Group Limited and NSSF in Parliament" Tanzanian *THISDAY*, Thursday 30 March 2006. See also "Now thankless Kagera Sugar `doctors` Lowassa directives" Tanzanian *THISDAY*, Wednesday, 11 April 2007 where it is stated that social security institutions, namely, NSSF, PSPF and PPF lent Tshs.12bn each to the highly indebted Kagera Sugar Limited. See further "Bunge team clears PSPF over Quality Plaza deal" Tanzanian *THISDAY*, Thursday, 19 April 2007.

<sup>105</sup> For instance the PPF, PSPF, NSSF, and GEPF have on many occasions congratulated the incumbent President and other political leaders through the media. These are unjustifiable acts of misusing public funds for personal gain. For instance see congratulatory remarks which appeared in Tanzanian *Daily News* of Friday 16 December 2005, Thursday 22 December 2005, Friday 30 December 2005, and Saturday 31 December 2005. See also Tanzanian *Guardian* of Saturday 31 December 2005, Tanzanian *Majira* of Thursday 22 December 2005 and Saturday 31 December 2005, Tanzanian *Mtanzania* of Friday 23 December 2005, and Tanzanian *Nipashe* of Thursday 22 December 2005.

<sup>106</sup> See International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *loc.cit.*

As far as the question of coverage is concerned, there is a large number of people who are atypically employed, self-employed, employed in the informal sector or unemployed. Leaving these groups unattended has been the current trend in social security. In order to have meaningful welfare reforms a comprehensive study is considered essential. This complements the ongoing social security reforms which are taking place in Tanzania with regard to coverage. This study, therefore, seeks to inform the Tanzanian government on how best it can extend coverage to the excluded majority. In the words of Du Toit "no society can prosper if large numbers of its citizens suffer insecurity or destitution."<sup>107</sup> It is considered imperative therefore to conduct this research in order to advise the Tanzanian social security system about what can be done to expand the current coverage and improve the levels of benefits. Consideration is given to the issue of abject poverty which is precipitated by, among other factors, inadequate benefits and the high rate of unemployment of the majority of the population which automatically excludes them from the ambit of the existing schemes which cover only those who are formally employed.

It cannot be overemphasised that the problem of lack of coordination has affected many employees in the so-called 'well-protected' formal sector. With the current trends of looking for well-paid jobs, and moving from one social security scheme to another, or from one country to another, it is evident that there is a need to investigate the problem and suggest ways of safeguarding the rights or entitlements of employees to social security benefits. The problems of the social security beneficiaries are further compounded by a non-observance of good governance principles in the administration of the existing social security schemes. This study investigates the challenges which the Tanzanian government faces in reshaping the social security system in order to meet the social security reform endeavours. This study goes further to recommend what can be done to ensure coordination between the various social security schemes both within the country and across borders.

### **1.5 OBJECTIVES OF THE STUDY**

The objective of this study was firstly to explore and propose methods of reform which would eventually lead to the recognition of social security as a fundamental and justiciable right. The study aimed to establish that social security

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<sup>107</sup> D. du Toit, "Foreword" in Olivier, *et al*, (eds), 1999, pp. vii-viii, at p. vii.

should be a constitutional right of every Tanzanian regardless of whether he/she is employed or unemployed. The lessons were drawn from the South African experience where social security and social assistance are constitutionally protected as justiciable rights.<sup>108</sup>

The second objective was to examine the extent of the effects of the narrow coverage of groups by the existing social security laws. The possibilities of extending social security coverage to atypical workers, informal workers and other excluded groups like home workers, domestic workers, contract workers, and tele-workers through integration were explored.

Thirdly, this study aimed to establish the importance of creating links between social security schemes to expand coverage and to ensure that they have a common understanding and baseline approach to their operations. This is expected to progressively curb the problems of inadequacy of benefits and non – transferability of social security benefits as part of the in-country and across border coordination strategies.

Lastly, this study seeks to establish that there can be no meaningful social security provisioning without the observance of good governance principles. It is argued that it is only in cases where the principles like participation by the stakeholders, accountability and transparency are guaranteed where extension of social security, provision of adequate benefits and coordination of social security, among others, can be said to exist.

## 1.6 RESEARCH METHODOLOGY

This study is based on legal, contextual and policy analysis. It involved two types of information and data collection methods, namely, library research and field research which provided secondary and primary data respectively.

Library research included the review of relevant materials for the study in various libraries in Tanzania including the University of Dar es Salaam Library and the Tanganyika Library. Tanganyika Library was accessed freely though the researcher faced limitations in borrowing books and references.<sup>109</sup>

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<sup>108</sup> See Article 27 of the South African Constitution of 1996. See also Currie, I., *et al*, *The Bill of Rights Handbook*, Fifth Ed, Juta and Co, Lansdowne, South Africa, 2005, at p. 568.

<sup>109</sup> This is a public library and all people have access to it.

Libraries at the University of Cape Town, mainly the Brand van Zyl Law Library and the African Studies Library, were also consulted. Access to these libraries was possible because the researcher is a student at the University of Cape Town. This enabled the researcher to gain comparative materials on social security trends on a South African perspective and other countries. The researcher also visited the Centre for International Comparative Labour and Social Security Law at the University of Johannesburg. The materials reviewed included books, theses, journal articles, legislation, government publications and case law. Internet materials and resources were also consulted in order to learn how social security challenges facing Tanzania are dealt with in other jurisdictions. These materials helped in concretising the arguments that coverage needs to be extended to the excluded and that those who are provided with social security should be adequately protected.

Field research was also conducted during the course of this study. This involved conducting interviews with organisations that deal with social security issues. Officials of different ministries, including individuals employed in the formal sector, informal sector, the self-employed and those who are in atypical forms of employment were interviewed. This was done by making prior appointments with respondents by phone or e-mail in order to obtain permission and to arrange dates for the interviews and, in some cases, for the administration of questionnaires. Field research was conducted in three regions in Tanzania: Dar es Salaam, Mbeya and Arusha. Field research helped the researcher, among other things, to understand the views and the expectations of the interviewees about the ongoing reforms in the social security system. The research findings form part of the challenges and recommendations that have been considered by this study and will be forwarded to policy-makers and legislators for consideration when making policies and reforming the laws respectively.

This research used the qualitative data collection method and in very limited circumstances the quantitative data collection method was employed. The qualitative data collection method involved the use of interviews and observation. In interviews both structured and unstructured questionnaires were used and, in some cases, personal interviews were conducted. The choice between the use of personal interviews and questionnaires was dependent on the type of information needed and the targeted respondents.

Data analysis was conducted by developing categories of different data, and data was presented by comparing and contrasting the responses obtained from the field. Data presentation is mainly based on narrative and descriptive reporting. It should be noted, however, that while some of the interviewees had no reservations about their personal names, titles and their offices being revealed, others indicated that their names should be withheld and only their titles could be used. Some of the interviewees wished to remain anonymous. Therefore, the responses from all the three categories of respondents are used in this thesis, with proper precaution not to breach the consent agreements concluded during field research.<sup>110</sup>

This research methodology was adopted in order to make a meaningful and reflective study. The methodology employed took into account the protocol developed by the researcher in compliance with the Faculty of Law Guidelines on Research Ethics Relating to Research on Human Subjects.<sup>111</sup>

### **1.7 DELIMITATIONS AND SCOPE OF THE STUDY**

This study was generally confined to the Tanzanian social security system. South Africa is used as a country of reference in as far as the identified problems are concerned. This study explores the problems of low coverage, inadequacy and insufficiency of social security benefits, lack of coordination, fragmentation of social security schemes and lack of good governance. The field research was conducted from June 2005 to March 2006.

Tanzania is a united republic which has two main parts, the Tanzanian mainland and the Isles. The Tanzanian mainland is called Tanganyika. The Isles comprise Unguja and Pemba which, as far as the union is concerned, are collectively called Zanzibar. The name Tanzania is therefore a product of the union between Tanganyika and Zanzibar. This study is confined to the Tanzanian mainland only and does not include Zanzibar. Among other reasons, the research was confined to the Tanzanian mainland because social security issues are not union matters.<sup>112</sup> Other reasons include the need for brevity and focus, since the Mainland and the Isles have different historical backgrounds as well as different labour and social security legislation.

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<sup>110</sup> See the Protocol to be followed when conducting research on human subjects 2005, submitted to the Faculty of Law Research and Ethics Committee in November 2005 and approved in December 2005.

<sup>111</sup> Approved at the Board Meeting on 21 May 2004.

<sup>112</sup> See 1<sup>st</sup> Schedule to the URT Constitution of 1977.

Apart from these reasons, and the fact that there are limitations of word count for a thesis, if both parts of Tanzania were covered by the study, the work would need a much bigger scope than the current study can cover.<sup>113</sup> This is because while in Zanzibar social security law establishes entitlement to social security benefits as a right, the Tanzania mainland does not.<sup>114</sup> However, the URT Constitution, which is applicable and binding to both Tanzania mainland and Zanzibar, considers social security to be one of the directive principles of state policy. In addition, while the Tanzania mainland uses the URT Constitution, the latter has her own Constitution which is neither applicable nor binding on the Tanzanian mainland. This is another reason why this study is confined to the Tanzanian mainland as the constitutional debate between the two parts of Tanzania is beyond the scope of this study.

However, the name "Tanzania" has been used throughout the study and not "Tanganyika" because it is used both to refer to the United Republic of Tanzania and to refer to the Tanzanian mainland. It should therefore be understood that Tanzania in this context refers to the Tanzanian mainland.

The study was conducted in three regions of Tanzania: Dar es Salaam, Mbeya and Arusha. With regard to the choice of regions, consideration was given to the existence of social security schemes or their branches in the regions chosen. The availability of documented social security and historical developments in the areas was another factor which influenced the researcher. Other considerations included the socio-economic setting of the area in which the research had to take place, the actors who were to be observed and interviewed, and the possibilities of the occurrence of events which the researcher could observe.

The targeted respondents included employers and employees in the atypical and formal sector, the employees in the chosen formal social security schemes, the administrators of social security schemes and pensioners. Employees in the formal sector included the academic staff at the University of Dar es Salaam, employees in the private sector and public sector, as well as government officials. Government officials included members of the Social Security Committee of the Labour Law Reform Programme Phase II. Other respondents included the atypically employed, home-based employers and employees, sub-contractors, members of informal social

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<sup>113</sup> The University of Cape Town limits the word count for a PhD thesis to 80,000 words.

<sup>114</sup> See s. 29(1) of the *Zanzibar Social Security Fund Act* of 2005, Act No. 2 of 2005. For a detailed discussion on the position in Tanzania mainland, see part 3.3.1 of chapter three of this thesis.

security institutions, the old, the invalid, the disabled and children. There were no generally established criteria for the selection of respondents because the informants were selected based on their ability to answer the research questions.<sup>115</sup>

It should be noted that the study is limited to the social *insurance* aspect of social security, as distinguished from social assistance and social relief. In the course of the discussion, however, references are made to other aspects of the broad category of social security which includes social assistance, social relief and other welfare programmes which cater for the well-being of people. It should be noted, at this point, that consideration of the social security concept in its entirety is beyond the scope of the present study. The choice of only one aspect of social security, social insurance, is based on the fact that the research needs to be focused and limited to issues that can be researched thoroughly. However, the term "social security" has been used throughout the study to denote social insurance, except where the contrary is indicated.

## 1.8 JUSTIFICATION OF THE STUDY AND ITS NATURE

The importance of this study is shown by identifying the problems facing Tanzania's social security system. As mentioned earlier, the major issues under consideration are coverage, adequacy, coordination, fragmentation and governance in social security. These problems were experienced in Tanzania during the colonial era and still persist to date. Tanzania is undergoing substantial reforms in the legal sector while some laws are undergoing substantial amendments, and there are lessons that can be learnt from the South African social security system, because South Africa is much more developed than Tanzania in many aspects of social security. As Bakari concisely states;

in some instances our approach may be wrong in the sense that we have parochialised ourselves to the situation in Tanzania [on social security] without looking what other countries are doing or have done in this area in the under development world (sic)<sup>116</sup>

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<sup>115</sup> The ability was measured through their experience of social security matters, their participation in social security institutions and what they understood social security to be.

<sup>116</sup> A. H. Bakari, *Some Salient Features of Social Security Laws of Tanzania*, Parastatals Pension Fund (PPF) Fifth Clients Seminar, 28 – 30 September 1994, A.I.C.C Arusha, Tanzania, at p. 5.

For instance, South Africa has constitutionalised socio-economic rights which are considered by other African countries as unjusticiable and not capable of implementation. By constitutionalising these rights the South African government has committed itself to guaranteeing its citizens the right to social security as part of their fundamental rights.<sup>117</sup> This can serve as a good lesson to the Tanzanian social security system which is undergoing both legal and constitutional reforms. The lessons include how Tanzania can constitutionalise and implement socio-economic rights, especially social security rights.<sup>118</sup>

It is undisputed that there are major and substantial differences between Tanzania and South Africa in terms of the two countries' histories and particularly their social security systems. The differences that exist between the two countries, however, do not prevent Tanzania from drawing lessons from South Africa because borrowing policy ideas and laws from other countries may be helpful to the borrowing country.<sup>119</sup> It is argued that economic, political and cultural differences do not preclude borrowing, provided the adaptation of the transplanted or borrowed law takes into account the local circumstances of the recipient country.<sup>120</sup>

The recipient country is better placed to choose what to borrow and adapt, and what not to, thereby avoiding the mistakes and shortfalls that the first country may have experienced. This is evidenced by the fact that Tanzania has borrowed her new labour laws from South Africa. Examples of the borrowed laws include the *Labour Institutions Act* of 2004<sup>121</sup> and the *Employment and Labour Relations Act* of 2004<sup>122</sup> which are more or less similar to the South African *Labour Relations Act* of 1995<sup>123</sup> and the *Basic Conditions of Employment Act* of 1997.<sup>124</sup> Another law which follows a similar trend is the *Occupational Health and Safety Act* of 2003<sup>125</sup> which is a replica of the South African *Occupational Health and Safety Act* of 1993.<sup>126</sup> As social

<sup>117</sup> See section 27 of the Constitution of the Republic of South Africa of 1996, Act No. 108 of 1996. See also Chapter Two of this Constitution which enshrines the Bill of Rights.

<sup>118</sup> The assertion that South Africa has a well-established social security system is true when South Africa is compared to other Southern African countries, save for a few which provide for universal social security benefits like Namibia, Seychelles, Botswana and Mauritius.

<sup>119</sup> See Watson, *op cit*, at pp. 79-84.

<sup>120</sup> *Ibid*.

<sup>121</sup> Act No.7 of 2004.

<sup>122</sup> Act. No.6 of 2004.

<sup>123</sup> Act No.66 of 1995.

<sup>124</sup> Act No. 75 of 1996.

<sup>125</sup> Act No. 5 of 2003.

<sup>126</sup> Act No. 85 of 1993.

security is closely related to labour standards,<sup>127</sup> and the latter are borrowed from South Africa, there is a good reason to look at the related social security law. The interconnectedness of social security and labour standards is exemplified by the new *Employment and Labour Relations Act* of 2004 which incorporates social security provisions such as those relating to sick leave.<sup>128</sup> It is therefore considered highly desirable to look at the South African experience when considering social security.

Although the two countries have different economies, they have some common features which make it pertinent to consider the lessons that can be learnt by Tanzania from the South African social security system. These features include the method the judiciary uses, like that of extended interpretation, to give effect to constitutional provisions. In Tanzania, there are two landmark cases on the expansion of the right to life to embrace the right to a clean and healthy environment.<sup>129</sup> In the two cases the High Court of Tanzania held that the right to life included the right to a clean environment and went further to state that the government had a duty to protect the people's right to a clean and healthy environment. The government was thus compelled to cease dumping waste near the plaintiffs' residential areas. A similar trend can hopefully be expected for the right to social security.

Similarly in South Africa, the Constitution guarantees entitlement to social security, and the Judiciary plays an important role in availing the right to people who are excluded but who are entitled to social security.<sup>130</sup> In the landmark case of *Government of the Republic of South Africa and Others v Grootboom and Others*, the South African Constitutional Court stated that the right to adequate housing is interconnected with other socio-economic rights including the right to social

<sup>127</sup> See M.P Olivier, "The Concept of Social Security" in Olivier, M.P., Smit, N., and Kalula E. R., (eds), *Social Security: A Legal Analysis*, LexisNexis Butterworths, Durban, 2003, pp23-47, at p.45.

<sup>128</sup> Section 32 of Act No. 6 of 2004 reduces sick leave from the current 9 months to 126 days. It is likely that these provisions will also be included in the anticipated social security legislation.

<sup>129</sup> See the case of *Felix Joseph Mavika & 4 Others v. Dar es Salaam City Commission and Ilala Municipal Council*, Civil Case No 316 of 2000, *Festo Balegele v. Dar es Salaam City Council*, Misc. Civil Case No. 90 of 1991. See also the case of *Joseph D. Kessy and Others v. the City Council of Dar es Salaam*, Civil Case No. 299 of 1988.

<sup>130</sup> See the cases of *Khosa & others v. The Minister of Social Development and others*, CCT 12/03; *Mahlaule & others v. The Minister of Social Development & others*, CCT 12/03; *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC); and *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC). See also Scheinin, M., "Protection of Economic Social and Cultural Rights in Finland – A Rights-Based Variant of the Welfare State?" in Scheinin, M., (ed), *Welfare State and Constitutionalism: Nordic perspectives*, Nordic Council of Ministers, København, 2001, pp. 245 – 285, at p. 251, where it is noted that irrespective of economic, social and cultural rights being constitutionally protected, "the judiciary has a role in securing compliance with such provisions."

security.<sup>131</sup> It was accordingly held that the “State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing.”<sup>132</sup>

Moreover, South Africa has tried to solve some problems that still exist in the Tanzanian social security system. This makes it desirable for a study of this kind to expose the Tanzanian law- and policy-makers to the possibilities of solving existing social security problems by using the legal and policy means which were/are employed by the South African Government in similar situations.<sup>133</sup> This study also argues that social security issues should be approached from a human rights perspective, in which case, South Africa, as Olivier and Kalula argue, serves as a good example.<sup>134</sup>

The importance of this kind of study becomes clear when one considers making any serious legal sector reforms in the country. Legal sector reform, as earlier noted, is at the forefront in Tanzania and social security is one of the targeted issues. This means that this study is timely and is needed to ensure long-lasting solutions to the existing social security system, allowing Tanzania to learn from and avoid the mistakes of the country of reference, South Africa. This study therefore looks at the challenges that faced the South African Government during the establishment of the current social security system and what problems still persist today. In this way Tanzania will be able to avoid the mistakes that South Africa made.

The study is also justified by the existence of class structures which are more or less similar in the two countries. The classes that exist in both countries are a result of education, access to resources and political power.<sup>135</sup> This has resulted in the classification of people as affluent, rich, middle class, poor, and the poorest of the poor.<sup>136</sup> The poorest of the poor are also the excluded majority and they are the most vulnerable. This shows that the two countries have some common features which explain why Tanzania can learn from South Africa about the extension of social security provisioning.

<sup>131</sup> Grootboom's case, *ibid*, see para 22 and 24 at 61H - 62A/B and 62D.

<sup>132</sup> *Ibid*, at para 24.

<sup>133</sup> M. Olivier and Kalula, E., “Introduction” in Olivier, M.P., *et al* (eds) *The Extension of Social Security Protection in South Africa, A Legal Inquiry*, Siber Ink, South Africa, 2001, pp. 1 – 8; at p. 7.

<sup>134</sup> M.P. Olivier and Kalula, E. R., “Regional Social Security” in Olivier, Smit, and Kalula (eds), 2003, *op cit*, pp 655 – 678, at p. 666. See also Bailey, *op cit*, at p. 1.

<sup>135</sup> Taylor Committee of Inquiry 2002, at p. 16.

<sup>136</sup> See *Ibid*.

Moreover, the nature of problems which are faced by the two countries also justifies the nature of the study. The HIV/Aids pandemic is alarming to both countries. This pandemic is a big challenge to the social security system because of the increase in the demand for provision of social security to the sick, and the free provision of medical treatment for affected people. This poses a challenge in the sense that the increase and spread of the pandemic affects budgetary allocations and social security provisioning. It is generally accepted that it is very expensive to provide social security to people living with HIV/Aids because they are more vulnerable to other diseases.<sup>137</sup>

Having used many terms the meanings of which are not obvious or defined, we now turn to defining those terms.

## 1.9 DEFINITION OF TERMS

The key phrases which are frequently used in this study include “social security,” “social assistance,” “social protection” and “social insurance.” These words, for the purposes of this study, have the meanings ascribed to them as hereunder provided.

“Social security” means the form of all regulations within a society which aim to guarantee the individual or group, on a contributory basis, not only physical survival but also general protection against unforeseeable risks which would entail deterioration of the situation and consequences which could be borne by the individual or group without external assistance.<sup>138</sup>

“Social assistance” means the provision of various kinds of social services, payment of social grants and social relief payments,<sup>139</sup> a benefit in cash or in kind financed by the state, either national or local, and this benefit is usually provided on the basis of a means or income test,<sup>140</sup> or state-provided basic minimum protection to relieve poverty, essentially subject to qualifying criteria on a non-contributory basis.<sup>141</sup>

<sup>137</sup> *Ibid.* at p 32.

<sup>138</sup> D. Kasente, *Gender and Social Security Reform in Africa*, International Development Research Centre, Ottawa, Canada, 1997, at p. 2.

<sup>139</sup> M.P. Olivier and Kalula, E. R., “Legal Framework and Scope of Coverage” in M.P. Olivier, *et al* (eds), *Introduction to Social Security*, LexisNexis Butterworths, Durban, 2004, pp. 33 – 53, at p. 38.

<sup>140</sup> F. Howell, “Social Assistance: Theoretical Background” in Ortiz, I. (ed), *Social Protection in Asia and the Pacific*, Asian Development Bank, Manila – Philippines, 2001, pp. 257 – 306, at p. 258.

<sup>141</sup> Taylor Committee of Inquiry 2002 at p. 36.

“Social protection” refers to a set of policies and programmes designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people’s exposure to risks and enhancing their capacity to protect themselves against hazards and interruption or loss of income.<sup>142</sup>

“Social insurance” means the designed programmes based on contributions by members which mitigate risks by providing income support in the time of need for medical care and family care and in the event of illness, disability, work injury, maternity, unemployment, old age and death.<sup>143</sup>

Another phrase which requires explanation is the term “atypical employment” which literally means “irregular employment.” It also refers to the employment relationship in fixed-term contracts, probation, part-time work, casual, seasonal and temporary work, temporary agency work, home-working, and tele-work.<sup>144</sup>

The term “informal sector” denotes a wide spectrum of activities that fall outside the regulatory framework. According to Bernabe’, the informal sector denotes diverse activities such as street vending, hawking, undeclared domestic work, bartering, stealing state property, corruption, bribery, petty trade, subsistence farming, drug trafficking, prostitution, tax evasion, money laundering and organised crime.<sup>145</sup> Informal employment refers therefore to employment relations in the informal sector. In this study, however, the informal sector excludes any activity which is criminal in nature and contrary to public policy, such as corruption, bribery, drug trafficking, prostitution, money laundering, tax evasion, stealing state property and organised crime.

“Formal employment” is regular and normal employment, predominantly stable, full-time, permanent and of unspecified duration. It also refers to those who work in regular jobs in sectors such as the government, local bodies, large-scale manufacturing, transport, banks, services and shops and establishments.<sup>146</sup>

<sup>142</sup> I. Ortiz, “Introduction,” in Ortiz, I. (ed), *Social Protection in Asia and the Pacific*, Asian Development Bank, Manila – Philippines, 2001, pp. 42 – 58, at p. 42.

<sup>143</sup> See <http://www.adb.org/socialprotection/insur.asp>, last accessed on 6 October 2004.

<sup>144</sup> <http://www.eurofound.eu.int/emire/FINLAND/ANCHOR-EP-AUM.html>, last accessed on 18 October 2005. See also Malherbe, *op cit*, at p. 63.

<sup>145</sup> S. Bernabe’, *Informal Employment in Countries in Transition: A Conceptual Framework*, CASE paper 56, Centre for Analysis of Social Exclusion, London School of Economics, April, 2002. Accessed through <http://euroscience.org/WGROUPS/YSC/BISCHENBERprep-session4c.pdf>, on 18 October 2005, at p. 8.

<sup>146</sup> K. Sankaran, *Protecting the Worker in the Informal Economy: The Role of Labour Law*, Paper presented to the Conference on the Scope of Labour Law: Redrawing the Boundaries of Protection,

## 1.10 OUTLINE OF CHAPTERS

This study is divided into seven chapters. Chapter one introduces the study generally, providing the background to the research questions advanced and setting out the methodology for the conducting of the study. The chapter also provides the justifications for the study and sets out the limits within which the research was conducted.

Chapter two conceptualises the issues of social security as part of social risk management strategies. The chapter explains the research issues and how they have been understood and dealt with by different authors. This is done by reviewing the literature addressing the identified issues in social security law. This literature review is confined to the issues that are considered by this study.

Chapter three provides an account of data analysis on the scope of coverage of social security schemes in Tanzania. The chapter also details the available options and challenges for extension of coverage to the excluded majority on one hand and the limited list of social risks on the other. Lessons from the South African experience on extension of coverage are also indicated.

Chapter four answers the third research question, *inter alia*, whether social security benefits are adequate. Basing on the data collected, different approaches to ensuring adequate benefits are provided and recommendations are made for the Tanzanian social security system.

The problems of coordination and lack of transferability measures in Tanzania are reported upon in chapter five. This chapter discusses in detail the importance of coordination and how Tanzania can protect immigrant workers such as Tanzanians going to work abroad and foreign nationals coming to work in Tanzania.

Chapter six considers the problem of fragmentation as the major challenge for good governance in Tanzania. This chapter reports on the current state of fragmented social security schemes and the options available to solve the problem. Suggestions are made from the lessons that are drawn from different jurisdictions.

In conclusion, chapter seven provides a summary of conclusions from all previous chapters. The conclusion is built on the research questions, the implications for social security policy and practice, and the indication for further research.

### **1.11 DISSEMINATION OF RESEARCH FINDINGS**

The research findings will be disseminated to different stakeholders in different ways. The research findings will be made available to policy-makers in the form of publications and presentations at different workshops that are being organised and the researcher will make efforts to attend whenever invited.

The research findings will also be presented to the Law Reform Commission of Tanzania. The research findings will be given to them in published form and where the opportunities arise the researcher will present the findings to the Commissioners in person. This will raise their awareness of the existing problems in the social security system.

This study is written in English and the majority of Tanzanians may not be able to understand it. Therefore efforts will be made to translate some of the research findings into Kiswahili for the benefit of the majority of Tanzanians. As the researcher may not be able to reach all the stakeholders in the social security schemes, efforts will be made to make sure that both the translated and the English versions of the research findings are published in popular journals and magazines in Tanzania.

### **1.12 CONCLUSION**

This introductory chapter has laid the foundation for the thesis. It introduced the research issues and questions and provided justification for this research. Important terms were defined and the research methodology was described and justified. The delimitations of and an outline for the study was provided. The next chapter proceeds to describe the research issues with reference to the available literature.

## CHAPTER TWO

### CONCEPTUALISING SOCIAL SECURITY ISSUES

#### 2.0 INTRODUCTION

The first chapter introduced social security issues which are the focus of this study. The chapter introduced what the study is about and how it was conducted as well as the research methodology. The previous chapter also highlighted the current problems facing the Tanzanian social security system.

The problems that are investigated include, low coverage of both the population and the risks, inadequacy of social security benefits, lack of coordination between social security schemes and systems, fragmentation of social security schemes and finally the problems associated with lack of good governance in social security systems.

A brief historical consideration of the social security systems was provided, illustrating the evolution of social security in Tanzania and South Africa. The reasons as to why South Africa should serve as a reference country were laid out. The reasons include, among others, the fact that both of the countries are members of SADC and that Tanzanian labour laws have been borrowed from South Africa which have direct relevance to social security law currently undergoing reforms. These reasons indicate that there are lessons that Tanzania can learn from South Africa's model of social security including its constitutionalisation of socio-economic rights.

This chapter examines the general principles of the social security issues that are being investigated. This is done by reviewing existing literature on the issues of coverage, coordination and non-transferability of social security benefits, adequacy, fragmentation of social security schemes and governance. These issues form an important part of the study, the purpose of which is to contribute to the current legal transformation and the reform of social security at national and regional levels.

At national level, these issues are looked at in terms of the problems facing the Tanzanian social security systems. At regional level, the study focuses on the social security developments and reforms taking place in SADC. Given that Tanzania is also a member of the EAC, her social security responsibilities under SADC may serve as examples for her social security responsibilities under the EAC.

The social security principles are drawn from different approaches to the issues being examined. Among others, the schools of thought considered include the

ILO and the World Bank approaches. The chapter also considers the gaps in these approaches or the areas neglected in the literature reviewed, with a view to addressing these omissions in subsequent chapters.

## 2.1 THE CONCEPT OF SOCIAL SECURITY

Defining social security has been a concern for many scholars and researchers for centuries. To date there is no single definition that is universally accepted. The concept of social security, however, has developed over time and its application in particular circumstances has been the major focus. There are three major approaches to defining social security: Firstly, social security can be defined with reference to the list of social risks; secondly, it can be defined in terms of the involvement of the state; and thirdly, social security can be defined in terms of its aims.<sup>1</sup> Olivier suggests that the concept of social security should not be confined to these approaches and that it is necessary to include the broad range of social security measures in any meaningful definition.<sup>2</sup> This section looks at the historical development of the concept, the debates involved, and the need for widening the concept of social security to suit the circumstances of developing countries.

### 2.1.1 Development of the concept of social security

The concept of social security has traditionally been used to denote measures and schemes devised to protect income. The concept emerged during the industrial revolution when urbanisation was the order of the day and migrating workers needed protection from their employers as they were detached from their communities.<sup>3</sup> A number of approaches to social security emerged, *inter alia*, the Bismarckian approach and the Beveridge approach.<sup>4</sup>

The Bismarckian approach was initiated by Chancellor Otto von Bismarck of Germany in the 1880s and his country became the first industrialised country to adopt

<sup>1</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 25.

<sup>2</sup> *Ibid.*

<sup>3</sup> Scheinin, M., "The Right to Social Security," in Eide, A., *et al.* (eds), *Economic, Social and Cultural Rights*, 2<sup>nd</sup> ed., Kluwer Law International, Netherlands, 2001, pp. 211 – 221, at p. 211. See also the International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, at p. 7.

<sup>4</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 29. For a more detailed discussion on other conceptual underpinnings of social security, see Ploug, N. and Kvist, J., *Social Security in Europe: Development or Dismantlement?* Kluwer Law International, The Hague, The Netherlands, 1996, pp.10 – 17.

a public and formal social security programme.<sup>5</sup> This programme was employment-based and was built on the principle of social solidarity and was compulsory for workers. The benefits which were available under this programme were independent of one's contributions but were subject to minimum levels and upper limits.<sup>6</sup> About 30 years later, similar programmes were introduced in other European countries and some Latin American countries.<sup>7</sup>

Conversely, the Beveridge approach, which was created by William Beveridge, the initiator of the development of the Welfare State in Britain, hinged on the creation of universal protection for the entire population.<sup>8</sup> This approach included both social insurance and social assistance schemes. While the former would cover those who are able to contribute for their wellbeing, the latter would be state-funded, non-contributory and means- or needs-tested benefits, specifically for those who cannot make contributions to the former.<sup>9</sup> Another approach following similar principles is the Scandinavian model. This model advocates "relatively high minimum universal protection to all its citizens and residents."<sup>10</sup> Although it is also funded by taxation or rather by the state budget, it operates on what Olivier calls "accepted moral and humanitarian principles."<sup>11</sup> The Scandinavian model goes beyond the

<sup>5</sup> [www.info.com/socialsecurity](http://www.info.com/socialsecurity), at p. 2, last accessed on 20 March 2006. See also Scheinin, M., "The Right to Social Security," in Eide, A., *et al.*(eds), 2001, *op cit*, at p. 211; Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 29; and Kanywanyi, *op cit*, at p. 14.

<sup>6</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 29 and Kanywanyi, *op cit*, at p. 14. See also Headlam, J. W., *Bismarck and the Foundation of the Germany Empire*, the Knickerbocker Press, New York, 1899, pp. 405 – 439, at p. 415, it is stated that "[Bismarck] wished to institute a fund from which there should be paid to every working man who was incapacitated by sickness, accident, or old age, a pension from the State. In his original plan he intended that working men should not be required to make any contribution themselves towards this fund."

<sup>7</sup> Kanywanyi, *op cit*, at p. 14. See also [www.info.com/socialsecurity](http://www.info.com/socialsecurity), at p. 2. Necessary modifications were made to various features to benefit different categories of workers in those countries.

<sup>8</sup> See Smith, B. A., "The Beveridge Report: Its Origins and Outcomes," in Hills, J., Ditch, J., and Glennerster, H., (eds), *Beveridge and Social Security: An International Retrospective*, Clarendon Press, Oxford, 1994, pp. 10 – 22, at p. 14; Moore, V. *et al.*, "The Concept of Social Security" in Olivier, *et al.*, (eds), 1999, *op cit*, pp. 7-19, at p. 15; Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 29; and Davison, R., *Social Security: The Story of British Social Progress and the Beveridge Plan*, George G. Harrap & Co. Ltd, London, 1943.

<sup>9</sup> See Fraser, D., *The Welfare State*, Sutton Pocket Histories, Sutton Publishing, England, 2000, at pp. 68-69; Kanywanyi, *op cit*, at p. 12; Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 29; and Smith, "The Beveridge Report: Its Origins and Outcomes," in Hills, Ditch, and Glennerster, *op cit*, at p. 14.

<sup>10</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 30. See also Einhorn, E.S and Logue, J., *Economic and Social Security in Scandinavia: A Model for the Baltic Area?* Paper prepared for the Council for European Studies Meeting, Chicago, 29 March – 2 April, 2006.

<sup>11</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 30.

categorical means- or needs-testing. Its main aim is to guarantee people a standard of living which is based on moral and humanitarian standards.

While the Bismarckian approach is based on social insurance principles, the Beveridge approach is based on both social insurance and social assistance principles. Social security experts and the ILO accept that social security includes elements of both social insurance and social assistance. This is evident in the ILO approach to social security which encompasses both approaches in its conceptual definition of social security. The ILO defines social security to mean:

the protection which a society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care; and the provision of subsidies for families with children.<sup>12</sup>

Despite the fact that the ILO definition incorporates the two approaches, it has been heavily criticised, mainly for being too narrow and not sufficiently comprehensive for developing countries. The narrowness of the concept is clear from the fact that it adopts a risk- or contingency-based approach, aligning social security programmes to public measures and neglecting other social security actors. The concept also concentrates on compensatory measures and leaves out issues of prevention, re-integration, redistribution of resources, poverty and social exclusion. However, recently, the ILO recognised the need to focus on poverty prevention and alleviation as some of the important aims of social security and to engage other actors such as the family and local solidarity networks, civil society institutions, enterprises and commercial market, government and social security institutions, and the international community.<sup>13</sup>

The first criticism of the ILO concept of social security is that its contingency- or risk-based approach has weaknesses. If the concept of social security is based on the traditional social risks as outlined by the ILO, many risks in developing countries would be excluded. According to Pieters, the ILO's list of risks

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<sup>12</sup> ILO, *Introduction to Social Security*, International Labour Office, Geneva, Switzerland, 1989, at p. 3.

<sup>13</sup> ILO, *Social Security: A New Consensus*, International Labour Organisation, Geneva, 2001, at pp. 1 and 94-97. See also Olivier, M. P. and Van Rensburg, L.J. "Perspectives on the Concept of Social Security" in Olivier, M. P., *et al.* (eds), 2001, *op cit.*, pp. 22 – 28, at p. 25. See further Moore, *et al.*, "The Concept of Social Security" in Olivier, *et al.* (eds), 1999, *op cit.*, at p. 13.

does not state what social security *should* contain but a “description of the content of social security schemes.”<sup>14</sup> The author argues that the ILO approach confines the schemes to the risks mentioned, thus excluding any chance of extension of coverage to other risks if the need arises. In the case of developing countries, the excluded risks include drought, floods, crop failure, epidemics, inflation, corruption and technological redundancy of skills.<sup>15</sup> In the words of Olivier,

...the concept of social security has to be determined not purely in terms of the existing schemes covering the said contingencies, but essentially in terms of the aims for which these schemes are intended. Ideally the focus should not be on a list of social risks but rather on a set of policy instruments devised to elaborate upon, or forward, a certain aim. Also, while the traditional risk categories may be helpful in identifying more common life experiences and the situations to which human beings are generally exposed, they may not reflect particular risk-creating conditions which people on the African continent, for example, may be exposed to – such as natural disasters, the impact of HIV/AIDS and crop failure...<sup>16</sup>

Therefore, social security should be viewed as the goal to be achieved and an ‘end in itself’ and not as a means, strategy or path for achieving protection.<sup>17</sup>

The second criticism is of the ILO’s alignment of social security programmes with public measures. Van Ginneken argues that social security is provided through public measures as does the ILO.<sup>18</sup> Nevertheless, Van Ginneken’s concept of social security embraces collective arrangements over and above public measures.<sup>19</sup> Social security programmes are performed by other actors and schemes apart from the state, and according to the World Bank, even more so in developing countries where

<sup>14</sup> D. Pieters, *Introduction into the Basic Principles of Social Security*, Kluwer Law & Taxation Publishers, Deventer – Boston, 1993, at p. 1.

<sup>15</sup> I. Ortiz, (ed), *Social Protection in Asia and the Pacific*, Asian Development Bank, Manila – Philippines, 2001. See also Holzmann, R. and Jorgensen, S., *Social Protection as Social Risk Management: Conceptual Underpinnings for the Social Protection Sector Strategy Paper*, Social Protection Discussion Paper No. 99 of 1999. Last accessed on 23 March 2006 through <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Social-Risk-Management-DP/9904.pdf>.

<sup>16</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 30.

<sup>17</sup> P. Saunders, *Developing Policy Planning and Research Capabilities in the Asia Pacific*, Social Policy Research Centre Discussion Paper No. 78, October 1997, University of New South Wales, Sydney, at pp. 2-3. Available at [http://www.sprc.unsw.edu.au/dpldp\\_078-2up.pdf](http://www.sprc.unsw.edu.au/dpldp_078-2up.pdf), last accessed on 15 August 2004.

<sup>18</sup> W. van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, (ed), 1999, *op cit*, pp. 1-36, at p. 5.

<sup>19</sup> *Ibid*.

“publicly provided and financed” programmes are not sufficient.<sup>20</sup> These other schemes include private, occupational welfare measures, collective or individual schemes, and traditional schemes. According to Olivier, comprehensive social security needs to take into account all these programmes.<sup>21</sup> However, it is argued that all these actors should play a role in social security provisioning; none of them can act alone and be successful in protecting the society. For instance, entrusting social security solely to the private sector is likely to cause discrimination against vulnerable groups,<sup>22</sup> because most private social security institutions are profit-motivated. It is argued that where the use of private institutions is inevitable the remedy for the excluded groups is to enact legislation which will enforce minimum solidarity and cross-subsidisation among the groups.<sup>23</sup>

The ILO concept of social security is further criticised because it associates social security with formal employment. In many developing countries formal employment accounts for approximately less than 10 per cent of the labour force. In some countries the percentage is lower than 10 per cent and is shrinking because of structural adjustment policies and privatisation.<sup>24</sup> The labour market in developing countries is therefore characterised by “high proportions of self-employment and unstable and irregular wage employment.”<sup>25</sup> In a similar vein, Olivier remarks that the ILO concept of social security “strengthens and perpetuates forms of inequality and patterns of social exclusion and deprivation, given the formal employment bias of the social insurance system.”<sup>26</sup> The inappropriateness of the ILO employment-based

<sup>20</sup> R. Holzmann, Sherburne-Benz L. and Tesliuc, E., *Social Risk Management: The World Bank's Approach to Social Protection in a Globalising World*, Social Protection Department, The World Bank, Washington, D.C., May 2003, at pp. 1 and 3. Available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Publications/20220038/SRMWBApproachtoSP.pdf>, last accessed on 21 February 2006. See also Moore, *et al*, “The Concept of Social Security” in Olivier, *et al*, (eds), 1999, *op cit*, at p.18.

<sup>21</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 36. See also De Neubourg, C. and Weigand, C., *Social Policy as Social Risk Management*, International Social Security Association, The Year 2000 International Research Conference on Social Security, Social Security in the Global Village Helsinki, 25 – 27 September 2000, at p. 2.

<sup>22</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 40.

<sup>23</sup> Taylor Committee of Inquiry 2002, at pp. 121 and 149.

<sup>24</sup> E. Reynaud, *The Extension of Social Security Coverage: the Approach of the International Labour Office*, Working Paper No. 3, International Labour Office, Geneva, 2002, at p. 1. Accessed through <http://www3.ilo.org/public/english/protection/socsec/download/esspaper3.pdf>, on 25 August 2005. See also Maes, A., “Informal economy and social security in sub-Saharan Africa,” *International Social Security Review*, Vol. 56, Nos. 3-4, 2003, pp.39-58, at p. 42.

<sup>25</sup> S. Guhan, “Social security options for developing countries,” *International Labour Review*, Vol. 133 No.1, 1994, pp. 35-53, at p. 37. See also ILO, *Decent work*, Report of the Director-General, International Labour Conference, 87<sup>th</sup> Session, Geneva, 1999, at p. 7.

<sup>26</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 38.

social security concept lies also in the “intractability of the problems” that face the rural population and in regarding unemployment as a cause of loss of income. Guhan argues that the problem that most of the developing countries face is not unemployment but underemployment.<sup>27</sup> In this respect, the unemployment faced by developed countries is not the same as unemployment in developing countries and the latter should not be equated with poverty. To quote him,

...[n]or are unemployment and poverty congruent: the poor in developing countries are poor not because they lack employment (in fact, they are overworked) but because they are employed irregularly at low wages or derive low incomes from self-employment based on low assets.<sup>28</sup>

This employment-based social security approach has led to low coverage and the exclusion of the majority from the existing formal employment-based social security systems in developing countries. By way of conclusion, Guhan states that:

All in all...it does not make sense to regard the social programmes of France, the United Kingdom and the United States as presenting a shop window from which a developing country can select the goods it prefers. Neither Beveridge nor Bismarck nor Roosevelt can provide a model for social security in developing countries.<sup>29</sup>

Fourthly, the ILO conceptualises social security as mainly compensatory in nature. Issues of prevention, re-integration, and redistribution of resources, poverty and social exclusion are given little or no attention at all.<sup>30</sup> Comprehensive social security should concentrate not only on curative measures, but also on preventative and remedial measures.<sup>31</sup> Social security should also focus on the causes of social

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<sup>27</sup> Guhan, *op cit*, at p. 37.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid*.

<sup>30</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 20, where the ILO mentions that ‘...it is salutary to bear in mind that effective social security owes as much to preventive measures as to compensation and cure.’

<sup>31</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 29 where the authors state that “...social security should be aimed at not only providing compensation, but also, where possible and appropriate, at preventing social contingencies from arising, and at integrating those who were the victims of such contingencies into the labour market and society.”

insecurity and vulnerability, such as social exclusion and marginalisation, and not only on the effects.<sup>32</sup> Olivier puts it succinctly:

[t]his implies that measures aimed at preventing human damage (such as employment creation policies, health and safety regulation, preventative health care) and remedying or repairing damage (for example, reskilling or retraining; labour market and social integration) should be adopted as an integral part of the social security system, alongside compensatory measures. In fact, one could only speak of comprehensive coverage and true indemnification as part of social security firstly, where reasonable measures have been taken to prevent human damage or to keep such damage to a minimum; secondly, where reasonable steps have been put in place to repair such damages; (by adopting (re)integrative strategies); and thirdly, where reasonable compensation is provided if and to the extent that the damage appears to be irreparable.<sup>33</sup>

Similarly, the World Bank states that social protection should focus on social risk management.<sup>34</sup> Social risk management involves three strategies: prevention, mitigation and coping strategies.<sup>35</sup> The risk management approach primarily “avoids the traditional institutional perspective of splitting up the whole area of social security or protection in different institutional branches like social insurance, social assistance etc.”<sup>36</sup>

Preventative strategies are relevant before a risk occurs, and are introduced in order “to increase people’s expected income and to reduce the income variance.”<sup>37</sup> This is possible by organising economic and social life in such a way that the probability of the occurrence of a contingency is reduced. The means used for preventative strategies include good governance of the physical environment,

<sup>32</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at p. 3. See also Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32 and Moore, *et al*, “The Concept of Social Security” in Olivier, *et al*, (eds), 1999, *op cit*, at p. 7.

<sup>33</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32.

<sup>34</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at p. 1.

<sup>35</sup> *Ibid*, at p. 7. See also Holzmann, R. and Jorgensen, S., *Social Risk Management: A New Conceptual Framework for Social Protection and Beyond*, Social Protection Discussion Paper No. 0006, February 2000, at p. 10. Available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Social-Risk-Management-DP/0006.pdf>, last accessed on 20 March 2006.

<sup>36</sup> J. Freiberg-Straub, *Social Security for the Poor – Options and Experiences*, Poverty Reduction Project, Discussion Paper, March 1999, at p. 14.

<sup>37</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 14. See also Holzmann, R., *Risk and Vulnerability: The Forward Looking Role of Social Protection in a Globalizing World*, Social Protection Discussion Paper Series No. 0109, World Bank, 2001, at p. 9. Last accessed on 21 March 2006 through <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Social-Risk-Management-DP/0109.pdf>.

macroeconomic stabilisation policy, sufficient regulation of markets and effective law enforcement.<sup>38</sup> Other instruments include policies regarding sound macroeconomics, public health, environment, education and training. Preventative strategies involve measures to reduce the risk in the labour market, which is concerned with the risk of unemployment, under-employment or low wages due to inappropriate skills or poorly functioning labour markets.<sup>39</sup> The essence of all these initiatives is to produce a less risky environment for the members of a society. However, it is believed that most of these instruments for preventative strategies fall outside the scope of social protection.<sup>40</sup>

Mitigating strategies are used to decrease the potential impact of a future risk. These mitigation strategies are used before the risk occurs, and are similar to preventative strategies. The difference between the two is that while the latter reduces the probability of the occurrence of the risk, the former reduces the potential impact if the risk occurs.<sup>41</sup> Risk mitigation can take the form of portfolio diversification. Portfolio diversification involves “storing or keeping eggs in different baskets” which “reduces the variability of income by relying on a variety of assets from which returns are not perfectly correlated.”<sup>42</sup> Another form of risk mitigation is that of informal and formal insurance mechanisms. These mechanisms entail “risk sharing through a number of participants whose risks are not correlated.”<sup>43</sup> The last form of risk mitigation is “hedging” which is “based on risk exchange or the payment of a risk price to somebody for assuming that risk.”<sup>44</sup> This can be exemplified by various family arrangements like marriage and other labour contracts.<sup>45</sup>

<sup>38</sup> See De Neubourg and Weigand, *op cit.* at p. 18. See also Holzmann and Jorgensen, 2000, *op cit.* at p. 14.

<sup>39</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit.* at p. 7. See also Holzmann and Jorgensen, 2000, *op cit.* at p. 14.

<sup>40</sup> Holzmann, 2001, *op cit.* at p. 9.

<sup>41</sup> *Ibid.* See also Holzmann, Sherburne-Benz and Tesliuc, *op cit.* at p. 7 and Holzmann and Jorgensen, 2000, *op cit.* at p. 14.

<sup>42</sup> Holzmann and Jorgensen, 2000, *op cit.* at p. 14. See also Holzmann, 2001, *op cit.* at p. 10.

<sup>43</sup> Holzmann and Jorgensen, 2000, *op cit.* at p. 14. This form entails payment of risk-based insurance premiums for future contingencies for the formal mechanisms, and for the informal ones, the main players are the family and the community.

<sup>44</sup> Holzmann and Jorgensen, 2000, *op cit.* at p. 14.

<sup>45</sup> Holzmann and Jorgensen, 2000, *op cit.* at p. 15. See also Heitzmann, K., Canagarajah, R. S., and Siegel, P. B., *Guidelines for Assessing the Sources of Risk and Vulnerability*, Social Protection Discussion Paper Series No. 0218, World Bank, June 2002, at p. 12. Accessed through <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Social-Risk-Management-DP/0218.pdf>, on 13 March 2006.

Coping strategies are intended to “relieve the impact of the risk once it has occurred.”<sup>46</sup> The forms of coping strategies include individual borrowing, migration, selling labour, reduction of food intake and reliance on public or private transfers.<sup>47</sup> Coping strategies necessitate external relief if the individuals who are involved in the risk are poor. In such cases, the government will have to assist the affected people to cope with the risks, for instance, by food provision.<sup>48</sup>

The viability of the discussed strategies depends on many actors, such as individuals or households, communities, non-governmental organisations, market institutions, the government and international institutions.<sup>49</sup> Individuals or households and communities in most cases operate where there are no appropriate market instruments.<sup>50</sup> In this case the individual or household has to strengthen its own form of risk management. However, this form of risk management can cause what Holzmann and Jorgensen call “undesirable social consequences” like child labour.<sup>51</sup>

Non-governmental organizations (NGOs) also serve as actors in social risk management through the creation and sponsorship of savings and micro-credit schemes.<sup>52</sup> This provides protection for members of these schemes thereby helping the members to manage the risks.<sup>53</sup>

Market institutions also provide a variety of risk management instruments if they are well regulated and if there is a competitive environment.<sup>54</sup> This is possible because the institutions tend to help with job placements and social assistance

<sup>46</sup> Holzmann, 2001, *op cit*, at p. 9. See also Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at p. 7.

<sup>47</sup> *Ibid.*

<sup>48</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 15. See also Holzmann, 2001, *op cit*, at p. 9.

<sup>49</sup> See Holzmann and Jorgensen, 2000, *op cit*, at p. 16. See also Heitzmann, Canagarajah and Siegel, *op cit*, at pp. 8 – 18. See further Vakis, R., *Complementing Natural Disasters Management: The Role of Social Protection*, Social Protection Discussion Paper No. 0543, World Bank, February 2006, at pp. 7-8. Last accessed through <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Social-Risk-Management-DP/0543.pdf>, on 23 August 2006. See also Siegel, P. B., Alwang, J., and Canagarajah, S., *Viewing Microinsurance as a Social Risk Management Instrument*, Social Protection Discussion Paper Series No. 0116, World Bank, June 2001, at p. 36. Accessed through <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/SP-Discussion-papers/Social-Risk-Management-DP/0116.pdf>, on 14 March 2006.

<sup>50</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 16.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> See Heitzmann, Canagarajah and Siegel, *op cit*, at p. 11. See also Holzmann and Jorgensen, 2000, *op cit*, at p. 17. See further Siegel, Alwang, and Canagarajah, *op cit*, at p. 14.

<sup>54</sup> Heitzmann, Canagarajah and Siegel, *op cit*, at p. 12. See also Holzmann and Jorgensen, 2000, *op cit*, at p. 18.

payments through paying taxes.<sup>55</sup> In this case, the market institutions are also actors in social risk management.

The government as one of the actors in social risk management has different roles to play. The roles include “(i) implementing policy actions for risk prevention, (ii) facilitating the set-up of market-based financial institutions, providing an enabling legal environment, ensuring their regulation and supervision,... facilitat[ing] the flow of information, (iii) providing risk management instruments where the private sector fails,... (iv) providing social safety nets for risk coping, and (v) enacting [legal provisions for] income redistribution.”<sup>56</sup> When the government performs these roles, it protects people from the social risks.

International institutions are other actors in social risk management. These institutions include the International Monetary Fund, the World Bank, the International Labour Organization and the United Nations Organisation, among others.<sup>57</sup> These institutions, in line with the social risk management strategies, act in reducing, mitigating and coping with adverse risks. This can be exemplified by the Bretton Woods institutions, which assist in the provision of adjustment and emergency funds during economic and financial crises as a coping strategy.<sup>58</sup> The ILO sets out labour standards, which are a risk reduction strategy. Other international institutions provide for risk mitigation by ensuring improvement in the functioning of financial markets.<sup>59</sup>

However, these actors in social risk management can also act as the perpetrators of risks and may be responsible for catastrophic events. In the words of Holzmann and Jorgensen:

All these actors only offer risk management arrangements but can also be important generators of risk themselves, e.g. through the support of development programmes that increase some risks for some people, the impact of aid in kind on domestic producers' risk or by the fact that some of the service providers are in a monopolistic situation and extract rent, thereby increasing risk. This requires one to place social risk management into the political context and ask under what types of conditions the actors are more

<sup>55</sup> *Ibid*

<sup>56</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 18. See also Heitzmann, Canagarajah and Siegel, *op cit*, at p. 13.

<sup>57</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 18.

<sup>58</sup> *Ibid*

<sup>59</sup> *Ibid*. See also Holzmann and Jorgensen, 1999, *op cit*, at p. 10.

or less likely to generate risk or offer good risk management arrangements.<sup>60</sup>

Therefore it is only a concept of social security that takes into account the identified discrepancies that will pass the test of comprehensiveness.

### 2.1.2. A comprehensive concept of social security

In the previous section, the development of the concept of social security, the various approaches to social security provisioning and the criticisms thereof, were considered. In this section the discussion focuses on developing a comprehensive concept of social security which takes into account the criticisms raised in the preceding section.

A comprehensive concept of social security should take into account, among other things, the aims of social security, the measures and instruments devised to meet the ultimate goals of social security, and should stress the importance of solidarity. With regard to developing countries, the World Bank notes that:

[Social protection] requires a more comprehensive approach which draws attention to many more risks, and which proposes many more instruments of dealing with diverse risks, than traditionally considered by social protection. This is the purpose of social risk management... and its application in developing countries.<sup>61</sup>

The aims of social security include, but are not limited to, providing complete protection against human damage, protection of society and the state, redistribution of resources and dealing with the causes of social insecurity, poverty prevention and alleviation, and ensuring an adequate standard of living. Social security should also aim at preventing social risks from happening, mitigating the impact if the social risks are unavoidable, and compensating victims or remedying matters where a social risk occurs. As stated by Olivier, "the traditional perception that social security is aimed merely at income protection is too restrictive."<sup>62</sup>

First and foremost, with regard to the aim of protecting against human damage, social security ought to focus on employment creation policies, health and safety regulations, and preventative health care.<sup>63</sup> Protection against human damage

<sup>60</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 18.

<sup>61</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at p. 1.

<sup>62</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 43.

<sup>63</sup> *Ibid*, at p. 36.

can also be achieved through measures to reduce the risk in the labour market, and by dealing with the risk of unemployment or under-employment or low wages due to inappropriate skills or a poorly functioning labour market.<sup>64</sup> While Van Ginneken denounces the promotion of employment as one of the aims of social security,<sup>65</sup> Guhan argues that the promotion of employment prevents unemployment and health care prevents sickness.<sup>66</sup> The two approaches seem to agree on one point: that social security should aim at preventative measures for comprehensive social protection. The former argues that the ultimate goal of social security is social protection, and the latter argues for preventative programmes before the social risks occur. Comprehensive social security, it is submitted, should involve multiple approaches and measures in order to prevent human damage and achieve social protection. These should include:

[P]romotional measures that aim to improve endowments, exchange entitlements, real incomes and social consumption; preventive measures that seek more directly to avert deprivation in specific ways; and protective (or safety-net) measures that are yet more specific in their objective of guaranteeing relief from deprivation.<sup>67</sup>

Secondly, social security should aim at protecting or be tailored towards the protection of society and the state and not the protection of an isolated individual only. A comprehensive social security concept should recognise and acknowledge the fact that an individual is a social being and when protecting him/her consideration should also be given to society and the state who play a notable role in his/her welfare. Where social security does not provide enough for the individual it purports to protect, the burden is on the society and the state.<sup>68</sup> For instance, where an elderly individual is not adequately provided for by the social security system, the society has to provide help and the state has a primary responsibility to protect its citizens.<sup>69</sup> It is on this basis that this study argues that provision of adequate protection to the population covered by the existing social security systems is mandatory for any

<sup>64</sup> Holzmann and Jorgensen, 2000, *op cit*, at p. 14.

<sup>65</sup> W. van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed), 1999, *op cit*, p. 5.

<sup>66</sup> Guhan, *op cit*, at p. 38.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32. See also Moore, *et al*, "The Concept of Social Security" in Olivier, *et al*, (eds), 1999, *op cit*, at p. 9. See further the International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at pp. 16 and 25.

meaningful social security system. This is possible, according to Berghman, through the adoption of preventative and reintegration measures, the imposition of an obligation on individuals to insure themselves, and the regulation of exits from the labour market in a way which will protect employment.<sup>70</sup>

Comprehensive social security should also aim at the redistribution of resources from the rich to the poor.<sup>71</sup> Minimum levels of protection can only be achieved through the redistribution of resources. Redistribution, it is argued, implies societal solidarity.<sup>72</sup> According to the ILO, comprehensive social security depends largely on national solidarity and the principle of shared responsibility.<sup>73</sup> Redistribution of resources embraces both principles. Where the poor are adequately protected, other aims of social security, such as poverty prevention and alleviation, are also fulfilled. Redistribution is possible where there is "careful construction of the contribution and benefit structure of public insurance funds."<sup>74</sup> The principle of redistribution of resources from the rich to the poor to alleviate and prevent poverty and to ensure an adequate standard of living constitutes the third indicator of a comprehensive social security system.

Fourthly, comprehensive social security should address the causes of social insecurity, namely social exclusion and marginalisation, and not only its effects.<sup>75</sup> It is only when the root causes of social exclusion and marginalisation are identified and analysed that comprehensive social security can be said to exist. The analysis should consider the "processes which bring about exclusion, the affected categories of people, and the role of the actors involved in the exclusion process."<sup>76</sup>

A comprehensive social security concept should also embrace all measures, instruments and institutions devised to meet the ultimate goals of social security in society. The measures, instruments and institutions involved include, but are not

<sup>70</sup> J. Berghman, "The resurgence of poverty and the struggle against exclusion: A New Challenge for Social Security?" *International Social Security Review*, 1997, Vol. 50 Nos. 10-12, at p. 18.

<sup>71</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at p. 2. See also Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at pp. 23 and 43. See further Guhan, *op cit*, at p. 37.

<sup>72</sup> Raoul Wallenberg Institute of Human Rights and Humanitarian Law, *General Comments and Recommendations adopted by UN Human Rights Treaty Bodies, Vol II*; Committee on Economic Social and Cultural Rights, No. 3, 1997, para 11.

<sup>73</sup> ILO, *Into the Twenty-First Century: The Development of Social Security*, ILO, 1984, at p. 115. See also Olivier and Van Rensburg, "Perspectives on the Concept of Social Security" in Olivier, M. P., *et al*, (eds), 2001, *op cit*, at p. 26.

<sup>74</sup> Taylor Committee of Inquiry 2002, at pp. 41-43.

<sup>75</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32.

<sup>76</sup> *Ibid*, at p. 44.

limited to, formal, informal, traditional and other non-public instruments in a given social security system.<sup>77</sup> Traditionally, the basic instruments intended to achieve coverage are social insurance and social assistance mechanisms.<sup>78</sup> The ILO has conceded that these instruments have not been able to guarantee the basic standard of living of a member of society who lives under the illusion that he/she is covered by the social security system.<sup>79</sup> Comprehensive social security, therefore, has to go beyond social insurance and social assistance measures. This is another important aspect which any comprehensive social security concept must acknowledge.

There are many reasons why developing countries need a more comprehensive social security concept than the employment and risk-based ILO definition which is very limited in terms of the risks and groups of people covered. Writing from a South African perspective, Olivier argues that the pertinent reasons are the extent of poverty and deprivation to which millions of those living in the developing world are exposed, and the current exclusion of most of these people from the reach of the social security system.<sup>80</sup> Other reasons include the rise in informal employment and the exclusion of persons who are informally employed from the reach of the system, and the constitutional imperatives which grant social security entitlements on a non-discriminatory basis and which aim to enhance human dignity, citizenship and societal participation and the socio-economic imperatives of poverty reduction.<sup>81</sup> The need for increased access to adequate basic services and the creation of an environment for sustainable social and economic advancement of all people also justifies the need for comprehensive social security.<sup>82</sup>

The need for a comprehensive social security concept is further based on the close interrelationship between the mutually reinforcing constitutional and socio-economic imperatives, long-term unemployment which has become endemic, the absence of sufficient employment creation and the tendency of private sector and sometimes even occupational-based schemes to exclude lower income and higher-risk

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<sup>77</sup> Saunders, *op cit*, at p. 3. See also Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 36.

<sup>78</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32.

<sup>79</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at pp. 20 and 24. See also Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32.

<sup>80</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 27.

<sup>81</sup> *Ibid.*

<sup>82</sup> *Ibid.*

categories of people in order to maximise profit.<sup>83</sup> Nonetheless, with the exception of the constitutionally protected social security entitlements, similar problems are shared by many developing countries, including Tanzania.

In addition, it is argued that the definition of social security need not be universal, which means that each and every country can devise its own definition. The ILO states that “each society must determine how best to ensure income security.”<sup>84</sup> Olivier notes that the “social security definition is flexible, reflecting a country-specific content, and is subject to constant change and development over time. Structural and cultural factors... determine the specific content of social security in a country at any given time.”<sup>85</sup> These reasons justify why developing countries, more specifically African countries, need to devise an acceptable and more accommodating social security concept to suit their specific circumstances.

Comprehensive social security in developing countries or societies entails, therefore, preventative measures to protect a member of society from social risks, mitigation measures to help the member encountering social risks with preparedness, remedial or compensatory measures where the risk has occurred, developmental aspects and basic level of adequate protection. Comprehensive social security also includes “all instruments, schemes or institutions representing functional alternatives for publicly recognised schemes – that is to say, all instruments available to the society for guaranteeing social security.”<sup>86</sup> It is also suggested that social security should be considered as a fundamental human right, as broadly declared by Article 22 of the Universal Declaration of Human Rights of 1948<sup>87</sup> which provides that:

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the

<sup>83</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 27. See also the Taylor Committee of Inquiry 2002, at pp. 37-39.

<sup>84</sup> ILO, *Social Security: A New Consensus*, International Labour Organisation, Geneva, 2001, at p. 2. See also Kannan, *op cit*, at p. 20

<sup>85</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 28. See also Saunders, *op cit*, at p. 3. See further Olivier, M. P., “Introduction” in Olivier, *et al*, (eds), 1999, *op cit*, pp. 1-6, at p.3. See also Boni, M., *Labour market flexibility, non-standard employment and social security in Central and Eastern Europe*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 3 where it is stated that “each society needs to develop its own model of modern social security.”

<sup>86</sup> Taylor Committee of Inquiry 2002, at p. 143. See also Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 37.

<sup>87</sup> Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948.

organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

However, the World Bank is of the view that comprehensive social security can be achieved, together with the preventative, mitigation and coping strategies, when its multiple-pillar approach to social security pension is employed. The World Bank lays down four pillars for this purpose: the zero pillar comprises social pension, the first pillar is the mandatory unfunded scheme, the second is a mandatory funded scheme and the third pillar is the voluntary saving arrangements. The zero pillar is for the lifetime poor, the first and second pillars are ideal for the formal sector, and the third pillar is for the informal sector or those in the formal sector who would like to top up their retirement income.<sup>88</sup>

These pillars cannot work in isolation; they all have to be adopted by a particular country in accordance with its preferences and risk profiles.<sup>89</sup> This approach has been commended by many scholars but it is doubtful if it can work successfully in most developing countries. Firstly, it is argued that governments in developing countries are too poor to finance the zero pillar for the lifetime poor and there are incidents of misuse of funds allocated to the publicly managed schemes.<sup>90</sup> Secondly, occupational and privately managed schemes are aimed at profit-making and members are placed at the mercy of the financial market, employers and insurance companies.<sup>91</sup> In this case there can be no guarantee that those who work in the formal sector are adequately protected against social risks. Even where the first and second pillars already exist in the developing world, they have not been as effective as they should be. Retirees from formal employment are poor, they are paid minimal benefits, and they are as in need of state assistance as everybody else.

With regard to the third pillar, salaries for workers in the developing countries are very low and it is doubtful whether these workers can afford to save or even consider saving from what they earn. Even if such workers manage to save, the

<sup>88</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at pp.17-18. For the World Bank's earlier version on the social security pillars, see World Bank, *Averting the old age crisis: Policies to protect the old and promote growth*, Oxford University Press, New York, 1994. See also International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at p. 22. See further Asher, A. and Olivier M. P., "Retirement and old age," in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, pp. 231 - 299, at p. 234.

<sup>89</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at p. 17.

<sup>90</sup> International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at p. 22.

<sup>91</sup> *Ibid*, at p. 22.

percentage of the formal sector is almost negligible in the developing world: less than 10 per cent. Where would the remaining 90 per cent belong? Informal sector workers, who would belong to the third pillar, are not inclined to contribute voluntarily to existing schemes because of the minimal benefits they receive or they see others receive.<sup>92</sup> Also, the risk pool is very deep to the effect that the formal sector and the “excluded” who can afford to contribute do not want to share responsibilities with the poor who would also need to join.<sup>93</sup> Social solidarity, the redistribution of resources, poverty prevention and alleviation, the core values of a comprehensive social security system, cannot be achieved while such a state of affairs exists.

Apart from the problem of defining an adequate social security concept, most developing countries experience practical problems with the existing social security systems. These problems include the low coverage of the existing social security schemes, a lack of coordination between the schemes and the non-transferability of social security benefits, fragmentation of social security schemes, lack of good governance in these schemes and insufficient social security benefits. To some extent, the literature reviewed above reflects the existence of the problems of low coverage, social exclusion and the inadequacy of social security protection, and therefore the need to address the core causes of social exclusion and the adoption of redistribution principles. This study looks at these last two issues in the light of the other problems identified, namely, lack of coordination between the schemes and non-transferability of social security benefits, fragmentation of social security schemes and lack of good governance.

## **2.2 ISSUES IN SOCIAL SECURITY LAW**

### **2.2.1 Scope of coverage of social security schemes**

Coverage is an important issue in social security. Coverage is assessed in terms of how many groups of people are covered, the number of social risks covered, and how many social security benefits are provided by the existing social security systems.

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<sup>92</sup> See part 3.1 of chapter three of this thesis for more details.

<sup>93</sup> C. Bailey, *Extending Social Security Coverage in Africa, Global Campaign on Social Security and Coverage for All*, ESS Paper No. 20, International Labour Office, Geneva, 2004, at p. 1.

### 2.2.1.1 The population covered

Each individual in a given society deserves some degree of social protection. The extent of protection differs from one society to another and from one social security scheme to another. These schemes include traditional, informal and formal social security schemes. An individual may, in most cases, belong to a single formal social security scheme. It is only in limited circumstances that a person can belong to more than one formal social security scheme like where an individual is covered by two different statutes covering private and public sectors. While the traditional and the informal schemes may accommodate all individuals in their scope of coverage, the formal schemes are naturally exclusive. This section seeks to explain this exclusivity of the existing formal social security schemes and the reasons therefor.

The main cause of low coverage and the exclusion of the majority from formal schemes is the content of legislation. Social security is usually guided by legislation:<sup>94</sup> The law establishes the schemes, states the groups of people covered under the established schemes, and prescribes the risks against which members of the schemes are protected and the benefits available. In this way, the legislation excludes certain groups from the scope of coverage by purporting to cover only the groups that are mentioned in it.<sup>95</sup> As rightly put by Bailey, "legislation has precipitated the current exclusion of the informal sector, the self-employed, domestic servants, home workers, casual workers, contract workers, the urban and rural poor and the marginalised groups like the disabled and the old."<sup>96</sup>

Secondly, limited coverage is caused by economic peculiarities and disparities that exist between countries, because extension of coverage to the excluded majority is dependent on the level of economic development of each country.<sup>97</sup> Whereas coverage of the active population in the developed world is almost 100 per cent, in the developing world it is less than 10 per cent.<sup>98</sup> Migrant workers and those in the

<sup>94</sup> The Encyclopaedia Britannica defines the international usage of the term "social security" as meaning "all collective measures established by legislation in order to maintain individual or family income or to provide income when some or all sources of income are disrupted or terminated, or when exceptionally heavy expenditure have to be incurred."

<sup>95</sup> M.P Olivier and Kalula, E. R., "Scope of Coverage" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, pp. 123-147, at p. 135. See also Reynaud, *op cit*, at p. 7. See further Maes, *op cit*, at p. 44.

<sup>96</sup> Bailey, *op cit*, at p. 1. See also Reynaud, *op cit*, at p. 7.

<sup>97</sup> International Labour Conference, 89<sup>th</sup> Session, Report VI, *Social Security: Issues, Challenges and Prospects*, Sixth Item on the Agenda, ILO, Geneva, 2001, at p. 67.

<sup>98</sup> *Ibid*, at p. 3. See also Ghai, M., *The Coverage Gap: Informal Labour Markets in the Developing World with Special Reference to India*, Paper presented at the 5<sup>th</sup> International Research Conference on

informal sector are in most cases excluded from the ambit of social security schemes in both developed and developing countries. The contributory nature and employment-based nature of the social security schemes are advanced as among the main reasons for social exclusion of the mentioned groups. This is not to say, however, that economic development is the only prerequisite for efficient social security as far as coverage is concerned.<sup>99</sup>

The third reason for low coverage is the differences in the nature and conditions of employment that exist between formal, informal and atypical employment, among other excluded groups. Firstly, formal employment has a more organised way of keeping records which is lacking in most informal, atypical and self-employment sectors.<sup>100</sup> Thus social security schemes operate more efficiently in the formal sector. Since employees' salaries are known and their contributions are easily assessed, "a contribution based on wages is easily calculated, and when deducted at source by the employer, easily administered. It reduces the danger of fraud, wages being easily checked by the employee or other parties."<sup>101</sup> Secondly, most social security schemes in developing countries are funded by contributions from the employers and employees and in limited circumstances, the state supplements these contributions.<sup>102</sup> It is undisputed that for those in the self-employment, informal and atypical employment sectors, social security schemes have to depend on self-assessment of income. This poses a challenge to the social security schemes, especially when it comes to ensuring the compliance of those in the excluded groups whose income comes from different sources. Moreover, while the formally employed contribute a certain percentage and the employer matches this contribution, those who are excluded have to contribute, where inclusion is envisaged or preferred, almost double that which a fellow member of the social security scheme contributes.<sup>103</sup> This discourages most excluded groups from joining the formal social security schemes and so they remain at the periphery.

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Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?

<sup>99</sup> *Ibid.*

<sup>100</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p.13.

<sup>101</sup> F. Pavard, "Social Security Financing through the Contribution Method" in International Social Security Association, *Methods of Financing Social Security: Their Economic and Social Effects*, Studies and Research No. 15, ISSA, Geneva, 1979, pp.13-24, at p. 13.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

Following from the third reason are the high administrative costs that are associated with enforcing compliance of the self-employed, and the informally and atypically employed. Because of the "self-assessment" nature of contributions from the excluded groups, it is argued that the administrative costs of ensuring the compliance of the self employed, and the informally and atypically employed would most likely be higher than the contributions being sought from these groups.<sup>104</sup>

Lastly, history has also played a role in the current limited social security coverage. In spite of the differences that may exist between one country's history and another's, most countries in the developing world share similar experiences of social exclusion from previous social security systems. For instance, the South African Taylor Committee of Inquiry of 2002 established that apartheid precipitated the current problems of social exclusion faced by the majority of black South Africans,<sup>105</sup> since the black majority in South Africa was excluded from the social security system under apartheid. In Tanzania, the colonial government excluded the majority of Tanzanians from the social security system through the creation of work/employment-based social security schemes.<sup>106</sup> The exclusionary nature of previous social security systems therefore has a close bearing on the current social security situation, as almost all the social security schemes cover the formally employed and exclude the atypically employed, the self-employed and workers in the informal sector.<sup>107</sup>

Extending social security to all people is a matter of social justice.<sup>108</sup> On the one hand, Reynaud argues that coverage can be extended to the excluded self-employed and informal sector through the creation of different schemes for different groups with different interests.<sup>109</sup> It is argued however, that this way of extending coverage would create fragmentation of the social security systems, another problem that affects extension of coverage.<sup>110</sup> On the other hand, Bailey suggests that in order to have meaningful extension of coverage, social security should be viewed as a fundamental human right which means that those who are excluded are denied this

<sup>104</sup> International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at p. 13. See also Dau, *op cit*, at p. 7.

<sup>105</sup> Taylor Committee of Inquiry 2002, at p.30. See also Mouton, P., *Social Security in Africa: Trends, Problems and Prospects*, International Labour Office, Geneva, 1975, at p. 10.

<sup>106</sup> Kanywanyi, *op cit*, at p. 6.

<sup>107</sup> Olivier and Kalula, "Scope of Coverage" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 129.

<sup>108</sup> Kaseke, 1995, *op cit*, at p. 30. See also Reynaud, *op cit*, at p. 1.

<sup>109</sup> Reynaud, *op cit*, at p. 7.

<sup>110</sup> *Ibid*, at p. 3.

right.<sup>111</sup> The latter option reflects the importance of constitutionalising socio-economic rights in order to explore their full potential. Without this, many people are likely to fall outside the scope of coverage of existing social security schemes and would remain without legal recourse.

However, there is a fundamental question about extension of coverage, *inter alia*, whether the existing social security system should be extended to cover the whole population or whether there should be a specific mechanism that would provide a lower level of protection for the uncovered population.<sup>112</sup> The first part of the question is accompanied by several limits of the existing social insurance, including its contributory nature. The second part necessitates a dualistic kind of approach as it seeks to establish solidarity among the privileged and solidarity among the underprivileged.<sup>113</sup> As both approaches have limitations, namely, the contributory nature and the creation of divisions between the affluent and the poor, respectively, legal reforms should aim at a more comprehensive social security system. It has been observed that what is needed is a system that will take into account the redistribution approach so as to ensure social solidarity and the sharing of responsibilities and resources between the rich and the poor.<sup>114</sup>

### 2.2.1.2 Social risks covered

Most formal social security schemes in developing countries limit their coverage to one or more of the risks covered by the ILO *Social Security (Minimum Standards) Convention*, 1952, namely, medical care, family care or costs related to raising children, sickness, unemployment, old age, employment injury, maternity, invalidity and death of the bread winner. However, there are other risks apart from the above-mentioned ILO risks. These include lack of housing, lack of food, children's education, natural disasters and agricultural risks like crop failure.<sup>115</sup> In essence, the ILO list of social risks leaves out many risks which are more prevalent in developing countries.<sup>116</sup> The formal social security schemes in these countries have mostly

<sup>111</sup> Bailey, *op cit*, at p. 1. The same argument is raised by Reynaud, *op cit*, at p. 15.

<sup>112</sup> Reynaud, *op cit*, at p. 3.

<sup>113</sup> *Ibid.*

<sup>114</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 39. See also parts 3.1, 3.4 and 3.5 of chapter three and part 4.3 of chapter four of this thesis.

<sup>115</sup> International Labour Conference, *89<sup>th</sup> Session, Report VI*, *op cit*, at p. 5. See also Taylor Committee of Inquiry 2002, at p. 21 and Rwegoshora, H. M. M., *Employment – Based Social Security Systems in Tanzania*, Labour Law Reform (Phase II), February 2005, at p. 8. See Further Grootboom's case, *ante*.

<sup>116</sup> See part 2.1.1, *ante*.

adopted the ILO list. Coverage of risks is mostly between one and four risks for most developing countries and a notable number of countries cover all nine risks.<sup>117</sup>

Limited social risk coverage in Africa is caused by, among other things, narrow coverage envisaged by legislation, high costs of covering some risks, low levels of contributions from members of the schemes, unavailability of income-producing investments of social security funds, and lack of actuarial studies to ascertain the financial position of the fund in the future.

Most social security schemes in the developed world cover almost all nine contingencies. For instance in countries like Canada, Austria, Denmark, France, Germany, Iran, Israel, Japan, Sweden, the United Kingdom and the United States of America, the risks of old age, disability, death, sickness, maternity, work injury (equivalent of employment injury), unemployment, medical care and family care are all covered.<sup>118</sup>

The evidence available shows that the current social security systems in African countries are selective as to what they cover. This is mainly a result of the legislation establishing a specific social security scheme which dictates what the scheme should cover.<sup>119</sup> In some cases, the law is very limited on what the established scheme should cover, leaving no room for a management team of the scheme to expand coverage of social risks except where the law is amended. In this way, social security schemes are bound to provide what the establishing law dictates. For instance, in Tanzania, most schemes cover retirement or old age, and the death of a bread winner, leaving out other contingencies. The notable exception is the National Social Security Fund which covers old age/retirement, death, sickness, employment injury, maternity, invalidity and health care.<sup>120</sup> In South Africa, generally, social risks

<sup>117</sup> For instance Uganda, Swaziland and Malawi have more or less similar coverage of risks and cover less than six risks. Tunisia, Togo, South Africa, Seychelles, Morocco, Mauritius, Madagascar, and India cover seven or more of the ILO risks. See the Social Security Administration, *Social Security Programmes throughout the World – 1997*, Office of Research, Evaluation and Statistics, Research Report No. 65, SSA Publication No. 13-11805, August 1997. See also the 2004-2005 Research Report available at <http://www.ssa.gov/policy/docs/progdesc/ssptw>, last accessed on 21 May 2006.

<sup>118</sup> Social Security Administration, *Social Security Programmes throughout the World – 1997*, *op cit*, at pp. 22-23, 64-67, 74-77, 103-105, 130-133, 141-144, 175-177, 184-187, 194-197, 337-340, 368-372, and 373-376.

<sup>119</sup> See the Tanzanian *Parastatal Pensions Act* of 1978 and the South African *Road Accident Fund Act*, 1996, Act No. 56 and the risks covered.

<sup>120</sup> See the Act No. 28 of 1997.

covered include old age, family care, unemployment, employment injury, disability and invalidity, sickness and death.<sup>121</sup>

Another reason for narrow coverage is the seemingly high costs of some social risks, because some risks are far more expensive to cover. For instance medical care is in most cases not covered by many social security schemes because the higher the risk, the higher the expenses.<sup>122</sup> This means that despite the legislation providing for narrow coverage, the social security system would in any event be reluctant to engage in the provision of social security benefits which would involve high expenses for a few victims or clients.<sup>123</sup>

Furthermore, the low level of contributions from members of the schemes is another reason why social security schemes cover only a few risks. It is argued that the formulae used by the schemes to collect money from the clients do not realise sufficient funds, therefore the scheme is unable to cover other risks.<sup>124</sup> This is directly linked to the level of income of each contributing client, meaning that the lower the income, the lower the contributions. In effect, social security schemes fail to cover as many risks as possible because of the low level of contributions, which makes the pooling of risks and redistribution impracticable. Hence, while the rich are able to protect themselves against the risks not covered by the social security schemes, the poor remain trapped in a situation of low coverage of a number of social risks.

Despite the low levels of contributions, it is submitted that it would still be possible for the social security schemes to cover many more risks. If there were open and free investments of the collected funds, more social risks could be covered. The current investment policies of the social security schemes do not give a full mandate to the management teams to decide on investment strategies.<sup>125</sup> It is argued that in-country investment takes a long time to yield good profits and sometimes the

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<sup>121</sup> Taylor Committee of Inquiry 2002, *op cit*, at p. 32.

<sup>122</sup> E. Ahmad, "Social Security and the Poor: Choices for Developing Countries." *The World Bank Research Observer*, Vol.6, No. 1: 105 – 127, January 1991, at p. 110.

<sup>123</sup> Personal interview with a former employee of the PPF, on 20 June 2005, in Dar es Salaam, Tanzania. In South Africa medical care is in most cases privately provided and this depends on the medical scheme chosen and the ability to pay premiums required under the specific schemes. This is true even in Tanzania for affluent individuals and private companies that can afford to pay the exorbitant premiums required by the medical care providers. See also part 1.1 of chapter one of this thesis.

<sup>124</sup> See Rwegoshora, *op cit*, at pp. 35-39.

<sup>125</sup> Most of the social security funds are allowed to invest only in the country and not across borders. The latter type of investment is said to be very profitable but most governments do not allow it. See International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at pp. 10-12.

investment venture does not return what is invested. As a rule of thumb, good returns come from good investments. Another problem with investment opportunities is the enormous powers vested in the ministers responsible for these schemes. In Tanzania, for example, the minister can give directions on a variety of matters concerning the schemes, including how and where to invest.<sup>126</sup> This has led to some schemes investing in unprofitable businesses, not because of the yield expected, but for political reasons. The argument can therefore be made that it is very unlikely that the social security fund would extend coverage of risks where it has invested in an unprofitable business.

Lack of actuarial studies to ascertain the financial position of the fund in the future is another reason for the limited coverage of social risks. Social security schemes are reluctant to commit themselves to covering more risks, because they may enter into conflicts with their clients if they fail to deliver. Therefore, they only cover limited risks which are easily predictable, such as death, retirement and old age.<sup>127</sup> As a matter of fact, the ILO in a way supports this trend of limited coverage of risks. The ILO recommends that a minimum of three out of nine contingencies outlined in the ILO Convention No.102 should be covered by any social security scheme.<sup>128</sup> On average, most of the social security systems cover the minimum of three contingencies, always choosing from the predictable risks. It is only a few schemes which cover more, and even fewer cover less than the minimum.<sup>129</sup>

It should be noted however, that apart from the nine contingencies enumerated by the ILO Convention No. 102, there are other social risks that are prevalent in Africa, especially in sub-Saharan Africa. As earlier noted, these risks include unemployment, poverty, agricultural risks, famine, drought, and the HIV/Aids pandemic. These risks, to say the least, are the most prevalent in Africa and yet they are not covered by any of the existing social security schemes. It is imperative that coverage of risks should be broadened to embrace the prevalent risks in Africa to

<sup>126</sup> See for example, section 18 of the *Local Authorities Provident Fund Act of 2000* which provides that the minister may give directions on general or specific matters and that LAPF will have to adhere to such directions. See further chapter six of this thesis for more details.

<sup>127</sup> Bailey, *op cit*, at p. 6. See also Dos Santos, N. M. G. and Fernandes, E., *Reform of Brazilian Social Security in a Comparative Perspective: The Search for an Appropriate Model*, The Year 2000 International Research Conference on Social Security, Helsinki, 25 – 27 September 2000, at p. 4 where it is stated that the core risks include old age, death, maternity, sickness and employment injury.

<sup>128</sup> See Article 2 Part I of the ILO Convention No. 102.

<sup>129</sup> For instance in Tanzania while the NSSF covers about six of the ILO conventional risks, namely, medical care, old age, employment injury, maternity, invalidity and survivors, the PPF covers only disability, survivors and old age.

make for a meaningful social security system. The ILO notes that unemployment is the most prevalent risk in most African states but its coverage has never been a priority.<sup>130</sup> It is only a few African countries which cover the unemployment risk, for example, Tunisia, Seychelles, Mauritius, and South Africa. On the basis of exclusion of the most prevalent social risks, Olivier suggests that Africa should devise its own concept of social security and should enumerate the risks that should be given priority.<sup>131</sup> This new concept would embrace the risks that are omitted by the ILO Convention No.102. Nonetheless, Guhan argues that the majority of people in developing countries are not necessarily “unemployed” but “underemployed” and overworked.<sup>132</sup>

In conclusion, with regard to risk coverage, it is evident from the previous discussion that a number of social risks are left out in most of the schemes in many developing countries. This situation needs to be remedied for meaningful social security to be achieved.

### 2.2.1.3 Social security benefits available

The social security benefits as enumerated by the ILO are essentially the same as the enumerated risks under Convention No. 102. The benefits include health care benefits, family benefits, sickness benefits, unemployment benefits, old age/retirement benefits, employment injury benefits, maternity benefits, invalidity benefits and survivors' benefits. These are the minimum benefits that any social security system should offer. Surprisingly, this has not been the case as each social security system chooses what to offer and what not to offer.<sup>133</sup> This is caused by, among other things, the limitations of the establishing legislation, the economic base of the scheme, the number of members, and the difficulties of administering certain benefits which are perceived as more costly than others.

Almost all of the social security schemes are established by legislation, apart from the occupational-based social security schemes which would normally have

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<sup>130</sup> International Labour Conference, 89<sup>th</sup> Session, Report VI, *op cit*, at p. 12.

<sup>131</sup> Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 24. See also the International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at p. 6.

<sup>132</sup> Guhan, *op cit*, at p. 37. See also part 2.1.1, *ante*.

<sup>133</sup> See footnote 129.

regulations, but are not directly established by a statute.<sup>134</sup> Where the legislation stipulates what the scheme should offer, it is unlikely that any scheme will offer more than what the legislation states. In this case, the less generous the legislative provisions, the fewer the benefits the social security scheme will offer. The examples include the NSSF which offers retirement or old age pensions, invalidity benefits, survivors' benefits, funeral grants, maternity benefits, withdrawal benefits, employment injury benefits and medical health care while the PPF offers old age pensions, invalidity benefits, withdrawal benefits and education benefits.<sup>135</sup> This problem, however, is not unique to Tanzania or any other country. All over the world, mainly in developing countries, social security systems have always been selective about what to offer and what not to offer. In the Philippines, for instance, while both private and public social security schemes provide for invalidity, survivors' and old age benefits, the private social security scheme provides also for sickness and maternity benefits.<sup>136</sup>

There are underlying assumptions that some social security benefits are difficult to administer and are more costly than others. For instance, medical-related benefits require a well-established structure which would require the involvement of hospital management and various stakeholders before the benefits are disbursed.<sup>137</sup> Other benefits which are avoided include employment injury and unemployment benefits.<sup>138</sup> In respect of employment injury benefits, the reasons advanced include the fact that it is the employer, in most cases, who is responsible except where there are separate insurance arrangements. Where the rate of unemployment is very high, and the effects of the structural adjustment programmes which continue to keep many people out of employment are still in existence, it is believed that the provision of unemployment benefits is just not feasible and therefore cannot be offered.<sup>139</sup>

<sup>134</sup> European Commission communication concerning measure aimed at improving the portability of supplementary pension rights, CEA position paper on the 2<sup>nd</sup> stage consultation of the social partners, 5 November 2003, Bruxelles, at p. 3. Available at [http://www.ania.it/rel\\_internazionali/attivita/vie3107e\\_as3020e\\_anx\\_stage](http://www.ania.it/rel_internazionali/attivita/vie3107e_as3020e_anx_stage), last accessed on 6 August 2005.

<sup>135</sup> See Part IV of Act No. 28 of 1997 and Part VI of Act No. 14 of 1978 respectively. Both schemes operate in Tanzania.

<sup>136</sup> Cruz, *op cit*, at p. 2. See also SSS Economic Research Department, *Social Security Rights: Acquisition, Maintenance and Enforcement - The Philippine Social Security System Experience*, ISSA Initiative, Strengthening the security in social security - National reports, available at <http://www.issa.int/engl/homef.htm>, last accessed on 20 February 2007.

<sup>137</sup> Taylor Committee of Inquiry 2002, *op cit*, at p. 31.

<sup>138</sup> International Labour Conference, 89<sup>th</sup> Session, Report VI, *op cit*, at p. 19.

<sup>139</sup> *Ibid*.

Coverage in terms of social security benefits offered is to a large extent still limited to the chosen benefits, leaving out other crucial benefits like health benefits, unemployment benefits and employment injury benefits. Therefore it can be argued that the social security schemes should prioritise the extension of coverage of risks to enable them to offer more benefits to their respective members.

However, it is also argued that the extension of coverage of social security to the excluded groups, risks and “unavailable” benefits depends on the economic, social and political situation in each country.<sup>140</sup> Other factors include the nature of the country’s governance, the macro-economic situation and the state of the labour market, measures put in place that are necessary to reduce poverty and improve income distribution and public confidence in social security systems.<sup>141</sup> From another point of view, Pal *et al* argue that, with a few exceptions, developing countries can actually afford to provide social protection to the population irrespective of the levels of development.<sup>142</sup>

On the basis of low coverage in many developing countries, Reynaud proposes four strategies to achieve the ideal extension of coverage of social security to many, namely, extending social insurance schemes to the excluded majority, encouraging micro-insurance, introducing universal benefits or services financed from general state revenues, and establishing or extending means-tested benefits or services also financed from general state revenues.<sup>143</sup> These are the challenges and options that developing countries should consider in order to attain comprehensive social security protection.

### 2.2.2 Adequacy of social security benefits

Adequacy can be defined as the state of having sufficient means to satisfy a need or to deal with a particular problem or situation.<sup>144</sup> From a social security

<sup>140</sup> Reynaud, *op cit*, at p. 18. See also Willmore, L., “Universal Pensions for Developing Countries,” *World Development*, Vol. 34 No. 12, January 2007 and Willmore, L., “Universal age pensions in developing countries: The example of Mauritius,” *International Social Security Review*, Vol. 59 No. 4, 2006, pp. 67 – 89 where Willmore argues that political will matters most in “universal” coverage schemes.

<sup>141</sup> Reynaud, *op cit*, at pp. 18-19. See also ILO, *Social Security: A New Consensus*, International Labour Organisation, Geneva, 2001, at p. 2.

<sup>142</sup> See Pal, K., *et al*, *Can low income countries afford basic social protection? First results of a modelling exercise*, Issues in Social Protection, Discussion Paper No. 13, Social Security Department, ILO, Geneva, June 2005.

<sup>143</sup> Reynaud, *op cit*, at p. 19. More details about these strategies appear in chapter three of this thesis.

<sup>144</sup> See <http://dictionary.reference.com/browse/Adequacy>, last accessed on 21 February 2006.

perspective, adequacy entails the sufficiency of social security benefits to satisfy a person who is in a particular situation upon the occurrence of the social risk against which one is protected.

The issue of adequacy is considered by looking at the number of risks covered, as earlier discussed, as well as the value of the social security benefits available to a person who is covered by the existing social security system. As noted earlier on, the social risks that are currently covered are inadequate. People are vulnerable to other risks that are excluded from the ambit of the existing system.<sup>145</sup> It is the social risks covered that determine the kind of benefits one is entitled to. The issue of adequacy of benefits goes further than the types of benefits offered. It goes to the significance of the quantum of those benefits which is believed to be far from adequate.<sup>146</sup> This problem is related, among other things, to the rigidity of social security laws which do not take into account rampant inflation and its effects on the formulae used to calculate benefits.

At another level, the law has to be predictable and this can only be achieved where the law is rigid and consistent.<sup>147</sup> Social security legislation, as is the case with other laws, cannot be changed frequently to accommodate changes which take place daily. In this case one may find that social security law can be static and stagnant for long periods of time, which means that the number of benefits and the formulae used to calculate the benefits also remain static. In this way, the rigid character of social security legislation fuels the inadequacy of benefits. However, while rigidity does not serve the beneficiaries well, the management structures of social security schemes regard rigid rules as one way in which a social security scheme can save money.

The effects of inflation in most developing countries also contribute to the inadequacy of benefits. The formulae used to calculate benefits do not take the inflation rate into account. This has negatively affected beneficiaries who receive benefits that do not reflect the real value of the money which they contributed.<sup>148</sup> Essentially this contravenes the indexation principle which requires that the value of

<sup>145</sup> See part 2.2.1.2 of this chapter for more details.

<sup>146</sup> B. Rutinwa, *Review of the Policies and Legislation on Employment and Labour in Tanzania*, June 2005, at p. 15. See also Rwegoshora, *op cit* at p. 11.

<sup>147</sup> Stanford Encyclopaedia of Philosophy, *Nature of Law*, May 2001. Last accessed through <http://plato.stanford.edu/entries/lawphil-nature/> on 16 October 2006.

<sup>148</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 26. See also the International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at p. 11.

benefits should reflect the value of contributions made.<sup>149</sup> However, considering the rate of “hyperinflation” in developing countries, no social security scheme would be able to cope with daily economic changes if they were to be considered whenever paying social security benefits to beneficiaries, unless investment in profit-yielding investments were guaranteed.

Furthermore, the quantum of social security benefits is often inadequate because the formulae used do not take account of changes that occur with the devaluation of currency. For instance, during a contributory period, money may be worth more than at the time of retirement. This can be illustrated by normal exchange rates. For example, it may be that during the contribution period US\$1 was equivalent to Tshs.70, while at retirement US\$1 is equivalent to Tshs.1200. In Tanzania, in 1986, US\$1 was equivalent to Tshs. 17; in 1990, US\$1 was equivalent to Tshs.190; in July 1994, US\$1 was equivalent to Tshs.500;<sup>150</sup> in July 2000, US\$1 was equivalent to Tshs. 799; and in September 2006, US\$1 was equivalent to Tshs.1,336.<sup>151</sup>

The computation formulae also take into account the contributions made by the beneficiary.<sup>152</sup> It is well known that contributions to social security schemes primarily depend on earnings:<sup>153</sup> Therefore, the higher the contributions, the higher the benefits. The beneficiary who has a lower income will make lower contributions and will be entitled to less than the one who contributed more. Adequate protection for the low wage earner thus becomes inconceivable. This indicates that the issue of social solidarity and pooling of risks has not been given due consideration by the existing social security systems, as the “economic, philosophical or ideological approach...functions and aims” of these systems are not based on the solidarity principle.<sup>154</sup> It is on the basis of this that this study argues that there is a need to adopt a more comprehensive social security concept which takes into account solidarity measures and redistribution of resources principles. Until then, the low income earner can never be guaranteed adequate benefits.

<sup>149</sup> C. Gillion, “The development and reform of social security pensions: The approach of the International Labour Office,” *International Social Security Review*, Vol. 53 No. 1, 2000, pp. 35-63, at p. 40.

<sup>150</sup> See Msalangi, *op cit*, at p. 6.

<sup>151</sup> See <http://www.bot-tz.org/FinancialMarkets/ExchangeRates/ShowExchangeRates.asp>, last accessed on 14 September 2006. See also “Inflation in May highest in 8 years” *Tanzanian Daily News*, Monday, 3 July 2006 and “Inflation rate hits 7.3pc” *Tanzanian Guardian*, Tuesday, 24 April 2007.

<sup>152</sup> Dos Santos and Fernandes, *op cit*, at p.11.

<sup>153</sup> Cruz, *op cit*, at p. 2. See also Kashonda, M., *Labour and Legal Reform Phase II, Social Security, 2005*, First Draft, *op cit*, at p. 10.

<sup>154</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 25.

It is evident then from the foregoing that social security benefits are inadequate. There is a need to prioritise the problem of inadequacy of benefits, considering that there are suggestions of embracing a comprehensive social security concept to include issues of prevention of the occurrence of social risks, in case of occurrence then there should be re-integration and issues of redistribution of resources.<sup>155</sup> Under the current arrangement, even the nine contingencies enumerated by ILO Convention No. 102 are not adequately provided for. It follows, therefore, that reintegration, redistribution and preventative social security are not likely to be realised in the near future. Social security benefits which guarantee a decent and dignified life in the eventuality of social risks will not be attained if deliberate efforts are not made to reform the current social security systems in developing countries.

Further, it is argued that there is a close link between the adequacy of social security benefits and the level of democracy reached in a specific country. Where democracy has been achieved, there is, in most cases, freedom of expression and guaranteed access to justice. Accordingly, Reynaud argues that where there is democracy, affected parties would complain about the insufficiency of social security benefits and any injustice would be addressed.<sup>156</sup>

It should be noted that co-ordination is another important aspect of ensuring adequate social protection. Coordination between social security schemes has to be in-country and across borders. Where a beneficiary loses his/her contributions and contributory periods when changing jobs or migrating from one country to another, the criteria set to determine entitlements usually work to the disadvantage of the contributor, resulting in the inadequacy of benefits.

### **2.2.3 Coordination of social security provisioning**

Coordination, as far as social security is concerned, refers to the relationship between different schemes within a country and the relationship between different national social security systems across borders. Chardon defines coordination in terms of one of its functions, and he states that coordination:

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<sup>155</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 32. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 29.

<sup>156</sup> Reynaud, *op cit*, at p. 18. See also Ross, S. T., "Doctrine and practice in social security pension reforms," *International Social Security Review*, 2000, Vol. 53 No. 2, pp. 3-29, at p. 15.

...relates to regulating the relationships between national social security systems on the basis of principles and techniques aiming at the protection of entitlement to social security by people who move, without touching the substance of these systems.<sup>157</sup>

Although both relationships are built on the same principles, the in-country relationship is built upon the schemes being able to cooperate on various issues, while cross-border coordination mainly concerns the protection of the derivative and personal social security rights of migrant workers.

The fundamental principle of coordination is to maintain acquired social security rights, thereby protecting the employee or worker from losing his/her entitlements.<sup>158</sup> This principle involves, but is not limited to, portability of social security benefits both within the country when moving from one social security scheme to another, and across borders when one is emigrating from one country to another. Referring to the latter, Holzmann defines portability as the ability of the migrant worker to 'preserve, maintain and transfer acquired social security rights independent of nationality and country of residence.'<sup>159</sup> On the same basis, portability within the country would mean the ability of a worker who is moving from employment covered by one social security scheme to another job under a different scheme to preserve, maintain and transfer acquired social security rights independent of the previous or current employment.

Portability of social security benefits is grounded on the principles of equality of treatment, export of benefits, totalisation of the periods of coverage, mutual administrative assistance and data on availment.<sup>160</sup> These principles are discussed in detail below.

It should be noted too that portability of social security rights and benefits does not benefit the migrant worker or the employee alone, it also increases the

<sup>157</sup> S. Chardon, "Principles of Coordination" in Jorens, Y. and Schulte, B., (eds), *Coordination of Social Security Schemes in Connection with the Accession of Central and Eastern European States*, Brussels, Belgium, La Charte, 1999, pp 45-80, at p. 46.

<sup>158</sup> *Ibid*, at p. 69.

<sup>159</sup> R. Holzmann, Koetli, J. and Chernetsky, T., *Portability Regimes of Pension and Health Care Benefits for International Migrants: An Analysis of Issues and Good Practices*, Social Protection Discussion Paper Series No. 0519, Social Protection Unit, Human Development Network, the World Bank, Washington, D.C., May 2005, at p. 4. Available at <http://siteresources.worldbank.org/SOCIALPROTECTION/Resources/0519.pdf>, last accessed on 24 March 2006.

<sup>160</sup> Cruz, *op cit*, at pp. 4 - 5. See part 2.2.3.2 of this chapter.

contribution base and therefore the investment capacity of the social security schemes.<sup>161</sup> A further point to note is that portability is closely connected to social insurance which has direct reference to preserving contributions and it is more or less a right because no individual assessment is required, but a legally defined position.<sup>162</sup> Portability has no direct connection with social assistance which is means-tested and need is considered an essential criterion.<sup>163</sup>

In most cases, the benefits involved in cross-border coordination include sickness and maternity benefits, invalidity benefits, old age and survivors' benefits, employment injury and occupational disease benefits, death grants, and unemployment and family benefits.<sup>164</sup> Depending on the agreements, some countries choose to cover a few of the listed social security benefits. So far it is only the European Union that provides for coordination on all the listed benefits by virtue of Article 4 of the *Council Regulation 1408/71*, while the *Caribbean Community (CARICOM) Agreement on Social Security* of 1996 covers invalidity, disability, retirement, survivors' and death benefits.<sup>165</sup>

The main objective of coordination is to 'promote freedom of movement of workers' and vice versa on the basis that they are protected against the loss of social security benefits acquired in their country of origin.<sup>166</sup> This objective is based on the major principle that workers should not be disadvantaged by the denial of social benefits nor should they be downgraded to lower social security benefits because they have moved from one country to another,<sup>167</sup> since they have worked and have contributed as equally to the country's development as those who remained in one country.

A second principle of the promotion of freedom of movement for workers is that there should be fiscal fairness for both the host country and the country of

<sup>161</sup> See Fenwick and Kalula, *op cit*, at p. 210.

<sup>162</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 55.

<sup>163</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 5 and Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 56.

<sup>164</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 54.

<sup>165</sup> See S. Mac Andrew, *Key note address on the CARICOM Single Market and Economy (CSME) and the Free Movement of Labour across the Region and its Implications for Social Security*, delivered on the occasion of the Thirty-Seveny Anniversary of the National Insurance Office, 8 June 2004, Bridgetown, Barbados. Available at <http://www.caricom.org/archives/csme/csme-macandrew.html>, last accessed on 2 August 2005.

<sup>166</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 46.

<sup>167</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 22.

origin.<sup>168</sup> The country that has benefited from the services and to which the worker has contributed should bear the burden of paying the social security benefits. Coordination should therefore facilitate fiscal fairness by removing the financial burden that would fall on the national social security system that has not received any social security contributions from the services of the worker.

Thirdly, coordination also fosters bureaucratic effectiveness, because it ensures that the social security institutions involved in the provision of social security benefits for a worker who has moved from one country to another cooperate to facilitate freedom of movement for such workers.<sup>169</sup> According to Chardon, this amounts to establishing bridges between different social security systems.<sup>170</sup>

Moreover, in ensuring freedom of movement of workers, coordination facilitates harmonious co-operation between national social security schemes and social security systems across borders.<sup>171</sup> This is because where coordination exists, there would be rules and mechanisms made by both schemes which would smooth the disbursement of social security benefits.<sup>172</sup>

Despite the enormous advantages of coordination, the lack thereof is one of the major problems in many developing countries, especially in sub-Saharan Africa. Zambia and Malawi are the only exceptions as they have coordination arrangements in place, while most countries are still lagging behind in terms of in-country, bilateral and multilateral arrangements to ensure coordination on social security issues. Zambia and Malawi have constituted the Zambia/Malawi Joint Permanent Commission to monitor social security benefits for nationals of the two countries. Among other things, this Commission works on the maintenance of social security benefits and rights acquired by both countries' nationals while working in any of the two countries.<sup>173</sup> There have been recent efforts to deal with this problem in many countries and in many regional co-operation initiatives, including the EAC<sup>174</sup> and the SADC. For instance SADC has concluded the *SADC Protocol on the Facilitation of Movement of Persons* of 2005 which, among other things, aims to facilitate among the

<sup>168</sup> *Ibid.*

<sup>169</sup> *Ibid.*

<sup>170</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 47.

<sup>171</sup> *Ibid.*

<sup>172</sup> *Ibid.*

<sup>173</sup> N. Chisupa, "Social protection in SADC: Developing an Integrated and Inclusive Framework – The Case of Zambia" in Olivier and Kalula, (eds), *op cit*, 2004, pp.198-218, at p. 204.

<sup>174</sup> Article 120 of the East Africa Community Treaty of 1999 provides that member states should endeavour to cooperate closely on social welfare matters.

member states the equal enjoyment of freedoms and privileges by citizens of a particular member state and the maintenance of rights acquired in another member state.<sup>175</sup> However, these efforts are still in their infancy, which makes coordination one of the crucial and timely issues covered by the present study. This study will therefore draw from the experiences of other countries and regional bodies like the Philippines, the Caribbean and the European Union to inform the efforts to develop strong co-ordination in the African social security context.

### 2.2.3.1 Coordination within the country

Coordination within a country entails cooperation between social security schemes existing in a particular country in the situation where a worker or employee moves from the public sector to the private sector, and vice versa, or from one social security scheme to another because of employment or for any other reason.<sup>176</sup>

In-country coordination has been a significant problem in most African countries. Countries have different schemes covering different groups of people, and whenever a person changes employment, previous contributions are usually forfeited. This is partly because of a lack of coordination between the different schemes, and partly because there are no portability provisions in the national social security legislation.

The effects of the lack of coordination and portability arrangements are seen from the fact that accumulated contributions and the time spent at the first place of employment are lost. The latter means that where the entitlement to social security benefits, like retirement benefits, depends on the number of months or weeks one has spent in employment, this benefit will no longer be available to someone who has changed jobs. According to Cruz, portability of benefits is a social justice issue which is "to provide meaningful protection and security to our retiring workers and their families."<sup>177</sup>

In view of this, the Philippine Government, for instance, enacted the *Republic Act No. 7699* in 1994 to address the problems associated with internal mobility of workers. This Act generally deals with the question of maintenance of acquired

<sup>175</sup> See Articles 22-23 of Chapter IX of the *SADC Protocol on the Facilitation of Movement of Persons in SADC*. Available at <http://www.queens.ca/samp/migdocs/protocol.html>, last accessed on 4 June 2006.

<sup>176</sup> See Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed), 1999, *op cit*, at pp. 25-26. See also Cruz, *op cit*, at p. 3.

<sup>177</sup> Cruz, *op cit*, at p. 4.

benefits by both the public and private social security schemes. The Act also provides that totalisation of benefits will cover only the risks of old age, disability and death, and will apply to members of the public and private social security schemes who do not qualify for pension benefits under any of the schemes.<sup>178</sup> Other features of the Act are the maintenance of membership records by both schemes, that overlapping periods of membership are credited to only one of the schemes, and the totalisation and pro-rata sharing of benefits. The totalisation and pro-rata sharing of benefits means that the member will receive benefits as if there were no interruptions to his/her membership of the two schemes and that each scheme will take responsibility to pay the member his/her pension based on the contribution period and the contributions made to each scheme.<sup>179</sup>

In-country portability is premised on the principles of totalisation of the number of years of service of the employee or worker, rewarding the employee who has contributed to the social and political development of the country, and ensuring that the employee is not prejudiced by the separate social security schemes that exist in a country.<sup>180</sup>

Totalisation of the number of years of service refers to the total accumulation of the time which the employee or worker has been employed by different employers who contribute to different social security schemes.<sup>181</sup> This principle is useful for social security benefits which are determined by the time one has spent in service, for instance, retirement benefits and survivors' benefits. Taking retirement benefits as an example, the employee would be entitled to benefits even if he/she has changed employment provided that when the years spent in service are totalled, they reach the minimum number of the years required. This principle operates on a *pro rata* basis in the sense that each scheme to which the employee has contributed would calculate the entitlements and determine how much he/she would receive from each scheme on the basis of time worked and the contributions made.<sup>182</sup>

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<sup>178</sup> See s. 3 of the *Republic Act* no. 7699.

<sup>179</sup> See s. 4 of the *Republic Act* No. 7699. See also Cruz, *op cit*, at p. 6.

<sup>180</sup> Cruz, *op cit*, at p. 6.

<sup>181</sup> *Ibid*

<sup>182</sup> J.-V Gruat, "Review of Policy Issues" *Extending Coverage under Basic Pension Schemes, General and Chinese Considerations, Issues in Social Protection*, Discussion paper No. 4, Paper delivered at an International Seminar held in Weihai, Shandong Province, in July 1996, at p. 21. See also Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 24 and Cruz, *op cit*, at p. 7.

The lack of in-country or internal portability arrangements discriminate unfairly against an employee who has changed employment. This is because the equal treatment principle is not followed as the employee who has not changed employment would benefit more than the employee who has changed jobs.<sup>183</sup> It is argued further that both employees have contributed more or less equally to the development of the country in terms of their services and that treating them differently amounts to prejudice to the one who has changed jobs.<sup>184</sup>

Another principle of in-country portability is that the employee should not be prejudiced by the different social security schemes existing in the country. It is argued that the employee would not be denied his/her social security benefits if there was only one social security scheme operating in the country.<sup>185</sup> Therefore, the existence of multiple schemes for different employees in the country should not prejudice the employees when it comes to entitlement to social security benefits.

In effect, in-country coordination is crucial especially where there are multiple schemes operating in the country and these schemes cover different groups of employees or workers.

#### 2.2.3.2 Coordination across borders

Coordination across borders, in as far as social security matters are concerned, entails cooperation on social security matters between two countries, between the members of the specific region, or between members of a specific community. It involves the existence of bilateral and multilateral agreements and treaties where the concerned members would set out their rights and obligations in the dispensation of social security rights.<sup>186</sup>

The principles involved in bilateral and multilateral agreements and treaties include equality of treatment, export of benefits, totalisation of periods of coverage, mutual administrative assistance and data on availment.

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<sup>183</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 22.

<sup>184</sup> Cruz, *op cit*, at p. 6.

<sup>185</sup> *Ibid*.

<sup>186</sup> See Part XII of the ILO Convention No. 102 on "Equality of Treatment of Non-National Residents." See also Article 27(1) of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, G.A. res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force 1 July 2003.

Equality of treatment is the main principle of coordination encompassing non-discrimination clauses based on nationality.<sup>187</sup> Discrimination, for the purposes of social security coordination is, as defined by Chardon, “applying different rules to comparable situations or applying the same rule to different situations.”<sup>188</sup> Non-discrimination in social security issues is one of the fundamental human rights which were promulgated by the *Universal Declaration of Human Rights* of 1948, which provides in Article 22 that “[e]veryone, as a member of society, has the right to social security.”<sup>189</sup> In line with this promulgation the ILO Convention No. 102 provides for the equal treatment of non-national residents.<sup>190</sup> Article 68 of Convention No. 102 states that “[n]on-national residents shall have the same rights as national residents... [p]rovided that the application of this paragraph may be made to the existence of a bilateral or multilateral agreement providing for reciprocity.” It would seem that the principle of equality of treatment in social security matters in relation to coordination is mainly based on the ILO Convention on *Equality of Treatment (Social Security) Convention* of 1962.<sup>191</sup> The ILO Convention No. 118 seeks to guarantee equality of treatment of stateless persons, refugees and migrant workers. It also states that equality of treatment should be observed in all existing branches of social security in a specific country insofar as the country has accepted the obligations under the ILO Convention No. 118.<sup>192</sup>

Export of benefits is another principle which is aimed at ensuring portability of social security benefits. The principle states that where the employee has contributed to a foreign country, the benefits should be sent to wherever the person

<sup>187</sup> Chardon, “Principles of Coordination” in Jorens and Schulte, (eds), *op cit*, at p. 61. See also D. Paparella, *Social Security Coverage for Migrants: Critical Aspects*, Paper presented at the International Social Security Association (ISSA), European regional meeting on Migrants and Social Protection in Oslo, Norway, 21 – 23 April 2004, at p. 21. Available at <http://www.issa.int/pdf/oslo04/2paparella.pdf>, last accessed on 6 August 2005.

<sup>188</sup> Chardon, “Principles of Coordination” in Jorens and Schulte, (eds), *op cit*, at p. 61.

<sup>189</sup> See also the International Covenant on Economic, Social and Cultural Rights of 1966.

<sup>190</sup> See Part XII of the ILO Convention No. 102.

<sup>191</sup> ILO Convention No. 118. Only 38 countries have ratified Convention No. 118. Article 10(1) of the ILO Convention No. 118 provides for an exception to the reciprocity requirement of the ILO Convention No. 102, as it provides that the principle of equality of treatment applies to refugees and stateless persons irrespective of non-existence of reciprocity. See also Article 27(1) *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families* of 1990 which provides for protection of migrant workers “in so far as they fulfil the requirements provided for by the applicable legislation of [the State of employment] and the applicable bilateral and multilateral treaties.”

<sup>192</sup> Articles 1, 2, 3 and 4 of the ILO Convention No. 118. See Voirin, M., “Social Security for Migrant Workers in Africa”, *International Labour Review*, Vol.122, No.3, May – June 1983, pp 329-342, at p. 331. See also the ILO Convention on *Equality of Treatment (Accident Compensation) Convention* of 1925, Convention No. 19.

would be at the time when the social security benefits become due.<sup>193</sup> However, export of benefits involves costs which subject the benefits to certain limitations and reductions.<sup>194</sup> For instance, some jurisdictions treat social security benefits as income and therefore taxable.

Totalisation of periods of coverage is another principle of regional and international cooperation on social security matters. This refers to determination of the minimum requirement for the years of divided or scattered social security contributions to different social security schemes in different countries.<sup>195</sup> As earlier noted, this principle protects migrant workers or employees from any disadvantages of moving from one country to another, because they have contributed equally to the economic and social development of the countries in which they have worked. The other reason advanced is that every human being has a time of optimal productivity and so should not be denied social security rights that were acquired when she/he was of a productive age.<sup>196</sup>

Mutual administrative assistance is another guiding principle of regional and community coordination on social security issues. There are two components to this principle: maintenance of rights in the course of acquisition and maintenance of acquired rights.<sup>197</sup> The two components are by and large derived from the ILO Convention on the *Maintenance of Social Security Rights* of 1982 and the ILO Convention on *Equality of Treatment (Social Security) Convention* of 1962.<sup>198</sup> Apart from the two principles, the ILO Convention No. 157 also provides for the principle of determining the applicable legislation in a specific case.<sup>199</sup>

Maintenance of rights in the course of acquisition refers to the recognition and aggregation of the periods of contribution where the employee has been subject to different social security legislation in two or more countries.<sup>200</sup> This is beneficial to the employee as all social security rights acquired under different social security

<sup>193</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 10.

<sup>194</sup> Cruz, *op cit*, at p. 5 and Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p.10.

<sup>195</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 22.

<sup>196</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 51.

<sup>197</sup> *Ibid.* at pp. 68-69. See also Cruz, *op cit*, at p. 5.

<sup>198</sup> See articles 10(1) and 9(1) of the ILO Convention No. 157 of 1982 and article 7(1) of the ILO Convention No. 118. ILO Convention No. 157 has been ratified only by three states, namely, the Philippines, Spain and Sweden. See also the ILO Convention No. 48 on *Maintenance of Migrants' Pension Rights* of 1935. See Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 11 and Cruz, *op cit*, at p. 5.

<sup>199</sup> See Part II of the ILO Convention No. 157. See also Parts III and IV.

<sup>200</sup> Cruz, *op cit*, at p. 5 and Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 68.

schemes or systems to which he/she has been subjected are maintained, and the time of contribution aggregated, and used to determine his/her social security benefits which are dependent on time.<sup>201</sup>

Maintenance of acquired rights on the other hand, refers to the commitment by the state that the social security benefits will follow the beneficiary wherever he/she settles or resides.<sup>202</sup> This means that national social security legislation, as in the Philippines, has to protect and maintain the social security rights of people who in one way or another have contributed to the system, whether they are nationals or foreign nationals. As noted earlier on, this is one of the ways to ensure that coordination between states is guaranteed in social security matters.

Determination of applicable legislation is another important principle envisaged by ILO Convention No. 157. This principle seeks to avoid conflict of laws during the determination of one's social security entitlements. As Voirin succinctly puts it:

[The principle] aims to avoid conflicts of laws and the undesirable consequences that might ensue either through lack of protection or as a result of undue plurality of contributions or their liabilities or of benefits, in accordance with the principles set forth in the *Maintenance of Social Security Rights Convention*, 1982...<sup>203</sup>

Data on availment is another important aspect of coordination.<sup>204</sup> This principle entails coordination of databases and exchange of information concerning the beneficiaries of social security rights under bilateral or multilateral agreements. This facilitates easy administration and disbursement of social security benefits without undue delays.

Some countries have enacted unilateral social security laws for the portability of social security benefits to countries where there are no bilateral or multilateral arrangements. These include Germany, Australia, the Philippines and the United States of America. In the case of the USA, the benefits cannot be exported to Cuba, the Democratic People's Republic of Korea, and the successor countries of the Soviet Union.<sup>205</sup>

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<sup>201</sup> *Ibid.*

<sup>202</sup> *Ibid.*

<sup>203</sup> Voirin, *op cit*, at p. 332.

<sup>204</sup> Cruz, *op cit*, at p. 5.

<sup>205</sup> Paparella, *op cit*, at p. 11. See also Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 14.

### 2.2.3.2.1 Bilateral agreements

In the context of coordination of social security systems, bilateral agreements are agreements between two countries setting out the mechanisms, rights and obligations of member states in relation to their social security beneficiaries. The first main principle upon which bilateral agreements are grounded is the compatibility of the two parties' social security schemes.<sup>206</sup> The second principle is reciprocity of treatment to the nationals of the two countries.<sup>207</sup>

Compatibility of social security schemes refers to the way the national social security schemes of the states are organised and the types of benefits they offer. This principle ensures that the beneficiaries from member states are not disadvantaged by staying in another of the member countries.

The principle of reciprocity is based on the fact that the two countries entering into the agreement have to treat their nationals equally when it comes to social security matters. This is normally applicable to issues of portability of benefits and entitlement to benefits.

One of the advantages of having bilateral agreements is the inclusion of specific provisions for equality of treatment between the nationals of the two countries. This is achieved through non-discrimination clauses in the agreements, provisions on how to transfer the acquired social security rights/benefits or the social security rights/benefits in the acquisition process within the member states, setting out the kind of benefits that would be available for all nationals and specifying the ones that are portable, as well as provisions on the totalisation of periods of contributions.<sup>208</sup> However, bilateral agreements may lead to discrimination and inequalities between the nationals and migrant workers and among the migrant workers themselves.<sup>209</sup> This happens, for instance, where there are migrant workers from different countries which have different bilateral agreements with the host country. Each migrant worker will be treated according to the agreement with his/her home country.

In the absence of bilateral agreements, workers face disadvantages such as loss of their contributory periods, reduced portable benefits, and loss of the employer's contributions because in most cases, the employee would be entitled only to a lump

<sup>206</sup> Cruz, *op cit*, at p. 4.

<sup>207</sup> Paparella, *op cit*, at p. 8 and Cruz, *op cit*, at p. 4.

<sup>208</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 12.

<sup>209</sup> Paparella, *op cit*, at p. 10.

sum which excludes the employer's contributions.<sup>210</sup> The national governments are also overburdened by having to provide compulsory pensions to returning migrants, and having to provide health care to the entire population.<sup>211</sup> For instance, an elderly man returning to South Africa would be entitled to old age benefits and, in some cases, health care because he is not able to carry his benefits from the country where he was working because of the lack of portability agreements between the two countries. This would be the case even if the man had been given a lump sum and had misused it.

Another problem with the absence of bilateral agreements is that the employee is in some cases required to continue to contribute to the home country's social security system. This kind of arrangement is possible under the Hong Kong social security law.<sup>212</sup> The problem comes when, upon retirement, the retiree decides to stay in the host country, which means he/she will not be entitled to social security protection in the host country and the contributions made to the home country may not be enough to sustain the retiree in the host country.<sup>213</sup> Most importantly, one should bear in mind that this arrangement is possible only if the home country's national social security law allows such arrangements.<sup>214</sup>

Bilateral agreements take into account the specificity of each country and are closely scrutinised by the member states.<sup>215</sup> This is advantageous because all concerns between the contracting countries will be taken into account. Each bilateral agreement that a country enters into is likely to be different from another. However, this specificity and close scrutiny leads to a multiplicity of bilateral agreements and complicated administration as each bilateral agreement demands special administration.

Bilateral agreements offer various advantages, particularly the protection of the social security benefits of workers which is their primary aim. Consideration should, however, be given to multilateral agreements which have fewer administrative complexities. This shall be discussed in the next section.

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<sup>210</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at pp. 17 and 23.

<sup>211</sup> *Ibid*, at p. 23.

<sup>212</sup> *Ibid*.

<sup>213</sup> *Ibid*.

<sup>214</sup> This kind of arrangement is needed for most of the migrant workers in the Gulf Region where they are excluded from participating in and contributing to the public social security system. See Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 10.

<sup>215</sup> Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 25.

### 2.2.3.2.2 Multilateral agreements

Multilateral agreements are regional agreements on various issues. This means that once there is a multilateral agreement, every member state of a region or community is bound by it. In the social security context, multilateral agreements refer to agreements between countries about how they will address social security issues within the region or community.

Multilateral agreements have many advantages: They remove discrimination between nationals of different countries who are parties to the agreements and ease the bureaucratic procedures associated with bilateral agreements.<sup>216</sup> Multilateral agreements avoid the bureaucratic administrative procedures that are associated with social security systems, especially where a country has several bilateral agreements with different countries. This is because the complications which arise in the administration and enforcement of different bilateral agreements can now be managed on a multilateral basis, which means that the same regulations and procedures for all social security issues will apply between the member states.

In the absence of multilateral agreements, foreign nationals will be discriminated against on social security matters, because they may be treated differently, depending on the different bilateral agreements which exist between the host and home countries, or they may be totally discriminated against where there is no bilateral agreement between the two countries. Examples of communities benefiting from multilateral agreements include the Caribbean countries under the *Caribbean Community Agreement on Social Security* of 1996 and the European countries under the *Council Regulation No. 1408/71*.

The CARICOM Agreement on Social Security provides for, among other things, principles on the applicable law,<sup>217</sup> the provision of the agreed social security benefits,<sup>218</sup> and totalisation of contribution periods.<sup>219</sup> All the members of CARICOM have similar rights under the CARICOM Agreement. Similarly, the members of the European Union under the *Council Regulation No. 1408/71* are treated equally on social security matters regardless of which member country an EU national or resident is in. To achieve this, Regulation No. 1408/71 outlines several principles, including

<sup>216</sup> *Ibid*, at p. 22.

<sup>217</sup> See Part II of the CARICOM Agreement on Social Security of 1996.

<sup>218</sup> The benefits include invalidity benefits, old age benefits, retirement benefits, survivors' benefits, disability pensions, and death benefits. See Part III of the CARICOM Agreement on Social Security of 1996.

<sup>219</sup> Article 17 of the Part III of the CARICOM Agreement on Social Security of 1996.

choice of law (the *lex loci laboris*), equal treatment, aggregation of insurance periods and the exportability principle which entails the maintenance of acquired benefits and the payment of benefits to European Union residents in any country which is a member state of the Union.<sup>220</sup>

However, in some cases, the parties to the multilateral agreements may enter into bilateral agreements with other countries which are not members of the region or community. For instance, there are several bilateral agreements between European countries and other countries, for example, between the Philippines and Spain, and the Philippines and France.<sup>221</sup> Also, the community or region may enter into agreements with other countries. This kind of agreement will mean that the nationals of the individual country will be able to benefit from social security systems in any of the countries within the community and vice versa. For instance, the European Union has entered into agreements with Turkey, Morocco, Algeria and Tunisia.<sup>222</sup>

Multilateral agreements are, therefore, more advantageous than bilateral agreements where it is possible to involve many countries in the same agreement. However, in cases where there is no regional or community cooperation, bilateral agreements should be maintained.

It should be noted, however, that bilateral or multilateral agreements do not take precedence over national social security law.<sup>223</sup>

#### 2.2.4 Fragmentation of social security schemes

Fragmentation of social security schemes refers to the existence of multiple social security schemes which cover the same or different groups of people and provide the same or different kinds of benefits for similar occurrences of social risks. Fragmentation also refers to different levels of contributions, different conditions for entitlements to social security benefits, different mechanisms for collecting contributions from the members of the schemes, and different investment policies.<sup>224</sup>

<sup>220</sup> See also Olivier, M. P., *Regional Social Security: Are Innovative Developments in Southern Africa Relevant to the European Context?* Paper presented at the EISS Conference: Bergen, 27 – 29 September 2001; Conference theme: European Social Security and Global Politics, at p.18.

<sup>221</sup> See Cruz, *op cit*, at p. 5 and Holzmann, Koettl and Chemetsky, 2005, *op cit*, at p. 14.

<sup>222</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 59. The Agreements between EU with Morocco and Algeria were entered into force on 27 September 1978 by virtue of OJ L 264/78 and OJ L 263/78 respectively, with Tunisia on 27 September 1978 by virtue of OJ No L 265/78 and with Turkey on 29 December 1972 by virtue of OJ L 293/1.

<sup>223</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 73. See also International Labour Conference, 89<sup>th</sup> Session, Report VI, *op cit*, at p. 59.

<sup>224</sup> Rwegoshora, *op cit*, at pp. 18, 35, 38, and 58.

Fragmentation is considered a problem in many developing countries because it leads to a lack of focus for social security policies, an overlap of functions, and the fostering of discrimination and competition between the schemes. Fragmentation can also be caused by the absence of a central body responsible for social security coordination.<sup>225</sup> However, the presence of the Social Security Agency as the central body in South Africa has not solved the fragmentation problem because it is caused by the peculiarity of the social security system in place which is of a more private and voluntary nature for the working population.<sup>226</sup>

It is argued that the fragmentation of social security schemes leads to social protection policies lacking focus.<sup>227</sup> As policies are the framework for action, it is clear that fragmentation will result in a lack of direction for the improvement of the quality of life of people, which results in the abject poverty of the marginalised and excluded groups.<sup>228</sup>

Fragmentation also leads to the overlapping of functions, where different schemes under different ministries or ministerial departments cover the same groups of people.<sup>229</sup> Thus each ministry or department will be performing the same obligations for different schemes. These functions could be performed by a single ministry or department for all social security schemes if the system were not fragmented.

Another aspect of fragmentation is that it fosters discrimination. This can occur where the same group of employees are covered by different schemes which offer different benefit packages, and in the event of the occurrence of the social risk the employees are insured against, they would receive different benefits for the same risk.<sup>230</sup> People who would otherwise have been treated equally are discriminated against because of the social security schemes to which they are or were subjected.

<sup>225</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 25.

<sup>226</sup> E. Fultz and B. Pieris, *The Social Protection of Migrant Workers in South Africa*, ILO/SAMAT Policy Paper No. 3, Harare, Zimbabwe, 1997, at p. 4. See also the Taylor Committee of Inquiry 2002, at pp. 12 and 40. For a more recent discussion on the social security reform in South Africa see Republic of South Africa, *Social Security and Retirement Reform*, Second Discussion Paper, National Treasury, February 2007, which proposes a compulsory contributory scheme for South Africans. It should be noted that by 2007, the Social Security Agency was only working for social assistance measures.

<sup>227</sup> International Labour Conference, 89<sup>th</sup> Session, Report VI, *op cit*, at p. 63.

<sup>228</sup> Rwegoshora, *op cit*, at p. 19.

<sup>229</sup> International Labour Conference, 89<sup>th</sup> Session, Report VI, *op cit*, at p. 63.

<sup>230</sup> Kashonda, *op cit*, at p. 58. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 37. See further Bodor, A., *et al*, *Pensions Systems and the Cost of Supply Side Distortions in the Labour Market*, Paper presented at the 5<sup>th</sup> International Research

Fragmentation also fosters competition between the public social security schemes which destroys the whole meaning of solidarity and social security.<sup>231</sup> Competition between the public schemes, it is argued, leads to the misuse of public funds as money is used for advertisements instead of improving contributors' benefits.<sup>232</sup> It should be noted, however, that competition may be acceptable for private social security schemes like health schemes and private pension schemes as they operate in the private market, covering only those who can afford their costs.<sup>233</sup> Private social security schemes are voluntary rather than compulsory, and are, in most cases, privately regulated.<sup>234</sup> For instance, in Chile, the workers accumulate their private savings in tax-deferred pensions savings accounts. These savings belong to an individual and can be invested by the owner with any investment company. When the investment company does not meet the expectations of a member, the member can switch to another investment company. The investment companies therefore compete to have more pension savings invested with them.<sup>235</sup>

It is argued that it is unlikely to have comprehensive social security system and coordination arrangements amid fragmentation.<sup>236</sup>

### 2.2.5. Governance

Governance refers to "the relationship of the leadership with the led in terms of practical commitment and technical competence, fairness, efficiency and effectiveness of the institutions, service delivery, accountability and transparency."<sup>237</sup> The definition embraces the issues of transparency and accountability of the social security management team towards the members of and contributors to the social security institutions.<sup>238</sup> In this way, the effectiveness and efficiency of social security

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Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at pp. 3-4.

<sup>231</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 77. See also Rwegoshora, *op cit*, at p. 59.

<sup>232</sup> *Ibid*.

<sup>233</sup> Asian Development Bank, *Report and Recommendation of the President to the Board of Directors on a Proposed Cluster, First Loan and Technical Assistance Grant to the Republic of Indonesia for the Financial Governance and Social Security Reform Program*, RRP: INO 33399, November 2002, at p. 27.

<sup>234</sup> See Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 78.

<sup>235</sup> <http://www.fee.org/vnews.php?nid=3808>, last accessed on 5 October 2005.

<sup>236</sup> Personal interview with one of Tanzania's international experts for Phase II of Social Security Reform, on 12 June 2005 at Holiday Inn, Dar es Salaam, Tanzania. See also Rwegoshora, *op cit*, at pp. 58-59.

<sup>237</sup> Rwegoshora, *op cit*, at p. 40.

<sup>238</sup> See Pieters, *op cit*, at p. 19.

institutions are the outcome of the commitment and competence of the management team. It is argued that the sustainability and viability of a social security scheme depends on good governance as one of its important pillars.<sup>239</sup>

Over and above the definition of governance in social security schemes, UNESCAP outlines the general principles of good governance to include:

Participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.<sup>240</sup>

It follows therefore, that governance of social security schemes ought to be pegged on these principles for any successful administration of these institutions. And most importantly, as Jafferjee puts it, "in the governance of the [social security schemes] the workers should have a say and nobody should dare to deny that right."<sup>241</sup> It is the principle of participation of all stakeholders in the management of the social security institutions that will ensure observance of the good governance principles. As such, investment decisions will not only be joint decisions of all the stakeholders and minimise the chances of political influence and corruption, but they will also warrant public trust and the satisfaction of the contributors, and will increase the returns as compliance, it is believed, would be greatly improved.<sup>242</sup>

Non-adherence to the good governance principles constitutes bad governance. In many social security institutions in developing countries, good governance is yet to be attained. This state of affairs has led to a lack of transparency and accountability of the management to the beneficiaries of and contributors to social security institutions.<sup>243</sup> Also, bad governance is responsible for:

<sup>239</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 45.

<sup>240</sup> United Nations Economic and Social Commission, for Asia and Pacific, (UNESCAP), *What is Good Governance?* Accessed through <http://www.unescap.org/huset/gg/governance.htm>, on 5 July 2006.

<sup>241</sup> ILO, *Report on the Workshop on Financing and Governance of Social Security Schemes*, held on the 13 – 14 December (no year indicated), at Golden Sun Resort Hotel, Wadduwa, at p. 5, accessed through <http://ilo.law.cornell.edu/public/english/region/asro/colombo/download/socialsec.pdf>, on 10 July 2006.

<sup>242</sup> *Ibid*, at p. 7. See also McGillivray, W., "Contribution Evasion: Implications for Social Security Pension Schemes," *International Social Security Review*, Vol. 54, No. 4, 2001, pp. 3 – 22, at p. 3.

<sup>243</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 27. See also Matijascic, M. and Kay, S. J., "Social security at the crossroads: Toward effective pension reform in Latin America," *International Social Security Review*, Vol. 59 No. 1, 2006, pp. 3 – 27.

[I]ack of transparency and disclosure; weak internal corporate governance structures; directed investments under political pressure and poor returns; high administrative and operational costs; cross-subsidization between pension and non-pension programs; payment of dividends and taxes to the Government due to corporate status; a general perception among the participants that there is no independent audit; and inadequate management information systems, raising the possibility of underreporting or misallocation of contributions.<sup>244</sup>

These factors are the most prevalent in most of the existing social security schemes in developing countries.<sup>245</sup> It would seem, therefore, that all the problems that are encountered in the administration and provisioning of social security are a result of bad governance. For instance, lack of transparency and disclosure, as one of the elements of bad governance, has led to problems of misappropriation of social security funds for personal use and, in some cases, the delay of benefits and stagnant levels of social security benefits in many developing countries.<sup>246</sup>

Secondly, lack of confidence in the governance of the social security institutions has resulted in low returns and inadequate benefits because of the non-compliance rate of the contributors.<sup>247</sup> As such, “[h]igh levels of evasion and avoidance can indicate low public credibility of a social security scheme and reflect on the quality of governance of the scheme and the efficiency of scheme administration.”<sup>248</sup>

Delay in the payment of benefits when they are due is another common feature of lack of good governance, as well as misappropriation of social security funds. In the absence of good governance, social security funds can be misallocated and at times invested in non-profit yielding ventures like personal loans and politically-motivated ventures.<sup>249</sup> Where the funds have been invested or placed in non-profit yielding ventures, it is unlikely that the benefits will be disbursed at the appropriate

<sup>244</sup> Asian Development Bank, *loc.cit.*

<sup>245</sup> This is the case even for the mushrooming microinsurance schemes which in the recent past have strived to cover those excluded from the formal social security schemes; they are clouded with lack of transparency and weak accountability measures. See Nannyonjo, J., *The Challenges of Managing Microinsurance Schemes in Uganda*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 5.

<sup>246</sup> See Reynaud, *op cit*, at p. 4.

<sup>247</sup> Asian Development Bank, *loc.cit.* See also ILO, *Social Security: A New Consensus*, International Labour Organisation, Geneva, 2001, at p. 2.

<sup>248</sup> McGillivray, *op cit*, at p. 4.

<sup>249</sup> See Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 5.

time. Certainly, the problem of stagnation of social security benefits is also compounded by lack of good governance, because the funds which could otherwise be used to raise the levels of benefits are used for other activities.

Fourthly, bad governance is influenced by political interference and authority over the social security institutions. It is argued that for a social security scheme to adhere to the principles of good governance, it has to be free from political influence. In the current social security context, many decisions taken by the schemes are influenced by politicians, including investment decisions.<sup>250</sup> This is because, among other things, the senior administrators of the social security institutions are appointed by political leaders.<sup>251</sup> In view of this, and in order to put into effect good governance principles, which are vital for meaningful social security provisioning, Diop suggests that administrators of social security institutions should not be political appointees. This is the case in Senegal, where “the Board nominates and dismisses the Director-General and decides his or her salary...The Board’s prerogative in nominating the Director-General frees the latter from any political influence.”<sup>252</sup>

In view of the foregoing arguments, there can be no meaningful national social security institution in the absence of good governance.<sup>253</sup> Good governance, according to Bailey, is one of the means to ensure effectiveness and the extension of social security protection to the excluded majority.<sup>254</sup> In any successful social security scheme, the beneficiaries must have confidence in management, and this is gained through transparency and accountability which ensures efficiency, credibility and reliability.<sup>255</sup> Good governance has to be reinforced by legislation in order to address the identified problems and enhance the proper functioning of social security institutions. In the words of Bailey:

Public institutionalised social security schemes need to be based on a sound administrative and legislative structure which respects the roles and obligations of the stakeholders: those who pay contributions, those who receive benefits and those who are charged with making such systems work. Social dialogue between employers, workers, administrators

<sup>250</sup> ILO, *Report on the Workshop on Financing and Governance of Social Security Schemes*, *op cit*, at p. 2. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 21.

<sup>251</sup> A. Y. Diop, “Governance of social security regimes: Trends in Senegal,” *International Social Security Review*, Vol. 56 Nos. 3-4, 2003, pp. 17-23, at p. 21.

<sup>252</sup> *Ibid*

<sup>253</sup> Bailey, *op cit*, at p. 3.

<sup>254</sup> *Ibid*, at p. 13.

<sup>255</sup> *Ibid*

and policy makers is an essential ingredient. These elements have not been consistently present in public social security schemes in Africa and their absence has contributed to the administrative weaknesses and the low levels of coverage.<sup>256</sup>

Lack of good governance, therefore, is one of the major problems facing social security institutions in many developing countries, making it hard for the social security institutions to extend coverage and to be efficient in service delivery while placed at the mercy of political interference.<sup>257</sup> This being the case, it is evident that there is need to improve governance in the social security schemes.<sup>258</sup>

### 2.3 CONCLUSION

In this chapter we examined the current problems in social security law by reviewing some relevant literature with a view to establishing a more comprehensive concept of social security. The literature reviewed has revealed that the problems of social security are diverse, including the problem of limited coverage in terms of the population, social risks and social security benefits. Other problems include lack of in-country coordination for social security schemes and regional systems, inadequacy of social security benefits, fragmentation of social security schemes and lack of good governance.

The literature reviewed has shown that the current problems can be solved if governments are committed. For instance, at the regional level, member states should be committed to taking on board the issues of equal treatment of nationals from member states if any meaningful social security system is to be realised. At the national level, the government has to direct the reform endeavours towards viable policy formulation and legislative reforms so as to embrace the issues of coordination and good governance.

Moreover, literature shows that bilateral agreements are beneficial where multilateral agreements are not in place. It also shows that multilateral agreements should be preferred over the bilateral agreements because of the enormous advantages of having multilateral agreements.

Having looked at the social security issues and what they entail, we now proceed to consider each problem and how the data collected addresses the problems.

<sup>256</sup> Bailey, *op cit*, at pp. 13-14.

<sup>257</sup> *Ibid*, at p. 14.

<sup>258</sup> See Asian Development Bank, *loc. cit*.

In the next chapter, we consider what can be changed or reformed to reach the ultimate goal of social security, which is the improvement and maintenance of the welfare of people through solidarity measures.

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## CHAPTER THREE

### THE SCOPE OF COVERAGE OF SOCIAL SECURITY SCHEMES IN TANZANIA

*That social security should extend protection to the whole community is a truism. That its protection should be uniform for each section of the community is simple social justice. And that the whole community should stand together, non-national residents equally with national residents, to provide this protection is an expression of the solidarity which underlies the whole concept.<sup>1</sup>*

#### 3.0 INTRODUCTION

In chapter one the problems of the current social security systems in Tanzania and South Africa were examined. The research methodology was set out and the significance of the study to the social security reforms apparently underway was highlighted. Chapter one also described the general organisation of the chapters in this thesis. The previous chapter highlighted the main issues which are the focus of this study by reviewing different studies. The literature review revealed that the issues of low coverage, inadequacy of social security benefits, lack of coordination, fragmentation of social security schemes and problems in governance are common features of social security systems in many parts of the world, particularly in sub Saharan Africa. The reviewed literature also indicated that in the wake of emerging regionalisation, there is an urgent need to reform social security systems at both national and regional levels to allow for coordination.

This chapter reports in detail on current social security coverage in Tanzania, specifying the groups of people covered and those excluded, the social risks covered and the benefits that are offered by the social security schemes. The chapter is organised according to the questions on coverage posed in chapter one. First, it reports on whether the current social security system provides adequate coverage for the people it purports to cover. Secondly, it reports on the reasons why social security schemes cover few people, few risks and offer a limited number of benefits. Thirdly, the chapter sets out the possibilities for extending coverage to the excluded majority and the "neglected" risks. As it will be shown in this chapter, extension of coverage is

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<sup>1</sup> ILO, *Introduction to Social Security*, International Labour Office, Geneva, Switzerland, 1989, at p. 11.

imperative because the majority of the population are excluded from the scope of the existing social security schemes. Olivier and Kaseke rightly state that:

...[the] social security system of Tanzania is characterised by glaring disparities, the most important of which is the almost wholesale exclusion of the bulk of the population from meaningful social security coverage, due to small formal sector and the largely formal employment-based nature of the social insurance system and the inability of the social assistance system to reach those excluded on any significant scale.<sup>2</sup>

It will be argued that extension of coverage is possible in the context of comprehensive social security protection. This is done by drawing examples from South Africa and other countries to concretise the recommendations for extension of coverage. Moreover, it is argued in this chapter that a successful extension of coverage programme should consider a blend of the ILO and the World Bank approaches to social security and social protection. Lastly, considering the trend of exclusion of the majority of the population from the ambit of the existing schemes, the study suggests that separate schemes for the excluded are a better option for Tanzania.

In this chapter, the words “schemes” and “institutions” are used interchangeably to denote social security schemes or institutions. The term “excluded” refers to the totality of groups excluded from the existing social security schemes, including the informal sector, the self-employed, casual workers, the rural agricultural and peasantry population, the atypically employed and the unemployed. The meanings of other terms used are as explained in chapter one.

In traditional studies of social security law, “coverage” refers to groups of people and social risks. This study, however, included social security benefits under the broad category of “coverage” because social risks determine the benefits that can be offered. Thus benefits is one of the issues discussed in this chapter.

### **3.1. GROUPS OF PEOPLE COVERED AND THOSE WHO ARE EXCLUDED**

The activities of social security schemes in Tanzania are concentrated in the formal sector, excluding other sectors like the agricultural and informal sectors, atypical employment, and the self-employment sector. The trend of exclusion is

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<sup>2</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force, 2005, op cit, at p. 17.*

related to the socio-economic and political history of Tanzania. Before colonialism, social security in its informal context, was based on solidarity, mutuality and reciprocity and covered all individuals in society.<sup>3</sup> With the advent of colonialism, social security coverage was confined to the foreign expatriates and indigenous minority who were employed by the colonial government.<sup>4</sup> Apart from being employment-based, social security coverage was also earnings-related. Only the “high ranking employees” in the public sector were protected.<sup>5</sup>

After independence in 1961, some of the colonial social security laws were inherited<sup>6</sup> and other new laws were enacted.<sup>7</sup> Apart from providing coverage to formal employees in the government and the private sector, the independence government made deliberate efforts to provide comprehensive social security to the excluded majority.<sup>8</sup> These efforts came together with the policies of socialism and self reliance which, in essence, wanted to revert back to the “abandoned” traditional social security based on solidarity.<sup>9</sup> These efforts did not yield the expected comprehensive social security for the majority. Poverty continued to spread, especially to the rural peasant communities. Among other reasons, social protection efforts failed because of Tanzania’s commitment to helping other African countries involved in liberation struggles.<sup>10</sup> This commitment depleted most of the resources and social security

<sup>3</sup> Bossert, *op cit*, at p. 3.

<sup>4</sup> *Ibid.* at p. 108. See also the *Master and Servants Ordinance* of 1923, Cap 78, repealed by s.161 of the *Employment Ordinance* of 1957, Cap 366, the *Asiatic Officer’s Pensions Ordinance*, Cap 48, the *Provident Fund (Government Employees) Ordinance* of 1942, Cap. 51 of the Revised Laws of Tanganyika and the *Provident Fund (Local Authorities) Ordinance* of 1944, Cap. 53. The latter was repealed by s. 16 of the *Local Government Service Act*, of 1982, Act No. 10 of 1982.

<sup>5</sup> See the *European Officers’ Pensions Ordinance* of 1932, Cap 47 and the *Junior Officers’ Pensions Ordinance* Cap 268, both repealed by s. 24 of the *Pensions Ordinance*, of 1954, Cap 371 which was also repealed by s. 73(1) of the *Public Service Retirement Benefits Act* of 1999, Act No. 2 of 1999.

<sup>6</sup> *Pensions Ordinance*, of 1954, *Provident Fund (Government Employees) Ordinance* of 1942, *Provident Fund (Local Authorities) Ordinance* of 1944, the *Employment Ordinance* of 1957 (repealed by the *Employment and Labour Relations Act* of 2004, Act No. 6) and the *Workmen’s Compensation Ordinance* of 1949, Cap 263 as amended.

<sup>7</sup> For instance the *Severance Allowance Act* of 1962, Act No. 57 of 1962 (repealed by the *Employment and Labour Relations* of 2004, Act No. 6), the *National Provident Fund Act* of 1964, Act No. 36 of 1964 (repealed by the *National Social Security Fund Act* of 1997, Act No. 28) and the *Parastatal Pensions Fund Act* of 1978, Act No. 14.

<sup>8</sup> Kanywanyi, *op cit*, at p. 2. See also the *Workers’ and Farmers’ Housing Development Fund (Financing and Management) Act* of 1974, Act No. 20, repealed with savings by the *Payroll Levy Act* of 1985, Act No. 12 of 1985.

<sup>9</sup> See the Arusha Declaration on Socialism and Self-reliance of 1967. See also Kanywanyi, *op cit*, at p. 28.

<sup>10</sup> J. K. Nyerere, *Freedom and Development/Uhuru na Maendeleo*, A Selection from Writings and Speeches 1968 – 1973, Oxford University Press, Dar es Salaam, Nairobi, London, New York, 1973, Essay No. 16, pp. 108 – 125, at p. 113. At p. 115 Nyerere states that “Tanzania must support the struggle for freedom in [Mozambique, Angola, Portuguese Guinea, Southern Rhodesia and South Africa].” See also <http://www.africanet.com/africanet/country/Tanzania/history.html> accessed on 15

provisioning was no longer a top priority. The oil and fuel crises of 1974/5 and the war with Uganda in 1978/79 were other factors which impoverished Tanzania.<sup>11</sup> While direct social security provisioning by the government was decreasing, formal social security schemes continued to provide for the minority in the formal sector.

The intersection of rising levels of poverty and social security provision to the minority formal employees coincided with the conditions imposed on developing countries by the IMF and the World Bank. Tanzania was not spared. The IMF and the World Bank compelled Tanzania to stop subsidising medical care and agricultural supplies, and to reduce the number of employees in the government sector. These structural adjustment policies had adverse effects on the social security sphere.<sup>12</sup> Among other factors, it was these effects that led to low coverage by the current social security schemes.

The majority of the population outside the formal sector is excluded from the existing social security schemes. According to Dau, by 2002 Tanzania had a population of about 34.5 million people, of which 16 million were capable of working.<sup>13</sup> Of those capable of working, only 900,000 people, who represent about 5.6 per cent of the labour force, were covered by the formal social security schemes.<sup>14</sup> The challenge for Tanzania now is extension of coverage to the excluded majority.

It is on this multi-faceted history that the current social security system is built. Coverage by social security schemes in Tanzania is determined by diverse factors including legislation, the economy of the country, the nature of employment, contributory capacity, social security priorities, sound administration and method of financing. The excluded people find it difficult to enter social security schemes and the schemes are unable to extend coverage to the excluded where the mentioned factors like contributory capacity of the excluded are not positively considered.

As indicated in chapter two, legislation is one of the major aspects which determines coverage by social security schemes. In Tanzania, all existing formal

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March 2005 where it is noted that "Tanzania was bankrupted due to Nyerere's support of the guerrillas fighting for the independence of Angola and Mozambique against the Portuguese and also those fighting to overthrow the White minority government of Rhodesia...Nyerere also helped to topple two other regimes in 1975 in the Comoros Islands and in 1977 in the Seychelles."

<sup>11</sup> Msalangi, *op cit*, at p. 4. See also Bossert, *op cit*, at p. 94 and Butare, T. and Kaseke, E., "Social Security in Africa: Inherited burdens, future priorities, the burden of recent history", *International Social Security Review*, Vol. 56, Nos. 3-4, 2004, pp. 3 - 9, at p. 3. See further Shivji, "Introduction: The Transformation of the State and the Working People," in Shivji, (ed), 1986, *op cit*, at p. 4.

<sup>12</sup> W. van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed), 1999, *op cit*, at p. 8.

<sup>13</sup> Dau, *op cit*, at p. 1.

<sup>14</sup> *Ibid*

social security schemes and some of the informal schemes are established by legislation. In this context, social security coverage is determined by the law establishing a specific scheme.

The *National Social Security Fund Act* of 1997<sup>15</sup> establishes the NSSF which covers four categories of members. The first category embraces employees in the private sector, which includes companies, non-governmental organisations, embassies employing Tanzanians, international organisations and organised groups in the informal sector. The second category is government ministries and departments employing non-pensionable employees. The third category comprises parastatal organisations employing non-pensionable employees. The fourth category covers ministers of religion, the self-employed or any other employed person not covered by any other scheme such as the PSPF, PPF, LAPP and any groups declared as members by the minister responsible for labour matters.<sup>16</sup> Another different category covered by the NSSF is civil employees in the military.<sup>17</sup> Glaringly, temporary employees are specifically excluded.<sup>18</sup>

Another statute is the *Parastatal Pensions Act* of 1978<sup>19</sup> which covers four categories of employees, namely all parastatal organisations and public institutions, all private companies in which the government owns shares, private companies that are not covered by any other social security fund, and all parastatal organisations which have been restructured through privatisation, sale, or liquidation.<sup>20</sup> Non-pensionable employees in the parastatal organisations and the informal sector are also members of the PPF.<sup>21</sup>

Other legislation includes the *Local Authorities Provident Fund Act* of 2000<sup>22</sup> which covers employees in the local government authorities, the Local Government Loans Board, the Local Authorities Provident Fund, any institution owned by a local

<sup>15</sup> Act No. 28 of 1997.

<sup>16</sup> Ss. 2, 6 and 7 of Act No. 28 of 1997. See also NSSF, *The NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, Benefit Administration Department, NSSF Head Office, Dar es Salaam, at p. 2 and NSSF, *A Guide to the NSSF*, 2004 Issue, Dar es Salaam. This is also based on a personal interview with Mr. H. Faki, the Regional Manager of NSSF Mbeya Branch, at his office in Mbeya on 2 February 2006.

<sup>17</sup> Personal interview with Mr. H. Faki, *ante*.

<sup>18</sup> S. 8 of Act No. 28 of 1997.

<sup>19</sup> Act No. 14 of 1978.

<sup>20</sup> PPF, *PPF Guide*, Dar es Salaam, at p. 8.

<sup>21</sup> See s. 5 of Act No. 14 of 1978 as amended by s. 4 of the *Parastatal Pensions (Amendment) Act* of 2001, Act No. 25. Based also on a personal interview with the Acting Fund Secretary, Head Office, in Dar es Salaam, on 19 December 2005.

<sup>22</sup> Act No.6 of 2000.

government authority and any institution which elects to contribute to the LAPF.<sup>23</sup> It is noteworthy that the LAPF covers temporary employees as well.<sup>24</sup>

The *Provident Fund (Government Employees) Ordinance* of 1942<sup>25</sup> covers non-pensionable employees of the central government who are not covered by any other government pensionable social security schemes.<sup>26</sup> The categories of people covered include those employed to work in the prisons, the police, and operational employees who are categorised as such by the central government, those working on specific projects and those on contracts who are either under the government or from private undertakings.<sup>27</sup>

In a similar exclusive manner, the *National Health Insurance Fund Act* of 1999<sup>28</sup> covers civil servants.<sup>29</sup> Coverage is also extended to employees in executive agencies and government parastatals.<sup>30</sup> However, employees in local government, defence, police, prisons and those covered by NSSF are specifically excluded.<sup>31</sup> The *Political Service Retirement Benefits Act* of 1999,<sup>32</sup> as the name suggests, covers political leaders like the president, vice president, prime minister, ministers, deputy ministers, speaker of the national assembly, deputy speaker, a member of parliament, regional and district commissioners.<sup>33</sup> The *Public Service Retirement Benefits Act* of 1999<sup>34</sup> covers pensionable employees in the central government.<sup>35</sup> Other categories covered are those employed in the executive agencies excluding all employees in the

<sup>23</sup> See s. 6 of Act No. 6 of 2000.

<sup>24</sup> See s. 3 of Act No. 6 of 2000. Also based on personal interview with LAPF official in Dar es Salaam on 8 December, 2005.

<sup>25</sup> Cap 51 of the Revised Laws of Tanganyika.

<sup>26</sup> S. 4 of Cap 51. See also s.3 of the *Provident Fund (Government Employees) Ordinance (Amendment) Act* of 1965, Act No. 52.

<sup>27</sup> Personal interview with the official of the Government Employees' Provident Fund, in Dar es Salaam on 29 December 2005. When those working in the Prisons and Police complete their contractual period they automatically become members of PSPF. See also Baruti, E. E. M., *The Coverage Gap: Extension of Social Security Coverage to the Informal Sector Employees in Tanzania*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p.5.

<sup>28</sup> Act No.8 of 1999.

<sup>29</sup> S. 14 of Act No. 8 of 1999.

<sup>30</sup> See s. 2 of Act No. 8 of 1999. Also based on personal interview with Mr. R. Athumani, the Customer Relations Officer of the National Health Insurance Fund (NHIF), in Dar es Salaam on 13 December 2005.

<sup>31</sup> See s. 2 of Act No. 8 of 1999.

<sup>32</sup> Act No. 3 of 1999.

<sup>33</sup> S. 4 of Act No. 3 of 1999.

<sup>34</sup> Act No. 2 of 1999.

<sup>35</sup> S. 5 of Act No. 2 of 1999.

central government who are non-pensionable and employed on operational terms.<sup>36</sup> The *Community Health Fund Act* of 2001<sup>37</sup> covers all households in Tanzania through the establishment of Community Health Funds by their local government authorities.<sup>38</sup>

One more statute worthy of mention is the *Workmen's Compensation Ordinance* of 1949. As the nomenclature suggests, this legislation deals with compensating specified workers who sustain injuries in workplaces or places where the employee would not be except for employment purposes. This law specially excludes the following categories of workers: those not employed as manual labourers, those who are covered by other compensation schemes, casual employees, out-workers, a tributer, a member of the employee's family, and any other class of persons that the President may declare to be excluded.<sup>39</sup> The only categories of workers covered by this Ordinance are those who have entered into or work "under a contract of service or apprenticeship with an employer, whether by way of manual labour or otherwise..."<sup>40</sup>

It appears that coverage for some categories of employees by the social security institutions overlaps. The NSSF, PPF, GEPF and LAPF seem to cover employees in similar ventures. NSSF covers employees in the private sector, self-employed, non-pensionable employees in government parastatals and central government and the informal sector, to mention a few. PPF has also expanded its coverage to include these categories of employees by virtue of the *Parastatal Pensions (Amendment) Act* of 2001<sup>41</sup> which expands the definition of the parastatal organisation to include, among others, any private or public company, any person in the informal sector, and any corporation within the East African Community.<sup>42</sup> It

<sup>36</sup> See also s. 2 of Act No.2 of 1999. Also based on personal interview with the official of the Public Service Pensions Fund, in Dar es Salaam on 29 December 2005. It should be noted that some of the groups that are expressly excluded by PSPF are covered by GEPF. Other schemes which cover civil servants who are excluded from the coverage of PSPF include the Defence Forces Pensions and Gratuities Scheme (established under the *Defence Forces (Pension and Gratuities) Regulations*, Government Notice No. 52 of 1966) for officers of the Tanzania Peoples' Defence Forces. The Defence Forces Pensions and Gratuities Scheme, like the PSRB, is non-contributory and is funded from general taxes and revenues.

<sup>37</sup> Act No.1 of 2001.

<sup>38</sup> See ss. 2 and 7 of Act No. 1 of 2001.

<sup>39</sup> See s. 2(1) (a) – (f) of Cap 263 of 1949 as amended by the *Workmen's Compensation (Amendment) Act* of 1983, Act No. 17.

<sup>40</sup> See s. 2(1) of Cap 263 of 1949.

<sup>41</sup> Act No. 5 of 2001.

<sup>42</sup> See s. 2 of Act No. 5 of 2001. See also Rubambe, J. C., *The Impact of Privatisation to Tanzania Economy: Seven Years of Experience and the way Forward*, Paper presented at a seminar of the

seems that almost all the categories covered by PPF, except for the pensionable government parastatal employees, were/are covered by NSSF.

There is a reason for PPF spreading its wings of coverage. PPF was initially established for the government parastatals which were mushrooming during the 1970s and early 1980s. Towards the end of 1980s liberalisation of the economy and privatisation of most of the public enterprises, which were the sole members of PPF, affected this scheme in terms of its financial base and operations. Expanding its sphere of coverage was the only remedy. However, this extension did not consider that there were/are other schemes established solely to cover the groups that PPF would not cover. The labour market has witnessed these schemes scrambling for customers and this has severely affected extension of coverage and enforcement of compliance.

Where NSSF, for instance, pursues a private company which has not registered its employees, the company will either allege that they are covered by PPF or that they are waiting to hear from PPF and they will decide where to register their employees. Meanwhile, the employer continues to postpone registration at the expense of the employee, although the employee enjoys his/her full salary without social security deductions.<sup>43</sup> One example of this state of affairs is that of the Star Apparels Company which engaged in business for one and a half years without registering its employees with either PPF or NSSF.<sup>44</sup> This shows how the enforcement of compulsory registration against private companies is at a crossroads. Companies do not register with any of the schemes and when one scheme, for example, PPF asks them about registration they say that they are registered with NSSF, which may not necessarily be the case.<sup>45</sup> Another example is that of Silvadale Company of Kilimanjaro Region which had about 120 employees and registered only 36 employees with the NSSF.<sup>46</sup> Furthermore, whenever enforcement of compliance

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Tanzania Association of Accountants (TAA), Dar es Salaam, 1999 where it is indicated that by June 1999, out of 385 parastatals, about 279 corporate and non-corporate parastatals were divested. In this way, PPF had lost a number of members and the new Act wanted to remedy the situation.

<sup>43</sup> See Bailey, *op cit*, at p. 11 and McGillivray, *op cit*, at p. 5.

<sup>44</sup> Personal interview with an NSSF official (name withheld) on 28 February 2006, in Dar es Salaam.

<sup>45</sup> While this concern was more pronounced among NSSF customers and officials, PPF did not have any comments about this problem. The reason could be that it is NSSF which feels that PPF is encroaching on its area of coverage while PPF sees the social security market as competitive and thus each scheme should struggle to win more customers. These are the effects of scrambling for customers which are discussed in detail in chapter six of this thesis.

<sup>46</sup> See "NSSF denies the investor's report" *Tanzanian Mwanania*, Saturday, 8 July 2006. (Translation is mine).

issues arises between a social security institution and the companies or members, there are always threats that “if you continue to harass me about contributions I am going to cease my membership and register with another scheme.”<sup>47</sup>

Additionally, LAPF covers local government employees who initially were under NSSF. Employees of the Local Government Loans Board, the Local Authorities Provident Fund, and any institution owned by a local government authority who were under the NSSF must contribute to LAPF together with the employees of local government authorities who have been under LAPF all along.<sup>48</sup> While LAPF believes that NSSF is taking its members, NSSF feels that LAPF is taking what have always been NSSF’s members.

These intricacies postulate competition among the schemes and hostility between the institutions, as well as between the managers and administrators of these institutions. Surprisingly, the National Social Security Policy of 2003, which is supposed to provide direction and outline the goals of social security in Tanzania, encourages competition among the schemes.<sup>49</sup>

It is evident from the foregoing that it is only employees in the formal sector who are covered by the existing social security schemes, together with a negligible number of informal sector employees and the self-employed. For instance, among 367,948 members of NSSF, only 2,000 are workers from the informal sector.<sup>50</sup> One may ask why coverage is concentrated on employees. This takes us to the second explanation about why there is low social security coverage in Tanzania: the method of financing. All the schemes discussed above are financed by contributions from employers and employees, save for the Political Service Retirement Benefits which are financed from general revenue, and the Community Health Funds which are financed by contributions from members and matched by the government.<sup>51</sup>

It is argued that the contributory nature of the schemes fosters low coverage. This finding is supported by the fact that it is very unlikely that the excluded, like the

<sup>47</sup> Personal interview with an NSSF official (name withheld) on 28 February, 2006, in Dar es Salaam.

<sup>48</sup> See s. 16 (1) of the *Local Government Service Act* of 1982, Act No. 10.

<sup>49</sup> See Policy Statement No. 3.15 of the *National Social Security Policy*, January 2003, See also Dau, *op cit*, at p. 9. The intricacies involved with fragmentation of social security schemes and the challenges that Tanzania’s social security system is facing are discussed in detail in chapter six of this thesis.

<sup>50</sup> See Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 10. See also Dau, 2003, *op cit*, at p. 6.

<sup>51</sup> See s. 8(3) of Act No. 1 of 2001. Also based on personal interview with Mr. Rudovick James Nduhie, the Economist of the Ministry of Health – CHF, on 30 January 2006 in Dar es Salaam.

informal sector, the rural peasantry, domestic workers, the self-employed and those in atypical employment, will be able to pay “double” contributions, i.e., for the employer and on their own behalf.<sup>52</sup> Similarly, the fact that most of the excluded have “irregular” and unreliable income is another strain on the enforcement of compliance by the social security institutions. As summarised by Van Ginneken:

...informal sector workers have irregular patterns, since their employment is unpredictable and irregular. Casual and seasonal wage employment, for example, depends on the availability of jobs in specific periods. When there is no work, employment is immediately terminated, hence incomes are lost. Self-employment is often dependent on the business cycle and the state of the various product and services markets. The irregularity of informal sector employment makes it unreliable as a source of income for social insurance contributions.<sup>53</sup>

From one point of view, an additional problem with the contributory method of financing is that the excluded do not want to commit themselves to contributing to social security schemes which in the first place do not meet their immediate needs and priorities.<sup>54</sup> For instance, the priorities for the rural agricultural and peasant communities would be social security in terms of crop insurance, natural disaster

<sup>52</sup> Personal interviews with workers in the informal sector and the self-employed in Dar es Salaam, Mbeya and Arusha from December 2005 to early March 2006. (See appendix A). See also Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 11. See also “*Special Supplement for Social Security Funds*,” Tanzanian RAI, 23 – 29 March 2006, where it is stated that “a voluntary member is required to pay 20% of his/her earnings” as opposed to an employee who will share the contributions with his/her employer, say 10 percent from the employer and 10 per cent from the employee’s salary. See further Mesa-Lago, C., *The extension of social security coverage, the labour market and the lessons to be learned from Latin America: The example of healthcare*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 3 and Sankaran, K., “Protecting the Workers in the Informal Economy: The Role of Labour Law,” in Davidov, G. and Langille, B., (eds), *Boundaries and Frontiers of Labour Law*, Hart Publishing, Oxford and Portland, Oregon, 2006, pp. 205 – 220, at p. 219.

<sup>53</sup> Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 11. See also Riazi, M. and Mahdavi, M., *Establishment of the rural insurance fund in Iran: Formation trend, problems and challenges*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 3. See further Pienkos, A., *Investigating informal employment and its implications for closing the coverage gap in Trinidad and Tobago*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 18.

<sup>54</sup> Personal interview with workers in the informal sector and the self-employed in Dar es Salaam, Mbeya and Arusha from December 2005 to early March 2006. See also Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 11 and NSSF, *The study on the extension of social security to the informal sector, case study of agriculture, fishery, mining and SMEs*, Study Report, 2001 where the priorities of those in the informal sector are listed to include loan and credit facilities, sponsorship for vocational training, basic education for children, reliable market for their products, housing loans and working tools. See also Baruti, *op cit*, at p. 4.

issues arises between a social security institution and the companies or members, there are always threats that “if you continue to harass me about contributions I am going to cease my membership and register with another scheme.”<sup>47</sup>

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<sup>52</sup> Personal interviews with workers in the informal sector and the self-employed in Dar es Salaam, Mbeya and Arusha from December 2005 to early March 2006. (See appendix A). See also Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 11. See also “*Special Supplement for Social Security Funds*,” Tanzanian RAI, 23 – 29 March 2006, where it is stated that “a voluntary member is required to pay 20% of his/her earnings” as opposed to an employee who will share the contributions with his/her employer, say 10 percent from the employer and 10 per cent from the employee’s salary. See further Mesa-Lago, C., *The extension of social security coverage, the labour market and the lessons to be learned from Latin America: The example of healthcare*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 3 and Sankaran, K., “Protecting the Workers in the Informal Economy: The Role of Labour Law,” in Davidov, G. and Langille, B., (eds), *Boundaries and Frontiers of Labour Law*, Hart Publishing, Oxford and Portland, Oregon, 2006, pp. 205 – 220, at p. 219.

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<sup>54</sup> Personal interview with workers in the informal sector and the self-employed in Dar es Salaam, Mbeya and Arusha from December 2005 to early March 2006. See also Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 11 and NSSF, *The study on the extension of social security to the informal sector, case study of agriculture, fishery, mining and SMEs*, Study Report, 2001 where the priorities of those in the informal sector are listed to include loan and credit facilities, sponsorship for vocational training, basic education for children, reliable market for their products, housing loans and working tools. See also Baruti, *op cit*, at p. 4.

insurance, assisted marketing and new or better health services.<sup>55</sup> These issues are not covered by the existing schemes. At the same time the social security schemes are hesitant to extend coverage to the excluded as enforcement of compliance may be more expensive than the contributions being sought.<sup>56</sup> A practical implication for this finding is that extension of coverage is still only a distant possibility, as both sides, the excluded and the social security institutions, have different priorities. Extension of coverage can be achieved if “[s]ome other groups could be covered through the reform of the benefit and contribution structures of statutory social insurance schemes.”<sup>57</sup>

However, the success of the UMASIDA in Dar es Salaam and the positive response from the excluded to the Community Health Funds indicate that the excluded majority can become organised and provide for their priority social security needs.<sup>58</sup> UMASIDA is a health insurance institution for the informal sector and it is providing health care and medical care to its members. Although it is also contributory, it deals with the informal sector’s priority, which is health care. CHF has achieved prominence among the excluded in several places where it has been established.<sup>59</sup> CHF is also a contributory scheme but it is subsidised by the government, depending on the rate of contributions by members. For instance, where a member contributes Tsh.5,000 the government matches this by Tsh.5,000. The fact that members contribute on their own behalf and the government subsidises what the formal social security scheme would demand from the excluded as “employer’s contributions” is an incentive.<sup>60</sup> Most of the poor have joined these schemes and some employees in the formal sector are also joining CHFs.

<sup>55</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at pp. 16-17. See also Sankaran, *op cit*, at p. 220.

<sup>56</sup> Dau, *op cit*, at p. 7. See also the International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), *op cit*, at p. 13.

<sup>57</sup> Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 14.

<sup>58</sup> UMASIDA stands for an acronym for a mutual society for health care in the informal sector in Dar es Salaam. See Kiwara, A. D., “Health Insurance for the Informal Sector in the United Republic of Tanzania” in van Ginneken, W. (ed), *Social Security for the Excluded Majority: Case studies of Developing Countries*, ILO, Geneva, 1999, pp. 117-143. See also Steinwachs, L., *Extending health protection in Tanzania: Networking between health financing mechanisms*, International Labour Organisation, Geneva, 2002, pp. 22-23.

<sup>59</sup> For instance, the Igunga Community Health Fund, Mkuranga Community Health Fund, Bukombe Community Health Fund, Misungwi Community Health Fund and Maswa Community Health Fund.

<sup>60</sup> Coverage by the CHFs is expected to rise as many people are becoming aware of them and because health is considered as a top priority by most of the excluded categories. A similar programme is run in Iran and the government matches contributions by the rural residents. See Riazi and Mahdavi, *op cit*, at p. 6. See further Etrminan, E. and Chaker-ol-Hosseini, K., *Social protection for informal workers: Iranian Experience*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security:

Lack of employee-employer relationships and low income in the informal sector are other causes of low coverage in Tanzania.<sup>61</sup> The tendency has been for the employer to minimise costs by hiring casual, informal and atypical workers for some jobs so that the number of employees is kept as low as possible in order to minimise the employer's contributory burden. As these categories of workers do not fit into the definition of "employee", the employer is not compelled to register them with social security institutions. This has led to incidents of collusion between the employer and the "excluded" categories. The employer wants to reduce labour costs, and the employee wants to increase the income she/he takes home.<sup>62</sup> As to the reduction of labour costs, the employer prefers to engage informal or atypical workers for whom he/she does not need to contribute to a social security scheme. In this way, the employer minimises the labour costs as he/she just pays what is agreed upon with the informal or atypical worker. Linked to this is the fact that low income aggravates social exclusion. The informal or atypical worker who is paid his/her salary without deductions for contributions to the social security schemes finds that he/she is better placed than the formal employee who, despite receiving the same salary, has deductions made for social security contributions. This is done at the expense of the informal or atypical worker who enjoys the short period of the "good overflow" of income without considering the risks that may arise in the future.

Administrative bottlenecks also prevent formal social security schemes from extending coverage. First, it is the "high cost of detecting, inspecting and collecting contributions from the large numbers of self-employed, of domestic servants and of wage earners in micro enterprises."<sup>63</sup> Many more difficulties arise with the rural majority as they are "spatially scattered, occupationally diffuse and difficult to reach

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Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at pp. 13-14. See also Mesa-Lago, 2007, *op cit*, at p. 11.

<sup>61</sup> Dau, *op cit*, at p. 5. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 25. See further Mouton, *op cit*, at p. 10.

<sup>62</sup> See Bailey, *op cit*, at p. 11. See also Euzéby, C., "Social security for the twenty-first century," *International Social Security Review*, Vol. 51 No. 2, 1998, pp. 3-16, at p. 4 where Euzéby notes that "...since the inception of social security, employers' contributions have been cited as weighing heavily on labour costs and contributing to unemployment." See further Savoia, J. R. F., *Pension Reform in Brazil: The Challenge of Labour Inclusion*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 11. See further Mesa-Lago, 2007, *op cit*, at p. 7.

<sup>63</sup> C. Mesa-Lago, *Changing Social Security in Latin America: Towards alleviating the social costs of economic reform*, Lynne Rienner Publishers, Boulder, Colorado and London, 1994, as referred to by Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 8.

administratively.<sup>64</sup> Admittedly, it is difficult to identify and keep track of both the movements and the income of the excluded categories. The exclusion of the majority from the ambit of the existing social security schemes is therefore perhaps understandable.<sup>65</sup>

Secondly, public distrust in the administration of social security institutions is another stumbling block to the extension of coverage. The excluded may be dissatisfied with the way social security schemes are managed.<sup>66</sup> Extension of coverage cannot be achieved where the excluded "do not...believe that the government would handle social security funds with an appropriate degree of managerial competence..." Hence "certain avenues for expanding the system are effectively blocked."<sup>67</sup> As the ILO puts it:

Public confidence in social security systems is crucial if they are to attain and maintain wide coverage. This requires not only efficient administration and high standards of financial probity, but also a strong degree of commitment by the government itself to ensure the long-run health of the system. Where this confidence is lacking, people will always find ways to avoid contributing, even though their need for social protection may be very high.<sup>68</sup>

The nominal benefits offered by the existing social security schemes also discourage the excluded from joining them. Low levels of benefits confirm the belief that it is better to save individually for future contingencies than contribute to the schemes. It is true that contributions do not correspond to the levels of benefits and that those who have retired from employment are not sufficiently protected by the schemes, so that relatives and family members still bear the burden of taking care of them.<sup>69</sup> It is equally true that when the excluded see social security beneficiaries suffering, they cannot see any difference between being protected by the social

<sup>64</sup> S. Guhan, "Social security options for developing countries," *International Labour Review*, Vol. 133 No.1, 1994, pp. 35-53, at p. 37. See also Riazi and Mahdavi, *op cit*, at p. 2.

<sup>65</sup> Personal interview with Mr. Faki, *ante*. See also the ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 13.

<sup>66</sup> Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 8.

<sup>67</sup> E. M. Murphy, "Methods of Financing Social Security: An Introductory Analysis," in International Social Security Association, *Methods of Financing Social Security: their economic and social effects*, Studies and Research No. 15, Geneva, 1979, pp. 1-12, at p. 10.

<sup>68</sup> Reynaud, *op cit*, at p. 19.

<sup>69</sup> "I am like some one who has never contributed and paid anything to any social security scheme" were the words of the Deputy Coordinator (2) of the Pensions Union of Tanzania (PUT), a retiree interviewed on 18 January 2006; personal interview with Francis Xavier Kataya, a pensioner under PPF, in Dar es Salaam on 17 January 2006; personal interview with Mr. Hatibu Mwangobola Mwalisu, a beneficiary under NSSF (received his benefits under its predecessor, NPF), in Mbeya on 2 February 2006. The same views were shared by the interviewees in atypical and informal employment, *ante*.

security scheme and not being protected. In fact, some of them have stated that they are better off if they do not contribute and do not receive “token” benefits from the schemes.<sup>70</sup> Low levels of benefits, it is submitted, mean that extension of coverage is at a standstill.

Lack of awareness is another explanation for the low levels of coverage in Tanzania. Administrators of social security schemes in Tanzania hardly visit the employees/contributors to explain their organisational undertakings.<sup>71</sup> If the formal sector employees complain that they have no contact with their social security institutions, then certainly it is much more difficult to reach the excluded. It is advised that social security institutions should plan for outreach “missions” in order to reach the excluded. Equally, the institutions should also consider visiting and disseminating their information to the formal sector employees who mostly seem to have no idea about social security undertakings or the benefits to which they are entitled.<sup>72</sup>

Another aspect of low coverage is in the private health sector. History informs us that the government was the sole provider of, among other things, social welfare since independence. In respect of health, the government nationalised private hospitals in 1977 by virtue of the *Private Hospitals Regulation Act* of 1977.<sup>73</sup> In 1991 the government restored private practice and hospitals through the *Private Hospitals Regulation Amendment Act* of 1991<sup>74</sup> because of, among other factors, the structural adjustment policies of the IMF and the World Bank. The resurrection of private hospitals witnessed the emergence of private medical insurance companies in the country. These companies, like their counterparts in social security schemes, also limit their coverage to low risk people, namely “high income” earners and the affluent minority. This finding is based on the arbitrariness of the membership fees, the kind

<sup>70</sup> The aspect of inadequacy of benefits is discussed in detail in chapter four of this thesis. See further “Kilombero Teachers ‘fed up’ with NHIF” *Tanzanian Guardian*, Thursday, 16 June 2005 where one of the members, indicating her dissatisfaction with the NHIF stated that “[members] would be better off without the Fund ... as they did not get [medical] treatment despite deductions being made on their meagre salaries.”

<sup>71</sup> Most formal sector employees or rather beneficiaries who were interviewed indicated that they had no information about their social security institutions. All they knew was that every month the employer deducted social security contributions. (For instance see footnote 72 of this chapter). See also Kamuzora, P., “Extension of Formal Social Security Schemes in the United Republic of Tanzania” in Van Ginneken, (ed), 1999, *op cit*, pp. 95-116, at p. 106.

<sup>72</sup> At least 70 per cent of the formal sector employees interviewed indicated that they knew nothing about social security matters.

<sup>73</sup> Act No.6 of 1977.

<sup>74</sup> Act No. 26 of 1991.

of diseases that are provided for, and the fact that they have a tendency to “cherry-pick” who to cover and what kind of diseases to insure against.<sup>75</sup>

It follows from these findings that the health providers concentrate their activities in the formal sector, because the income of corporate clients is reliable. They also have a few affluent customers outside of the formal sector. As mentioned, exorbitant fees make it difficult for the excluded to become members of these companies.<sup>76</sup> For instance, the AAR Health Services cover individuals, government institutions and corporate customers with more than 10 employees.<sup>77</sup> Other medical insurance companies like Strategis and Medical Express Tanzania Ltd also cover almost the same range of clients.

It is important to note that in Tanzania, most of the people in the excluded groups are women. The majority of the rural peasant and agricultural communities, and the informal and atypical employment sectors are women. Rwegoshora states that:

The question of equity and fairness is one of the critical issues in Tanzanian social security system especially with regard to gender equality. Historically most of the employees in the formal sector are men when compared to women. This was and is still the case because of low level of education. Efforts have been made by the government to increase the number of girls in education institutions and even in higher administrative levels. Lack of necessary education and qualification has been one of reasons denying them better positions in the formal sector. It is for this reason that, men have had more access to social security benefits compared to women. Even those women who have had access to social security benefits, the benefits have been inadequate because of their low level salaries.<sup>78</sup>

<sup>75</sup> Almost all the schemes do not cover chronic diseases and their fees are as high as Tshs.1,878,415 per annum. See part I.1 of chapter one of this thesis. See also Olivier, “The concept of Social Security” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 139.

<sup>76</sup> See Kiwara, *op cit*, at p. 129.

<sup>77</sup> Personal interview with the AAR Customer Service Manager, in Dar es Salaam on 4 January 2006.

<sup>78</sup> Rwegoshora, *op cit*, at p. 13. See also Tungaraza, F. S. K., “Social Protection in SADC: Developing an Integrated and Inclusive Framework – the case of Tanzania” in Olivier and Kalula, (eds), *op cit*, 2004, pp 178 – 197, at p. 191. See further Olivier, M. and Kaseke, E., *Labour market participation and social security protection of females: Recent developments in SADC*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch? See also Kaseke, E., *Gender and Social Security in SADC: A Social Policy Perspective*, Paper presented at SADC Core Group of Social Security Specialists Conference on Gender and Social Security in SADC, General Rapporteur Report: Windhoek, 6 – 7 July 2006. See also Ratajczak-Tucholka, J., *The female old-age security and the labour market: Policy challenges for pension scheme, the case of Poland*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?

It is argued that if no deliberate efforts are put in place to extend coverage to the excluded groups, their exclusion may be challenged on the basis of discrimination<sup>79</sup> as was the case in *Bilka-Kaufhaus GmbH v. Weber von Hartz*.<sup>80</sup> In this case the complainant was a part-time employee in a company which excluded part-time employees from its occupational pension scheme. The issue in this case was whether the exclusion of part-time workers from membership of an occupational pension scheme amounted to indirect discrimination if such exclusion affected disproportionately more women than men. It was held that "Article 119 of the EEC Treaty is infringed by a department store company which excludes part-time employees from its occupational pension scheme, where that exclusion affects a far greater number of women than men, unless the undertaking shows that the exclusion is based on objectively justified factors unrelated to any discrimination on grounds of sex."<sup>81</sup> Similarly, exclusion in Tanzania may be linked to indirect discrimination as the majority of people in the excluded sector are women. Therefore, there is an urgent need to prioritise extension of coverage in Tanzania as exclusion could constitute a legal cause of action.

Similarly, social exclusion can be challenged as a human rights violation. Tanzania subscribes to the *Universal Declaration of Human Rights* of 1948 by way of inclusion of the Bill of Rights in her Constitution.<sup>82</sup> Article 22 of the Declaration provides that every person has the right to social security. Additionally, Tanzania has ratified the *International Covenant on Economic, Social and Cultural Rights* of 1966<sup>83</sup> which requires State Parties to recognise social protection as a right of

<sup>79</sup> I. Heide, "Sex equality and social security: Selected rulings of the European Court of Justice," *International Labour Review*, Vol. 143 No. 4, 2004, pp. 299-339, at p. 305. See also the ILO, *Social Security: A new consensus*, 2001, Geneva, at p. 2 where the ILO notes that "...those who are not covered by existing systems...include employees in small workplaces, the self-employed, migrant workers, and people – many of them women – active in the informal economy." See further Krause, C. and Scheinin, M., "The Right not to be Discriminated Against: The Case of Social Security," in Orlin, T. S., Rosas, A. and Scheinin, M., (eds), *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach*, Institute for Human Rights, Abo Akademi University, Turku, 2000, pp. 253 – 286. See also Schmid, G., *Flexibility and security on the labour market: Managing and sharing parental risks*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?

<sup>80</sup> Case 170/84, *Bilka-Kaufhaus GmbH v. Weber von Hartz*, [1986] ECR 1607 accessed through [http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=61984J0170&model=guichetto](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=61984J0170&model=guichetto) on 5 April 2006.

<sup>81</sup> See

[http://europa.eu.int/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=61984J0170&model=guichetto](http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=61984J0170&model=guichetto). See also Heide, *op cit*, at p. 305.

<sup>82</sup> See Part III of the URT Constitution of 1977 as amended from time to time.

<sup>83</sup> Ratified on 11 June 1976.

everyone and to take appropriate steps for the realisation of this right.<sup>84</sup> Despite this, Tanzania regards social security as one of the directive principles of state policy which are not enforceable.<sup>85</sup> Besides this, it is believed that social security has a direct bearing on one's right to life which is protected by the Constitution.<sup>86</sup> Social security guarantees protection to people when they can no longer protect themselves from the occurrence of social risks. For instance, sickness is a risk which can cause death if medical care is not guaranteed. In this case, the excluded can challenge the government for not protecting their right to life. There are two landmark cases decided by the Tanzanian High Court where the right to a clean environment, which is not protected by the Constitution, was inferred from the right to life.<sup>87</sup> It is submitted that the right to social security can similarly be inferred from the right to life. This cements the need for extension of social security coverage to the excluded.<sup>88</sup>

Coverage by social security schemes in Tanzania is still very low despite the Government's efforts to extend coverage to the excluded majority. Although the law has literally extended coverage to the self-employed and the employees in the informal sector albeit on voluntary basis,<sup>89</sup> many people, including the ones in the "now included" sectors, are still not included. The fate of migrant workers in Tanzania and Tanzanians working abroad is unknown.<sup>90</sup> It is submitted that extension of coverage needs to be prioritised by the government and social security institutions.<sup>91</sup>

The extension of coverage to people also involves the number of risks covered, and whether the "covered" groups consider the list of risks as sufficient or not.

<sup>84</sup> Article 11(1) of the *International Covenant on Economic, Social and Cultural Rights* of 1966. See also Scheinin, M., "The Right to Social Security," in Eide, A., *et al.*(eds), *Economic, Social and Cultural Rights*, 2<sup>nd</sup> ed., Kluwer Law International, Netherlands, 2001, pp. 211 – 221.

<sup>85</sup> See part 1.3 of chapter one of this thesis.

<sup>86</sup> See Article 14 of the Constitution of the United Republic of Tanzania of 1977. See also Scheinin, M., "The Right to Social Security," in Eide, A., *et al.*(eds), 2001, *op cit*, at p. 221 and Krause and Scheinin, "The Right not to be Discriminated Against: The Case of Social Security," in Orlin, Rosas, and Scheinin, (eds), 2000, *op cit*, at p. 255.

<sup>87</sup> See the cases of *Felix Joseph Mavika & 4 Others v. Dar es Salaam City Commission and Ilala Municipal Council*, Civil Case No 316 of 2000, *Festo Balegele v. Dar es Salaam City Council*, Misc. Civil Case No. 90 of 1991 and *Joseph D. Kessy and Others v. the City Council of Dar es Salaam*, Civil Case No. 299 of 1988.

<sup>88</sup> This aspect is discussed in detail under parts 3.4 and 3.5 of this chapter.

<sup>89</sup> See the *Parastatal Pensions Act* of 1978 as amended by Act No. 25 of 2001 and the *National Social Security Act* of 1997.

<sup>90</sup> This problem is discussed in detail in chapter five of this thesis.

<sup>91</sup> Parts 3.4 and 3.5 of this chapter give more details.

### 3.2 SOCIAL RISKS COVERED

As discussed in chapters one and two, the conventional social security risks enumerated by the ILO Convention No. 102, namely, old age, death, invalidity, employment injury, sickness and unemployment, maternity, family and medical care<sup>92</sup> do not exhaustively take into account the risks that are more prevalent in Africa and, mostly, sub-Saharan Africa.<sup>93</sup> To mention a few, the risks which are omitted by the ILO include, but are not limited to, drought, floods, famine, agricultural and pastoral risks. The ILO's concept of social security is, as indicated in chapter two, largely focused on protection of income for the formal sector. Tanzanian social security system follows a similar trend of protecting the formal sector, thereby excluding the majority who are concentrated outside formal employment.<sup>94</sup> This is supported by the nature of risks that are covered by the existing social security system.

The NSSF, which is the largest social security scheme in Tanzania, provides for protection of mostly the formal sector against the risks of old age, death, invalidity, employment injury, maternity, need for medical care and funeral expenses of a deceased member of NSSF.<sup>95</sup> The NSSF's leading list of risks is followed by that of the PSPF which covers old age, death, invalidity and sickness.<sup>96</sup> PPF and LAPP cover the risks of disability/invalidity, old age and death.<sup>97</sup> Other schemes cover only one risk: GEPF covers the risk of death while the NHIF and CHF are explicitly for health insurance or protection against the risk of illness.<sup>98</sup> Apart from NSSF members who are protected against the risk of employment injury, members of the rest of the schemes depend on the employers' insurance policies through the *Workmen's Compensation Ordinance* of 1949.<sup>99</sup> Family burdens and unemployment risks are not covered by a single social security scheme in Tanzania. It is recommended that the existing social security schemes should consider offering protection to the working population against unemployment as a number of workers unwillingly leaving the

<sup>92</sup> ILO Convention (Minimum Standards) of 1952, Convention No. 102.

<sup>93</sup> See Butare and Kaseke, *op cit*, at p. 3.

<sup>94</sup> See part 3.1 of this chapter.

<sup>95</sup> See Part V of Act No. 28 of 1997. See also the *National Social Security Fund (Health Insurance Benefits) Regulations*, 2005, Government Notice No. 140 of 2005. NSSF has about 367,948 members as of December 2005, PPF has about 59,000 by 30 November 2005, PSPF covers about 168,861 members, LAPP has about 45,000 members, GEPF has about 18,000 members and NHIF covers about 260,000.

<sup>96</sup> See Part III of Act No. 2 of 1999.

<sup>97</sup> See Part VI of Act No. 14 of 1978 and s. 27 of Act No. 6 of 2000 respectively.

<sup>98</sup> See s. 21 of Cap 51 of the Revised Laws of Tanganyika, Act No. 8 of 1999 and Act No. 1 of 2001 respectively.

<sup>99</sup> Cap 263 of the Revised Laws of Tanganyika.

formal sector through redundancies and retrenchments is growing. Lessons can be drawn from the South African Unemployment Insurance Fund which protects specified groups of the working population from the risks of unemployment and lack of income.<sup>100</sup>

It is evident from the foregoing that the social risks that are covered follow the ILO list of conventional risks, though not exhaustively. Although the excluded also need protection from the risks which are currently covered, it must be noted that they have their own prioritised risks. The prioritised risks among the excluded sectors include lack of housing, lack of food, children's education, natural disasters, pastoral and agricultural risks like crop failure and drought, loss of assets and working tools, and major social occasions such as wedding contributions.<sup>101</sup> Those who work in the formal sector also face these risks though their ability to handle them may be different.<sup>102</sup>

Exclusion of some risks from the scope of coverage of the current social security schemes in Tanzania is influenced by many factors. These include legal restrictions, methods of financing, design and social priorities of the country and the schemes, administrative bottlenecks, the associated high costs of covering some risks, restrictive investment policies and a lack of actuarial studies for the schemes.

Legislation takes a lead in every issue dealing with the scope of coverage. Legislation determines and sets out the risks that the scheme it has established will cover. As we have noted above, all the schemes cover the risks that the establishing legislation allows them to cover. However, the social security legislation is not proactive; rather, it is drafted in response to the priorities of the country, the risks faced by particular groups it seeks to protect and the means available to achieve social protection. As such,

<sup>100</sup> See the *Unemployment Insurance Fund Act* of 2001 and the *Unemployment Insurance Amendment Act* of 2003, Act Nos. 63 of 2001 and 32 of 2003 respectively.

<sup>101</sup> Personal interview with workers in the informal sector and the self-employed in Dar es Salaam, Mbeya and Arusha from December 2005 to early March 2006. (See Appendix A). See also Rwegoshora, *op cit*, at p. 8, Taylor Committee of Inquiry 2002, at p. 2 and the case of *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC). See further International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit*, at p. 5 and Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 10 and Tungaraza, "Social Protection in SADC: Developing an Integrated and Inclusive Framework – the case of Tanzania" in Olivier and Kalula, (eds), *op cit*, 2004, at p.185. Surprisingly, while some of the excluded cannot contribute to any social security scheme, they are able to contribute for other people's major events like bridal ceremonies; at times, this is their form of social security.

<sup>102</sup> The employees in the formal sector have a reliable income and they can even take a loan from the banks in case any social risk occurs which is outside the scope of the formal social security schemes.

one and the same objective need for social protection can be recognised as a social risk in one country or social security system while it may not qualify as such in another country or social security system. Example the need for care on the part of those unable to cope – a need for social protection which urgently awaits recognition as social risk in a large number of countries. This may not necessarily be the same in Africa where extended families are still in existence.<sup>103</sup>

The fact that the country's priorities determine the social risks covered is also evident from the concept of social security which has its roots in the developed world where people needed their income protected. In developing countries, which include Tanzania, there is basically no sufficient income to protect even for the formal sector. The inadequacy of the social security benefits available explains this.<sup>104</sup> Where income replacement is not guaranteed even to the formal sector, the worst is expected in the excluded sectors. Similarly, loss of income is not one of the major social risks in Tanzania, particularly for the excluded sectors. Their concerns are about calamities such as lack of food and famine, loss of earning power caused by disability, ill-health, loss of assets and economic recession, life-cycle crises like death and family breakdown, and above all these, they are worried about sudden and substantial expenses which may include hospital bills, education costs and major social occasions such as weddings.<sup>105</sup> It is a fact that "social security schemes cannot protect informal sector workers against all these risks and calamities."<sup>106</sup> That is why extending the conventional risks within the existing social security schemes may not work in favour of the excluded. The excluded need specially designed schemes which can deal with their needs and priorities.<sup>107</sup> In the same way, it is doubtful whether the current social security schemes take into account the priority risks of their members as the schemes have been unable to protect members from loss of income and concentration on the conventional ILO risks has not yielded positive results. Most of the schemes, as noted, still cover as few risks as three out of nine.

<sup>103</sup> Pieters, *op cit*, at p. 36.

<sup>104</sup> See chapter four of this thesis for more details.

<sup>105</sup> See Dau, *op cit*, at p. 6. See also Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 10 and Rwegoshora, *op cit*, at p. 7.

<sup>106</sup> Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 10.

<sup>107</sup> See Dau, *op cit*, at p. 9 and Taylor Committee of Inquiry, 2002, at p. 74. See also part 3.5 of this chapter for more details.

Apart from legislative parsimony, the method of financing also determines how many risks a scheme can afford to protect its members against.<sup>108</sup> Where social security schemes depend largely on contributions from members, it is unlikely that diverse social risks will be covered, particularly where wages and salaries are quite low, as in Tanzania.<sup>109</sup> In essence, a low level of contributions from members of the schemes is the main basis for the argument that it is difficult to extend coverage to the excluded risks.<sup>110</sup> Nonetheless, restrictive investment policies also contribute to the constrained financial bases of the schemes, thereby undermining their capacity to extend coverage to other risks which are left out and branded as "expensive risks." In Tanzania, inopportunately, social security schemes can only invest the fund's monies within the country and not across borders.<sup>111</sup>

Lack of actuarial studies to project the future financial position of the schemes is an additional reason for low coverage of risks. Actuarial studies evaluate the future soundness of any social security scheme without which the schemes cannot know what their financial position will be in the future. Existing social security schemes in Tanzania fail to extend coverage to include all social risks, for fear of being held accountable to the members for non-performance and failure of service delivery. There are a few exceptions to this. The NSSF has extended its list of social risks to include maternity, employment injury and medical care for members and their families,<sup>112</sup> and PPF is currently providing educational benefits to the families of deceased members.<sup>113</sup>

<sup>108</sup> Murphy, *op cit*, at p. 3.

<sup>109</sup> The current minimum wage is Tsh.66,000 per month which equals about US\$48.73 (exchange rates in September 2006). With this income from say 75 per cent of the contributors, covering more risks becomes an unbearable burden to the scheme. To avoid this, schemes keep their coverage of risks to the minimum required by legislation. See also Freiberg-Straub, *op cit*, at p.13.

<sup>110</sup> This view was shared by the majority of the administrators of the social security schemes with the exception of NSSF which boasts the most exhaustive list of risks compared to other schemes in Tanzania. For instance Mr. Rehani of NHIF stated that over 90 per cent of the members contribute less than Tsh.10,000 (equal to US\$7.38) per month although they demand complete protection against health risks.

<sup>111</sup> This was the concern for almost all the administrators who were interviewed as representatives of existing schemes in Tanzania, including NSSF, PPF, PSPF, NHIF and LAPF administrators.

<sup>112</sup> See s. 21 of Act No. 28 of 1997; *National Social Security Fund (Maternity Benefits) Regulations of 1999*, GN. No. 284 of 1999; Government Notice No. 140 of 2005 and the *National Social Security Fund (Employment Injury Benefits) Regulation of 2002*, Government Notice No. 97 of 2002.

<sup>113</sup> See the *PPF Guide* at p. 18. It should be noted, however, that while for PPF education benefits are a new invention, for NSSF the legislation gave leeway for the scheme to extend coverage to maternity, employment injury and medical care until when the scheme would be financially able to provide for these risks.

Low coverage of groups of people also contributes to the low levels of risk coverage. As indicated earlier, the majority of the population in Tanzania falls outside the scope of the existing social security schemes. As long as the number of members of the schemes remains low, the number of risks covered will also remain low. For instance, the NSSF has the highest number of members (about 367, 948) and covers more risks than any other scheme in Tanzania. GEPP, which has the lowest number of members (about 18,000), covers less risks. Thus, the fewer the number of people covered the lower the number of risks covered.<sup>114</sup> This is the principle of direct proportionality.

Consequently, extension of coverage of risks is partly dependant on extension of coverage of the population. It is thought that the reverse is also true. As indicated, extension of coverage of the groups depends on the number of risks the scheme covers and whether the risks covered are the top priorities of the excluded that are seeking or expected to join the scheme or not. In Tanzania, a social security scheme covering the social security priorities for excluded sectors such as "improving the effectiveness of health-care expenditure, death, survivor and disability,...expenditure on basic education, maternity and... childcare" risks is likely to win the support of the majority.<sup>115</sup> The motivation for the excluded groups to join the existing social security schemes is based primarily on the number of risks covered and the benefits available, which is the next aspect for consideration.

### 3.3 BENEFITS AVAILABLE

Availability of benefits is determined by the number of risks covered by a particular scheme. In Tanzania, there are two categories of social security benefits, that is, short-term benefits and long-term benefits. Short-term benefits include those which have time limits or are of a temporary nature. These include maternity benefits, educational benefits, employment injury benefits, withdrawal benefits, special lump sum/gratuity benefits, funeral grants, death benefits, sickness benefits and medical care. The long-term benefits involve benefits which cannot cease as long as the beneficiary lives. They are also known as life-time benefits. These include retirement/old age benefits, invalidity/disability benefits and survivors' benefits. Before the beneficiary can receive any of these benefits, there are different qualifying

<sup>114</sup> Freiberg-Straub, *op cit*, at p. 13.

<sup>115</sup> Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 11.

conditions and criteria to be satisfied. These qualifying conditions differ from one scheme to another. The number of benefits also depends on the particular scheme as there is no single scheme in Tanzania which covers all the risks outlined above.

### 3.3.1 Retirement/old age benefits

Old age/retirement benefits are available under most of the social security schemes in Tanzania including NSSF, PPF, LAPF, GEPF, PSPF and the PSRB. The qualifying conditions under NSSF include attainment of a pensionable age of 60 years and having contributed to the scheme for at least 15 years or "made at least 180 contribution credits to the fund."<sup>116</sup> Where a member has not fulfilled the two conditions, he/she is awarded a retirement special lump sum.<sup>117</sup> The scheme also pays retirement benefits to a member who has not reached the age of 60 but has contributed for 180 months.<sup>118</sup>

PPF offers retirement benefits under similar conditions except for the contributory time, which is at least 120 months before retirement.<sup>119</sup> Where a member has less than 10 years' contributions, he/she is awarded a gratuity benefit.<sup>120</sup> Similarly, PSPF offers retirement benefits by way of pensions, specifies a retirement age of either 55 years or 60 years and an aggregate of 15 years of qualifying service.<sup>121</sup> PSRB offers retirement pensions for specified political leaders, that is the former president, vice president, prime minister and the speaker of the National Assembly.<sup>122</sup> Other political leaders receive a lump sum gratuity depending on the years they have spent in service.<sup>123</sup> PSRB specifies neither age nor contributory time because it is a non-contributory scheme and political posts are not determined by age.<sup>124</sup> GEPF also offers retirement benefits where a member has reached a prescribed

<sup>116</sup> See s. 23 of Act No. 28 of 1997. See further NSSF, *The NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 3.

<sup>117</sup> See s. 26. of Act No. 28 of 1997. See also NSSF, *The NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 4.

<sup>118</sup> See s. 27. of Act No. 28 of 1997. See also NSSF, *The NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 4

<sup>119</sup> Ss. 24 and 26 of Act No. 14 of 1978. See also the *PPF Guide* at p. 13.

<sup>120</sup> See s. 28 of Act No. 14 of 1978. See also the *PPF Guide* at p. 19.

<sup>121</sup> See ss. 6, 9, 17, 22(1) and 25 of Act No 2 of 1999.

<sup>122</sup> See Parts III, IV and V of Act No. 3 of 1999.

<sup>123</sup> See Parts IV, V and VI of Act No. 3 of 1999.

<sup>124</sup> Every person who has reached the age of majority, 18 years, can become a political leader except for the president and vice president of the United Republic of Tanzania who must have attained the age of 40 years before nominations to contest for the political seats. See Articles 39(1)(b) and 47(4)(b) respectively of the URT Constitution of 1977 as amended.

retirement age.<sup>125</sup> Retirement benefits under GEPF are in the form of lump sums, not pensions. Similarly, LAPF does not offer pensions but rather lump sum payments in the event of retirement.<sup>126</sup>

The condition of attaining a retirement age to qualify for an old age pension seems to be applicable to all schemes discussed above except where the contrary is indicated. However, there are differences between schemes when it comes to the period of contributions, whether a retirement pension is a right or a privilege, and the minimum duration of the pension payments.

It is argued that such fragmentation has led to problems of unequal treatment of the workers in the formal sector, depending on the social security scheme to which they are subjected. While NSSF demands that a member should have contributed for at least 180 months, PPF provides that a retirement pension shall be payable where a member has contributed for at least 120 months. If social security provision is of a competitive nature, this adversely affects workers. Consider the situation where two retirees started to work at the same time, in two different private companies which had more or less similar salary scales, and they have both worked for 13 years. The one under PPF will qualify for an old age pension while the one under NSSF will be paid a retirement special lump sum, which does not help the retiree in the long term.<sup>127</sup> It should be noted, in addition, that by and large employees are not at liberty to choose the social security scheme to which they want to contribute; it is the employer who chooses the scheme for the employees.<sup>128</sup> It is believed that fair competition, if at all approved by the public social security schemes in Tanzania, can only be achieved where there are similar rules for all the schemes and they are all

<sup>125</sup> See s.16(c)(iv) of Cap 51 of the Revised Laws of Tanganyika.

<sup>126</sup> See s. 27 of Act No. 6 of 2000.

<sup>127</sup> The retiree, because of poverty and not being used to having a lot of money, will most likely misuse the money and/or spend it profligately and remain with nothing, and turn to the state for assistance. See Kanywanyi, *op cit*, at p. 17. Information also based on personal interview with Mr. Hatibu Mwangobola Mwalisu on 2 February 2006, *ante*, and a retired officer of the defunct East African Community, in Dar es Salaam on 20 December 2005.

<sup>128</sup> This was the concern for most of the retirees from the formal sector. They indicated that if they had known what they would be entitled to when they retired, they would even have changed employment so that they would have fallen under different schemes from the ones that paid their benefits. This concern was also shared by a retired professor of law at the University of Dar es Salaam who registered his dissatisfaction with the retirement benefits he is receiving under PPF. He was interviewed in Dar es Salaam on 3 March 2006. Prof. Kimambo of the History Department, University of Dar es Salaam, also received a lump sum payment which was very meagre in 1991 and he wished he was entitled to pensions like other colleagues who are retiring now. He was interviewed in Dar es Salaam on 12 December 2005.

providing social security under similar conditions.<sup>129</sup> It is therefore argued that it is unfair to subject people to different rules: in this case, different social security schemes which operate under different principles and rules.

An additional salient feature of retirement benefits is the question whether a retirement pension is a right or a privilege. The *Public Service Retirement Benefits Act* of 1999 expressly provides that benefits under this Act are paid as a right and the *Political Service Retirement Benefits Act* of 1999 follows a similar trend.<sup>130</sup> The *Parastatal Pensions Act* of 1978, however, explicitly states that pensions are not a right.<sup>131</sup> Nevertheless, the two laws that appear to protect pensioners from losing their rights stand to be challenged just like the *Parastatal Pensions Act* of 1978. This is because the conditions which are attached to this right in the two Acts are tantamount to denying social security rights to the retirees. The *Political Service Retirement Benefits Act* of 1999 in s. 6(2) calls for the application of the provisions of the URT Constitution of 1977. Article 46A(11) of the URT Constitution of 1977 provides that where the president "ceases to hold the office of President by reason of the charges against him being proved he shall not be entitled to receive any payment by way of pension or to receive any benefits or other privileges which he has under the Constitution or any other law enacted by Parliament." The same provision is applicable to the vice president by virtue of Article 50(5). Correspondingly, Articles 57(2) (g) and 71(1) (d) provide for the fate of the prime minister and the members of Parliament respectively: if they have violated the *Public Leadership Code of Ethics Act* of 1995,<sup>132</sup> they shall not be entitled to pensions. In a similar vein, section 6(2) of the *Public Service Retirement Benefits Act* of 1999 provides that

[t]he contribution of a member and the contribution of an employer to the pension, gratuity or other benefits shall, to the extent that a member retires...or is otherwise made to cease to becoming an employee in the service in *circumstances which does not injure or lower the esteem of or render the public service in disrepute, be of right.* (Emphasis is mine).

This shows how the rights given by one hand under these pension laws may be taken away by the other. Generally, social security legislation in Tanzania considers social

<sup>129</sup> Competition between public schemes is discussed in detail in chapter six of this thesis.

<sup>130</sup> See s. 6(2) of Act No 2 of 1999 and s. 6(1) of Act no 3 of 1999 and respectively.

<sup>131</sup> See s. 25 of Act No. 14 of 1978.

<sup>132</sup> Act No. 13 of 1995.

security to be a privilege rather than a right.<sup>133</sup> It is submitted that these are unfair considerations because if a pensioner is guilty of misconduct there are other forums in which to pursue him/her, thereby making the withholding or minimising of the social security benefits to which they are entitled unjustified. As a rule, it is not for pension schemes to punish the pensioners for any wrong done. As Pieters rightly argues,

...[S]ocial security does not serve so as to sanction, be it positively or negatively. Any antisocial conduct, when it is punishable, ought to be prosecuted; the culprit should be sentenced before a criminal court; it is not up to the social security system to provide a parallel sentence, nor does it have to impose a second sanction for the same fact.<sup>134</sup>

It is believed that all these laws need to be amended so that the proper channels are used to punish beneficiaries. Consequently, the URT Constitution of 1977 should be amended to give a full mandate to the *Political Service Retirement Benefits Act* of 1999 to offer benefits to political leaders without unlawfully withholding their social security rights. Similarly, the *Public Service Retirement Benefits Act* of 1999 should be amended to remove the provision which takes away the social security rights of the members of PSPF, especially pension benefits. Equally, it is submitted that the *Parastatal Pensions Act* of 1978 should also be amended and should provide that entitlements to pensions are rights and not privileges. The *National Social Security Fund Act* of 1997, the *Provident Fund (Government Employees) Ordinance* of 1942, and the *Local Authorities Provident Fund Act* of 2000 are not explicit as to whether the benefits are right or privileges. It is opined that these laws should also be amended to include provisions that the beneficiaries under these laws are entitled to social security benefits as rights. Fault or misconduct of the social security beneficiary should not be considered to be a disqualification for entitlement to benefits, and it is opined that derogation clauses should not be allowed in social security legislation.

<sup>133</sup> In seemingly similar lines, the Zimbabwean Government has published a notice to the Judges' Pension Scheme which states that "...the President...may direct the pensions officer to withhold any pension benefit to which the full pensioner was entitled under this scheme..." where the retired judge refuses to be recalled for duty by the President. See "*Retired Zimbabwe judges may lose pensions*," 28 March 2006. Accessed through <http://www.newzimbabwe.com/pages/judges7.13961.html> on 31 March 2006.

<sup>134</sup> Pieters, *op cit*, at p. 46. Surprisingly, s. 187(1) of the proposed *Social Security Act* of 2005 (by the international experts) provides for suspension of contributor's right to benefits where the beneficiary makes a false statement or shows fraudulent conduct.

Minimum pensionable time is another salient feature of the social security system in Tanzania. Regrettably, social security law seems to set a limit on the time for which a retiree may continue to live after his/her retirement date! PPF states that the "monthly old-age pension is guaranteed for 36 months."<sup>135</sup> One may ask, what if a retiree lives for more than three years? Pension payments are granted monthly for the rest of the life of the retired member, but are these payments guaranteed or are they a "privilege"? As a rule, pensions are paid monthly for the whole life of the pensioner or retiree upon fulfilling the prerequisites of a specific social security scheme. Apart from the 3 years in which a pension is guaranteed, PPF indicates another dilemma where it has a minimum pension period of 12.5 years. The fate of those who outlive this time is also not clear. A complaint by Mr Kataya exemplifies this dilemma:

...when I retired...I was receiving my monthly pension...By 1993 disbursements had ceased without notice to me. On following up with your office (PPF) I was informed that it was paid ...as a lump sum on the anticipation of the 12.5 years minimum pension period...[t]he decision of paying my pension by that method has made me lose my life pensions as I am still going strong. I therefore demand revival of it...<sup>136</sup>

It is recommended that pensioners should be taken care of for the rest of their lives after retirement,<sup>137</sup> taking into account that they have contributed immensely to the development of the country during their working lives. Although the life expectancy of a Tanzanian today is approximately 45 years, most people outlive these estimates.<sup>138</sup> In view of this, the Government has, since 2004, decided to restore to the pension roll all civil servants who had been paid lump sums or who had exhausted the minimum pensionable time. The fate of the retirees from the private sector who were paid lump sums is still unknown.<sup>139</sup> It is opined that retirees from the private sectors

<sup>135</sup> The *PPF Guide* at p. 13.

<sup>136</sup> Letter by Mr. Francis Xaxier Kataya, addressed to the Director General of PPF, dated 15 July 2001. Mr. Kataya was interviewed on 17 January 2006 in Dar es Salaam.

<sup>137</sup> See s. 25 of Act No. 28 of 1997.

<sup>138</sup> See <http://www.indexmundi.com/g/g.aspx?c=tz&v=30>, last accessed on 26 September 2006.

<sup>139</sup> This is also the case for some of the PPF beneficiaries whose pension payments were stopped upon the coming into force of the *Parastatal Pensions (Amendment) Act of 2001*, which requires that retirees be aged 55 to qualify for a pension. See s. 26 of Act No. 14 of 1978 as amended by s. 9 of Act No. 25 of 2001. Prior to 2001, members of PPF were entitled to pensions at the age of 50, compulsory retirement with no age limit, transfer to public service, removal from office in the public interest or on retirement by direction from the President. See s. 26 of Act No. 14 of 1978. In essence, the *Parastatal Pensions (Amendment) Act of 2001* acts retrospectively. See also "Implementation of PPF Act No. 26 of 2001 (sic) should be revisited" *Tanzanian Nipashe*, Monday, 21 August 2006, "President Kikwete help us to get our pensions from PPF" *Tanzanian Nipashe*, Saturday, 6 May 2006, "The matter between Mr. Joel Mwalondell and PPF is being handled by court" *Tanzanian Nipashe*, Monday, 17 July 2006, and

should, like their civil servant counterparts, be reinstated to the pension roll. Thought should also be given to the fact that old age is not a disease and, at some point, today's youth will also grow old eventually.

### 3.3.2 Survivors' benefits

Survivors' benefits are available where a member of a social security scheme has died, and they are given to surviving family members of the deceased, in most cases, the dependants. The schemes which offer this benefit include NSSF, PPF, PSPF, PSRB, GEPF and LAPF. While the NSSF, PPF, PSPF and PSRB offer both survivors' pensions and lump sum payments, LAPF and GEPF offer only lump sum benefits.

Under NSSF, a survivor's benefit can be paid in three forms, namely, a survivor's lump sum grant, a survivor's pension and a survivor's special lump sum. As noted, this benefit is paid to the dependants of the deceased and the *National Social Security Fund Act* of 1997 defines a dependant to include a spouse or spouses, a child under 18 years, or a child receiving education who has not attained the age of 21.<sup>140</sup> The conditions for receiving survivors' pensions are that the deceased must have attained pensionable age, and would have been entitled to a retirement pension had a claim been made, or the deceased would have been entitled to an invalidity pension if invalidity was deemed permanent at the time of death.<sup>141</sup> A survivor's lump sum grant is paid before the monthly pensions, where the deceased member of NSSF qualified for a retirement pension, but had not received it before he died.<sup>142</sup> Where the conditions for receiving a monthly pension described above are not met, a survivor's special lump sum is awarded.<sup>143</sup> Where all the conditions are met, the surviving spouse, widow or widower, above the age of 45 receives a survivor's pension for life and, if the spouse is below 45 years, the pension is paid for two years unless he/she takes care of dependent children under the age of 15 where he/she would also be

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"President Kikwete PPF Act No. 26 of 2001 (sic) is hurting us" *Tanzanian Nipashe*, Wednesday, 26 July 2006. (All translations are mine).

<sup>140</sup> See s. 33(2) of Act No. 28 of 1997.

<sup>141</sup> See s. 33(1) of Act No. 28 of 1997. See further *The NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 6.

<sup>142</sup> See s. 37(2) of Act No. 28 of 1997.

<sup>143</sup> See s. 36 of Act No. 28 of 1997.

entitled to a life time pension.<sup>144</sup> A dependant child who is also an invalid also receives a pension for life.<sup>145</sup>

PPF also provides for survivors' benefits which are awarded to the dependants of the deceased.<sup>146</sup> The conditions for receiving a survivor's benefit are that the deceased must have made contributions for at least 120 months and must have died while in service.<sup>147</sup> Where these conditions are not met, the surviving dependants are entitled to a death gratuity which is paid to the legal personal representative of the deceased estate.<sup>148</sup> Under the *Parastatal Pensions Act* of 1978 a dependant is defined as a widow(s), a widower, a child under 18 years, excluding a daughter who was married preceding the deceased's death, and the immediate parents of the deceased.<sup>149</sup> However, the widower and the parents have to satisfy the Board of Trustees of PPF that they were "wholly or substantially dependent upon the deceased member's income for their livelihood."<sup>150</sup> While the potential exclusion of the parents can be justified, it may be charged that it is unfair for the widower to be subjected to this condition, because any form of gender discrimination is unjustified.<sup>151</sup> If a widow is entitled to the benefit irrespective of whether she was "wholly dependent" or not, then the widower should equally be entitled to a survivor's benefit.

It is noteworthy, on the other hand, that the *Parastatal Pensions Act* of 1978 takes into account the realities of the extended family by regarding parents as dependants. A worrying aspect of PPF is that it bars a married daughter from receiving a survivor's benefit while there is no similar limitation for a married son.<sup>152</sup> It is noted that the law should not discriminate on the basis of gender. If age is the criterion, then it should apply to all children equally. Notably, PPF offers survivors' pensions for a period of 3 years<sup>153</sup> compared to NSSF which, if the conditions are satisfied, offers survivors' pensions for life.

<sup>144</sup> See s. 35(a) and (b) of Act No. 28 of 1997. These benefits would cease where the spouse remarries.

<sup>145</sup> See s. 35(c) of Act No. 28 of 1997.

<sup>146</sup> See Part VII of Act No. 14 of 1978. See also *PPF Guide* at p. 17.

<sup>147</sup> See s. 40 of Act No. 14 of 1978.

<sup>148</sup> See s. 39 of Act No. 14 of 1978. See also *PPF Guide* at p. 16.

<sup>149</sup> See s. 38 of Act No. 14 of 1978

<sup>150</sup> See s. 38 (b) and (d) of Act No. 14 of 1978

<sup>151</sup> See the case of *Pauger v. Austria*, 16717/90 [1997] ECHR 27 (28 May 1997), where the European Court of Justice found the distinction between a widow and a widower in the Austrian social security law was unjustified and unreasonable. See also Krause and Scheinin, "The Right not to be Discriminated Against: The Case of Social Security," in Orlin, Rosas, and Scheinin, (eds), 2000, *op cit*, at p. 260.

<sup>152</sup> See s. 38(c) of Act No. 14 of 1978

<sup>153</sup> See s. 40(4) of Act No. 14 of 1978. See also *PPF Guide* at p. 17.

PSPF provides for entitlement to a survivor's benefit for the widow or children of the deceased who were dependent on the deceased or disabled.<sup>154</sup> Where no pension has been paid to the widow or widower, a death gratuity may be awarded to the parents of the deceased if they were dependent on the deceased.<sup>155</sup> It is not clear from the *Public Service Retirement Benefits Act* of 1999 whether a widower can receive a survivor's benefit. There are neither clear conditions specified for the survivor's benefit under PSPF, nor is there a time limit for receiving the benefit. Nevertheless, the Act indicates that it is a "once off" payment by using words such as "pay the moneys direct to widow."<sup>156</sup>

It is notable that PSPF regards as a child any person below the age of 21. As noted earlier on, PPF and NSSF regard a child as any person under the age of 18. It is submitted there should be harmonisation between the schemes on the conditions for and limitations on entitlement to benefits. Children should not be subjected to different treatment just because their parents fell under a more advantageous scheme or under a parsimonious scheme. As for entitling a widower to a survivor's benefit, it is recommended that the law should be amended to remove discrimination based on gender. If a widow is entitled to benefits the widower should equally be entitled to the same benefits.

The *Political Service Retirement Benefits Act* of 1999 provides for survivors' pensions or gratuities for the surviving widows/widowers and/or dependants of the specified political leaders. It is only the President whose widow/widower is entitled to a survivor's pension and the dependants to gratuities, while other political leaders' widows/widowers and dependants receive gratuities.<sup>157</sup> The conditions for entitlement are similar to the ones discussed under retirement benefits.<sup>158</sup> The *Political Service Retirement Benefits Act* of 1999 defines a dependant as a widow, widower, every child of a leader who was dependent upon the deceased leader before his/her death, and the immediate parents if they satisfy the Permanent Secretary to the Treasury that they were dependent on the deceased leader preceding his/her death.<sup>159</sup> A striking feature is that a child is not defined in terms of age, but according to dependency. This means that even if a child is above the age of 21, he/she can still be entitled to the

<sup>154</sup> See s. 11 of Act No. 2 of 1999.

<sup>155</sup> See s.10 of Act No. 2 of 1999. This is similar to the conditions under PPF.

<sup>156</sup> See s. 11(1)(a) of Act No. 2 of 1999.

<sup>157</sup> See Parts III, IV, V and VI of Act No. 3 of 1999.

<sup>158</sup> See part 3.3.1 of this chapter.

<sup>159</sup> See s. 4 of Act No. 3 of 1999.

benefits under this Act upon proof of dependency, which differs from other schemes where "age" is a determinant factor. It is submitted that this laxity of the law should be limited and a child should be clearly defined. This laxity also leads to discrimination against other children whose parents were not political leaders and whose rights are affected by their age under their respective schemes.

Finally, GEPF, LAPF and the *Workmen's Compensation Ordinance* of 1949 offer survivors' benefits to dependants in the form of lump sum payments.<sup>160</sup>

In conclusion, survivors' benefits are available in Tanzania, although provided for by different laws and schemes, and subject to different qualifying conditions.

### 3.3.3 Invalidity/disability benefits

These benefits are also offered by the existing social security schemes in Tanzania including NSSF, PPF, PSPF, PSRB, GEPF and LAPF. NSSF offers invalidity benefits in the form of a pension and a lump sum. The conditions for entitlement to an invalidity pension are that a member must be suffering from a permanent invalidity,<sup>161</sup> must be under pensionable age and must have made 180 monthly contributions or at least 36 monthly contributions, of which 12 contributions or more must have been paid immediately preceding the date of invalidity.<sup>162</sup> Where a member does not meet the conditions above, he/she receives the invalidity special lump sum.<sup>163</sup> Where the conditions are fulfilled, an invalidity pension is payable for his/her life time, and when the invalid reaches retirement age, a retirement pension is awarded for the rest of his/her life.<sup>164</sup> It should be noted that no invalidity benefit can be awarded except upon determination by the medical board that the member is suffering from a permanent invalidity.<sup>165</sup>

The *Parastatal Pensions Act* of 1978 offers disability benefits upon fulfilment of two conditions. Firstly, it has to be medically proven to the satisfaction of the employer that the employee can no longer discharge his/her duties.<sup>166</sup> Secondly, the

<sup>160</sup> See ss. 16(a) and 21 of Cap 51 of the Revised Laws of Tanganyika, s. 27(d) of Act No. 6 of 2000 and s. 6 of Cap 263 of the Revised Laws of Tanganyika respectively.

<sup>161</sup> S. 28(2) of Act No. 28 of 1997 defines permanent invalidity as "permanent loss of two thirds or more of the earning capacity because of physical or mental invalidity."

<sup>162</sup> See s. 28 of Act No. 28 of 1997.

<sup>163</sup> See s. 31 of Act No. 28 of 1997.

<sup>164</sup> See s. 30 of Act No. 28 of 1997. See also *the NSSF Profile: Coverage, Benefits payable and Qualifying Conditions, op cit*, at p. 7.

<sup>165</sup> See s. 32 of Act No. 28 of 1997.

<sup>166</sup> See s. 26(b) of Act No. 14 of 1978. See also *PPF Guide* at p. 15.

member must have made at least 120 monthly contributions to PPF.<sup>167</sup> Notably, the conditions which apply to entitlement to retirement pensions apply also to disability benefits except that a disability pension is generously awarded on a monthly basis for the rest of the life of the disabled member.<sup>168</sup> Where the member's contributions have been made for less than 120 months, a gratuity is awarded instead of a disability pension.<sup>169</sup>

PSPF offers an invalidity pension to a member who is "unemployable" due to physical or mental disability.<sup>170</sup> As with PPF, the employer must be satisfied by the medical evidence that the employee can no longer perform his/her duties due to infirmity.<sup>171</sup> Not deviating substantially from other benefits under the *Public Service Retirement Benefits Act* of 1999, an invalidity pension is not pegged upon any condition relating to contributions made or permanency of invalidity. Provided a member is unemployable, he/she is entitled to an invalidity pension.

The *Political Service Retirement Benefits Act* of 1999 does not specifically provide for invalidity or disability benefits. However, invalidity benefits can be inferred from section 5(d) of this Act which provides that a political leader shall be entitled to the benefits stipulated in the Act upon medical evidence that he/she is incapable of discharging his/her official duties. Taking into consideration the conditions for entitlement to other benefits, it appears that the former president, vice president, prime minister and the speaker of the National Assembly would be entitled to invalidity pensions, while other political leaders would receive gratuities.<sup>172</sup> As with other benefits, there are no conditions for entitlement to invalidity benefits except as indicated under retirement benefits.<sup>173</sup>

Predictably, LAPP, GEPF and the *Workmen's Compensation Ordinance* of 1949 offer invalidity benefits as a lump sum where termination of employment is on medical grounds.<sup>174</sup>

<sup>167</sup> See *PPF Guide* at p. 15.

<sup>168</sup> *Ibid.*

<sup>169</sup> See *PPF Guide* at p. 15.

<sup>170</sup> See s. 13 of Act No. 2 of 1999.

<sup>171</sup> See s. 16(e) of Act No. 2 of 1999.

<sup>172</sup> This argument is based on the fact that the president, vice president, the prime minister and the speaker under ss. 9(1)(a), 12(1)(a), 14(1)(a) and 18(b) of Act No.3 of 1999 respectively, are entitled to retirement pensions while other political leaders are granted gratuity payments, see ss. 16(1), 20(1) and 21(1) of Act No.3 of 1999.

<sup>173</sup> See part 3.3.1 of this chapter.

<sup>174</sup> See s. 27(c) of Act No. 6 of 2000, s. 16(c)(i) of Cap 51 and s.7 of Cap 263 of the Revised Laws of Tanganyika respectively.

It is a notable feature that all these schemes do not have specialised doctors to determine the levels and permanency of invalidity. They also do not have the same medical board, and each statute constitutes its own medical board. This creates differences between members of the different social security schemes as two people suffering at more or less the same levels may receive different findings. One finding may be permanent invalidity while the other person could be regarded as having a temporary incapacity. Thus one person will not be entitled to invalidity pension while the other will be. It is proposed that social security law should be harmonised so as to result in similar findings for similar levels of incapacity or disability.

In addition, there is no mechanism in place to avoid collusion between the schemes and the medical practitioner so as to save funds. The employee could also collude with or bribe a medical practitioner so that the invalidity report is written in his/her favour. It is submitted that the social security schemes should consider establishing a joint medical examination board so that all the potential beneficiaries are subjected to the same conditions and to the same medical practitioners. In view of this, the conditions for invalidity pensions and the qualifying criteria, which are different from one scheme to another, ought to be harmonised. There is no justification for not offering invalidity benefits on a pensionable basis instead of as a lump sum, especially since the latter method leaves the whole burden on the family and relatives who are already poor. This will also help to curb the on-going unequal treatment of members under different schemes with different scales of benefits and qualifying conditions.

#### **3.3.4 Maternity benefits**

Maternity benefits are a short-term benefit. Only the NSSF provides maternity benefits for its female members. The conditions attached to this benefit are that the insured must have made at least 36 months of contributions, out of which 12 months of contributions must have been made immediately prior to the confinement date, the member must produce a medical certificate to show that she is expecting a child or has delivered a child, and there must be a three-year interval from the last receipt of the same benefits.<sup>175</sup>

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<sup>175</sup> See s. 44 of Act No. 28 of 1997.

Nevertheless, there is one significant issue, which is the interval allowed between one confinement and another. It is appreciated that it is a reasonable time between one confinement and another, but problems arise with current dynamics in social life and work. There are women who start having children while still young, so they can afford the three-year interval, and the existing system favours this group. There are other women who for various reasons have their children later in life and they are likely to have shorter intervals between one child and another. The latter group is not considered by the current conditions for maternity benefits. It is argued that it is unjustifiable and unfair to exclude the latter group from receiving maternity benefits for their subsequent children on the basis of three-year intervals. It is submitted that NSSF should consider offering maternity benefits depending on the number of children a female member has, rather than using three-year intervals. This argument is based on the fact that it is actually the latter category that will usually have fewer children than the former group, and it would be unfair for one woman with four children to receive maternity benefits for all the children while the woman with only two children is paid for only one confinement, because she fails to fulfil the interval condition.

Employers who are registered with NSSF are not obliged to pay their employees during their maternity leave.<sup>176</sup> This means that members of other schemes are provided with maternity benefits by their employers by virtue of section 25B of the *Employment Ordinance* of 1957.<sup>177</sup> It should be noted, nevertheless, that employer-based maternity benefits do not bar an employee from receiving similar benefits under social security schemes like the NSSF.<sup>178</sup> Because of lack of control measures, double dipping does occur where the employee receives benefits from both the employer and the social security schemes.<sup>179</sup> Much that this benefits members of the schemes which offer maternity benefits, it is recommended that there should be control measures so as to ease the financial burden on employers if social security

<sup>176</sup> See s. 46 of Act No. 28 of 1997.

<sup>177</sup> Cap 366 of the Revised Laws of Tanganyika. Replaced by s. 33 of the *Employment and Labour Relations Act of 2004, Act No. 6 (not yet in force)*. This Act repeals Cap 366. Section 33 of Act No. 6, like NSSF, provides that paid maternity leave can only be given once in a three-year cycle. Act No. 6 should be amended to limit the number of children for which a woman may claim benefits instead of using intervals. For a further discussion on social security benefits offered directly by employers see Olivier and Kaseke, *Labour market participation and social security protection of females: Recent developments in SADC, op cit*.

<sup>178</sup> This is the case even in the forthcoming *Employment and Labour Relations Act of 2004, Act No. 6*.

<sup>179</sup> Once again, this is a problem of lack of awareness on the part of the employer that NSSF offers maternity benefits.

schemes do provide maternity benefits. On this note, it is thought that it is better for the other social security schemes to consider offering maternity benefits while the employers should be left with the obligation to give leave to the employee. The social security schemes should shoulder the responsibility of providing maternity benefits as this is one of the core benefits outlined by the ILO *Convention on Social Security (Minimum Standards)* of 1952.

### 3.3.5. Employment injury benefits

As with maternity benefits, employment injury benefits are provided only by NSSF. Employment injury benefits embrace employment injury and occupational diseases. These benefits are provided by way of cash benefits, medical care, provision of artificial limbs, attendance allowances for helpers and death benefits.<sup>180</sup> The qualifying conditions include being registered with NSSF before the occurrence of the injury or occupational disease, and that the member must have been injured or contracted the occupational disease in the course of employment, or in connection with a specific activity in a specific occupation respectively.<sup>181</sup> Where an injured member or the one who contracted an occupational disease dies before a claim is made, then a death benefit is awarded in the form of a survivor's pension except where the survivors are entitled to other benefits related to the same incident.<sup>182</sup>

It should be noted that all the benefits, except the last two, namely, attendance allowances to helpers and death benefits, are granted or payable upon certification of the medical board. The law is silent as to whether members of NSSF are subjected to same medical board when they suffer similar injuries or occupational diseases. As argued in the section on invalidity benefits, this state of affairs results in the unequal treatment of members of the same scheme as different medical practitioners may submit different reports on more or less the same injury or disease.

The other problem with the employment injury benefit is that it subjects the injured member to a cumbersome procedure even where the injury is patently clear, for instance where a member has lost one hand.<sup>183</sup> It is submitted that entitlement to the employment injury benefit should not be subjected to a prolonged procedure if a

<sup>180</sup> See s. 40 of Act No. 28 of 1997.

<sup>181</sup> See s. 39 of Act No. 28 of 1997.

<sup>182</sup> See *the NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 12.

<sup>183</sup> Personal interviews with Mr. Alex Nkinda and Mr. Kania (pseudonyms) on 2 February 2006 in Mbeya; the latter stated that it allegedly took about nine months to receive his employment injury benefits.

*prima facie* case can be proven. However, close scrutiny may still be needed to determine permanent disability.

Additionally, employees who are not registered under NSSF are entitled to compensation in the event of employment injury in terms of the *Workmen's Compensation Ordinance* of 1949. Compensation is provided by the employer through purchasing an insurance policy against employment injuries or occupational diseases for the workers.<sup>184</sup> The only condition for an employer's liability to pay compensation to an injured person is that the injury must have been caused by an "...accident arising out of and in the course of the employment..."<sup>185</sup> Regrettably, this phrase has been interpreted narrowly by the courts and as a result many employees find themselves "not covered" either because the injury did not arise "out of" or "in the course" of employment, or it occurred when an employee was on "a frolic of his own."<sup>186</sup> It should be noted, however, that not all employees who are not covered by NSSF are covered by *Workmen's Compensation Ordinance* of 1949, since the latter excludes some employees on the basis of salary scales and nature of employment.<sup>187</sup>

### 3.3.6 Funeral grants and educational benefits

Funeral grants are offered by NSSF, PSPF and GEPF while educational benefits are provided by PPF. Under NSSF, a funeral grant is offered as reimbursement for expenses incurred by family members for the burial of a deceased member.<sup>188</sup> The qualifying conditions are that the deceased must have been an active member, must have made at least one contribution, and expenses must have been incurred for the burial of the deceased member.<sup>189</sup> Remarkably, the funeral grant is the only benefit that the law protects against economic decline.<sup>190</sup> Under the *Public Service Retirement Benefits Act* of 1999 funeral benefits are offered when a member of PSPF or his/her dependant dies.<sup>191</sup> Unsurprisingly, there are no conditions attached

<sup>184</sup> See ss. 5(1) and 25 of Cap 263 of the Revised Laws of Tanganyika.

<sup>185</sup> See ss. 5(1), 8 and 9 of Cap 263 of the Revised Laws of Tanganyika.

<sup>186</sup> See the cases of *Hans Nagarsen v. BP Tanzania Limited* [1987] TLR 175 and *Fakurudin Ebrahim v The Bank of Tanzania* [1978] LRT (Parts III & IV), n. 45. See also Shivji, I. G., *Law, State and the Working Class in Tanzania*, James Currey Ltd, London, 1986, at p. 147.

<sup>187</sup> See part 3.1 of this chapter.

<sup>188</sup> See s. 38 of Act No. 28 of 1997.

<sup>189</sup> *The NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 8.

<sup>190</sup> See s. 38(2) of Act No. 28 of 1997.

<sup>191</sup> See s. 12(2) of Act No. 2 of 1999. However, during field research, the administrators of PSPF did not mention funeral benefits as one of the benefits offered to members of the scheme. Personal interview with one of the PSPF officials in Dar es Salaam on 29 December 2005.

to this benefit. GEPF offers a funeral grant to meet the expenses of the funeral of a member where "such relief is required."<sup>192</sup>

PPF offers education benefits on the condition that the member dies while in service.<sup>193</sup> It is not clear, however, whether a child may receive both a survivor's benefit and an education benefit, or whether the benefits are mutually exclusive. Other schemes may be said to provide education benefits by implication from the provisions which provide for the care of children after the death of their members, because these schemes provide survivors' benefits to children of a certain age.<sup>194</sup>

### 3.3.7 Sickness benefits, medical care and health insurance benefits

Sickness benefits are offered only by PSPF. The benefit is offered where a member falls sick and this results in incapacity to work. The qualifying conditions are that a member must have been incapacitated for six months before applying for the sickness benefit, and that the medical evidence must satisfy the employer that the employee can no longer perform his/her duties.<sup>195</sup>

Medical care and health insurance benefits are mainly offered by NSSF and private insurance companies. NSSF provides for health insurance benefits by way of preventive and curative medical care to a member, a spouse and four children.<sup>196</sup> The conditions which apply to this benefit are that the member must have contributed to NSSF for a minimum of three months, and that the contributions must have been paid to the scheme within three months immediately preceding the social risk.<sup>197</sup> Although there has been a positive response from the majority of the members about this newly introduced benefit, a number of members and beneficiaries have their reservations. Their main complaint was about the paperwork involved. They stated that "the benefit is heartily welcomed and we commend our scheme for that, but the paperwork involved is just too much for us to handle."<sup>198</sup> Some members indicated that although they were entitled to the benefit by virtue of their membership and there is no extra

<sup>192</sup> See s. 21(2) of Cap 51 of the Revised Laws of Tanganyika. Funeral expenses of other family members of a member of GEPF are offered as repayable lump sums and are discussed in detail under part 3.3.8 of this chapter.

<sup>193</sup> See *PPF Guide* at p. 18.

<sup>194</sup> See part 3.3.2 of this chapter.

<sup>195</sup> See s. 12 (1) of Act No. 2 of 1999.

<sup>196</sup> See ss. 41 and 42 of Act No. 28 of 1997. See also the Government Notice No. 140 of 2005.

<sup>197</sup> See s. 41 of Act No. 28 of 1997.

<sup>198</sup> Personal interviews with different formal sector employees in Dar es Salaam, Mbeya and Arusha, from December to early March 2006. (See Appendix A). See also Reg. 4 of GN No. 140 of 2005.

contribution needed, they would prefer to contribute to the Community Health Fund which requires less paperwork, and fewer documents are needed before registration.<sup>199</sup> Another reason for their choice was that upon retirement NSSF health insurance benefits cease, but with CHF membership there is no time limit.<sup>200</sup>

In terms of the *Political Service Retirement Benefits Act* of 1999, the president, vice president and the prime minister, upon retirement, are entitled to a health insurance policy for treatment within the country.<sup>201</sup> However, members of their families are not covered.

The NHIF provides health insurance for civil servants, their spouses and four children/dependants.<sup>202</sup> This implies that members of PSPF, which does not provide health insurance, qualify to contribute to NHIF compulsorily for their medical care and health insurance. The only condition for entitlement to this benefit is that 3 months' contributions must have been made to NHIF before the benefit can be claimed. Notably, NHIF covers only employees, not retirees, whose entitlement to the benefit ceases three months after retirement, like its NSSF counterpart.<sup>203</sup> However, NHIF provides health insurance to more than four children/dependants where both spouses are civil servants.<sup>204</sup>

CHF is another health insurance scheme in Tanzania which caters for all households that are willing to contribute to the scheme. Health insurance is provided to the whole household, defined as a father, a mother and all children under the age of 18 years.<sup>205</sup> There is no limit on the number of children who can be insured, and in this way families in rural areas with more than four children are catered for. Another distinct feature of CHF is that it is voluntary compared to all the other schemes which are compulsory. Although CHF is yet to emerge in many parts of Tanzania because it only started in 2001, it is specially designed for the excluded sectors in both rural and urban areas. This assertion is clear from the nature of the scheme and the

<sup>199</sup> See Part III of Act No. 1 of 2001.

<sup>200</sup> See Reg. 3(2) of GN No. 140 of 2005. The benefits however, can be awarded to a retiree who has opted to pay 6 per cent of the contribution to NSSF. The fate of spouses and children is not indicated, Reg. 3(3) of GN No. 140 of 2005.

<sup>201</sup> See ss. 9(2)(b), 12(2)(b) and 14(2)(b) respectively.

<sup>202</sup> See s. 11 of Act No 8 of 1999.

<sup>203</sup> See s. 12(3) of Act No. 8 of 1999. However, recently, the Director-General of NHIF announced that by April 2007, NHIF services would be extended to its retired members. See "*Free treatment for retired members of NHIF*" *Tanzanian Nipashe*, Wednesday, 15 November 2006. (Translation is mine).

<sup>204</sup> See s. 11(2) of Act No. 8 of 1999.

<sup>205</sup> See s. 3 of Act No. 1 of 2001. A household also may mean a member who has attained the age of 18 or more, with or without children under 18, and an institution.

contributions that are paid by members.<sup>206</sup> PPF, LAPF and PSPF do not provide health insurance benefits.

Apart from social security institutions which provide health insurance, there are private health insurance providers which cater for the select minority who are employed in the formal sector and for the affluent. Private health providers deal with employers who want to insure their employees as corporate customers and the employees in most cases do not contribute anything to this undertaking. These providers provide health insurance to their members for specific health problems and social risks. Most of these schemes do not cover what they define as "chronic diseases." Chronic diseases, according to AAR Health Scheme, include diabetics, hypertension, asthma and HIV/Aids.<sup>207</sup> These diseases, however, can be covered under AAR through a special fund which is paid up by corporate customers.<sup>208</sup> Other schemes like MED-X Tanzania also exclude HIV/Aids in their insurance policies.<sup>209</sup> The NSSF's health insurance scheme also excludes diabetes and HIV/Aids, among others.<sup>210</sup>

### 3.3.8 Withdrawal benefits

The majority of the schemes in Tanzania, including the NSSF, PPF, PSPF, GEPF and LAPF, offer withdrawal benefits though under different conditions. The *National Social Security Fund Act* of 1997 does not expressly provide for withdrawal benefits. However, NSSF offers withdrawal benefits where a member withdraws membership and has been unemployed for six months before the application for the benefits.<sup>211</sup>

PPF offers withdrawal benefits where a member has lost his/her employment either through termination of employment or through dismissal.<sup>212</sup> Where a member has been employed for five years or more, and termination of employment is not due

<sup>206</sup> Members of CHF contribute annually, the amount depending on the decision of the local government in charge of the scheme. Most of the few members interviewed indicated that the amount they contribute, which ranges from Tsh.5,000 to Tsh.15,000, was affordable for most of the households in their areas.

<sup>207</sup> Personal interview with the AAR Customer Care Manager, *ante*. (See footnote 77).

<sup>208</sup> *Ibid*.

<sup>209</sup> MED-X Tanzania, *An Overview of Genesis Health*, undated, at p.3.

<sup>210</sup> See *the NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 14.

<sup>211</sup> Personal interviews with Mr. Faki of NSSF, *ante*, (see footnote 16), Messrs. Sadi W. Shemliwa, the Compliance, Records and Statistics Manager of NSSF on 9 January 2006 and Stephen Mwendu, a beneficiary of the withdrawal benefits under NSSF, interviewed on 1 January 2006, in Dar es Salaam.

<sup>212</sup> See s. 44 of Act No. 14 of 1978 as amended and substituted by Act No. 25 of 2001.

to dismissal for misconduct, the withdrawal benefits include his/her contributions, the employer's contributions and the interest accrued.<sup>213</sup> The employee who has worked for less than five years is entitled to a refund of his/her contributions and the employer's contributions.<sup>214</sup> As earlier noted under part 3.3.1, "dismissal for misconduct" disqualifies a member of PPF from receiving interest accrued on the employee's and employer's contributions. However, social security benefits should not be affected by wrongs that are punishable by other laws and authorities. Moreover, PPF has devised a deposit administration scheme where members, upon request, are paid back their contributions and the interest accrued.<sup>215</sup> This is another form of withdrawal which is tailored for voluntary members of the scheme.

Withdrawal benefits are also offered by PSPF for reasons of marriage, maternity, emigration and unemployment. It is only a female member who is entitled to apply for withdrawal benefits if she has permanently given up employment in the public sector as a result of marriage.<sup>216</sup> Two issues are worthy of discussion. Firstly, the law envisages that if a female member gives up employment in the public sector, she should be allowed to withdraw her benefits from PSPF which is for public employees, since she would belong to a different scheme when she is employed in the private sector. In this way, she loses all the periods of membership which, even in private schemes, will be needed to establish her entitlement to benefits like retirement, invalidity, and survivors' pensions. It may be charged that this provision perpetuates the problem of non-transferability of social security contributions and periods of contributions from one scheme to another.<sup>217</sup> Secondly, as noted under part 3.3.4, giving a discriminatory privilege to women only and not to men may be challenged in view of *Barber's* case. It is submitted that equality should be observed in all social security provisions as a male member may also decide to give up employment in the public service because of marriage. It is not a given that female members are the ones who should give up their jobs because of marriage.

<sup>213</sup> See s. 44(2) of Act No. 14 of 1978 as amended and substituted by Act No. 25 of 2001.

<sup>214</sup> See s. 44(1) of Act No. 14 of 1978 as amended and substituted by Act No. 25 of 2001.

<sup>215</sup> See *PPF Guide* at p. 21.

<sup>216</sup> See s. 14(a) of Act No. 2 of 1999. A similar position is envisaged by GEPF as it offers retirement benefits where a female member's services for the government are terminated on account of marriage, see section 16(c)(vi) of Cap 51 of the Revised Laws of Tanganyika.

<sup>217</sup> The problem of non-transferability is discussed in detail in chapter five of this thesis.

Maternity is another ground for receiving withdrawal benefits; fortunately, this applies to both male and female members of PSPF.<sup>218</sup> It is possible that a wife and husband can be under the same social security scheme, in this case PSPF. If both of them have sought employment in the private sector, and they have a newborn child, they both qualify for withdrawal benefits. In the private sector, their periods of contributions under PSPF will never count when it comes to determining retirement, invalidity, and survivors' pensions and any other benefits which depend on time. Thus, both will not qualify for pensions and they will just receive small lump sum payments which, as the retirees indicated, cannot give an old person a decent life. It is therefore recommended that the law should consider coordination and thus facilitate portability and transferability of benefits from one social security fund to another.

Withdrawal benefits are also offered by PSPF where a member is emigrating permanently from Tanzania to another country.<sup>219</sup> Among other reasons, lack of coordination between Tanzania and other countries about social security matters is the major reason for this type of benefit. It is submitted that there is a need for Tanzania to enter into bilateral social security agreements with other countries so that Tanzanian nationals who emigrate are not disadvantaged by losing their periods of contributions, and migrant workers who work in Tanzania are also not disadvantaged when they go back to their countries of origin.<sup>220</sup> This recommendation is also informed by the fact that PSPF suspends payment of benefits for any person who is outside Tanzania.<sup>221</sup>

Unemployment and the inability to make contributions for six months also entitle a member to PSPF to withdrawal benefits.<sup>222</sup> A notable condition is that an applicant must have reached 55 years of age. It is curious, however, that while a 55-year old member qualifies for retirement under voluntary retirement, the same scheme offers withdrawal benefits as well.<sup>223</sup> It is not clear whether the member may choose the provision in the law which suits him/her better or whether it is an error in the legislation. It is advised that withdrawal benefits should not be offered instead of

<sup>218</sup> See s. 14(b) and (c) of Act No. 2 of 1999.

<sup>219</sup> See s. 15(1)(a) of Act No. 2 of 1999. See also s. 49 which provides for other circumstances of withdrawals upon the Boards' authorisation, these include death of a member, physical or mental incapacity and permanent emigration from the United Republic of Tanzania.

<sup>220</sup> More discussion to follow in chapter five of this thesis.

<sup>221</sup> See s. 50(e)(i) of Act No. 2 of 1999.

<sup>222</sup> See s. 15(1)(b) of Act No. 2 of 1999.

<sup>223</sup> See s. 17(1) of Act No 2 of 1999.

retirement pensions, because while withdrawal benefits are paid as a lump sum, retirement pensions are paid monthly, subject to qualifying conditions, and the latter serves a retiree better than a lump sum payment does.<sup>224</sup>

It is further submitted that other social security legislation should consider pegging withdrawal benefits to an age limit so that those who are still actively working can either continue with their membership or can preserve their periods of contributions and the contributions themselves until they reach retirement age. However, a member of the scheme who has not contributed for a long time or who has preserved his/her contributions to the scheme may be entitled to only withdrawal benefits at the age of retirement and not to a pension as the conditions for retirement pensions will not have been fulfilled. Moreover, it is proposed that all social security schemes should discontinue withdrawal benefits so that members do not change social security schemes as fragmentation is still a problem. Withdrawal benefits should be disallowed also because they affect the long term protection envisaged by social insurance.<sup>225</sup>

GEPF allows the withdrawal of deposits in the event of death of the member or any member of his/her family, to pay the funeral expenses of any family member of the member, and to pay hospital or other expenses incurred through illness of the member or any other member of his/her family.<sup>226</sup> The withdrawn monies, however, must be paid back within 12 months.<sup>227</sup> Whereas other schemes offer withdrawal benefits when members leave the schemes, GEPF offers withdrawal benefits to both existing members or contributors and the outgoing members.

As noted earlier, all the benefits that are offered by LAPF are in the form of withdrawals under different qualifying conditions. The conditions required to qualify for withdrawals are retirement, termination of service, termination of appointment on medical grounds, abolition of office and death.<sup>228</sup> These withdrawals are in the form of a lump sum payment which includes the member's and employer's contributions.

<sup>224</sup> See Kanywanyi, *op cit*, at p. 27, commenting about the National Provident Fund, which is the predecessor of NSSF, Kanywanyi states that "[o]ne got a lump sum payment which would presumably last for a while and leave one penniless."

<sup>225</sup> See Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 26.

<sup>226</sup> See s. 13 of Cap 51 of the Revised Laws of Tanganyika.

<sup>227</sup> See s. 14 of Cap 51 of the Revised Laws of Tanganyika.

<sup>228</sup> See s. 27 of Act No. 6 of 2000.

Although the list of social security benefits in Tanzania may seem impressive, it is only the NSSF which offers more benefits than any other scheme. From what we have seen in the discussion above, the NSSF provides for six of the nine conventional benefits outlined by the ILO, followed by PSPF which offers four kinds of benefits, and lastly, PPF offers three categories of benefits. Provident funds offer withdrawal benefits which are not as such mentioned by ILO Convention No. 102. This shows that each scheme has a defined number of benefits to offer and the number of risks covered is also defined. The limitations of coverage are caused by the economic, social and political context of a particular country and the fact that some social security benefits are difficult to administer and more costly than others.

Comprehensive social security depends on each country's priorities, economic conditions and the political will of the State. It is the social, political and economic factors which dictate which risks should be prioritised, what social security benefits should be offered and what groups of people should be covered.<sup>229</sup> Other reasons for low coverage of social security benefits include the financial and economic base of the scheme and the number of members covered under the scheme.

The economic or financial base of any social security scheme is the factor which determines what benefits can be offered, because the social security scheme cannot offer more benefits where there is no financing capacity. Most social security schemes in Tanzania provide only the social security benefits which are stipulated in the legislation. Additional benefits are available only where the scheme finds that it has the financial ability to finance extra benefits. For instance, NSSF at its inception started offering five benefits: old age pensions, invalidity pensions, survivors' pensions, funeral grants and withdrawal benefits. In September 1999, it operationalised maternity benefits and in October 2002 it introduced employment injury benefits.<sup>230</sup> On top of that, NSSF, on the basis of its economic and financial position has recently considered offering health benefits over and above the accustomed benefits which it has been offering since its establishment.<sup>231</sup>

<sup>229</sup> More details to follow under part 3.5 of this chapter.

<sup>230</sup> See ss. 21 and 22 of Act No. 28 of 1997. See also GN. No. 284 of 1999, GN. No. 97 of 2002 and the *NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p.3.

<sup>231</sup> See the Government Notice No. 140 of 2005. However, it should be noted that although social health insurance was previously stipulated in the legislation, it was deferred until the scheme was financially capable of financing it. See ss. 21 and 22 of Act No. 28 of 1997.

The number of members of a particular scheme also determines the number of social security benefits that can be offered.<sup>232</sup> On the one hand, when the beneficiaries are few, impliedly, they are manageable and therefore can have access to more benefits. However, the alternative argument is that the fewer the members, the fewer the contributions, hence the scheme's inability to provide for a diversity of benefits owing to a lack of funds. While limited membership can be seen as a reason for the limited provision of social security benefits, it can also be seen as an advantage because the numbers are manageable. However, in Tanzania, the limited number of contributors has negatively affected the performance of the schemes, not to mention the extension of the number of benefits offered. This is primarily caused by low salaries which determine the size of contributions made by a member.

A significant feature of all the social security benefits discussed is that they are all compulsory and remedial in nature. Among other reasons, this has been influenced by the adoption of the ILO social security concept which emphasises compensatory measures rather than preventative measures.<sup>233</sup> The only exception to this is the social health insurance under NSSF and AAR which provides for limited preventative measures to health risks.<sup>234</sup> Pieters argues that the first two stages of the role of social security, namely, prevention and re-integration, are addressed outside the scope of many social security systems.<sup>235</sup> Examples of these functions include safety at work, education and reskilling. This is the case in Tanzania where no single social security scheme deals with the first two stages of the social security route. Social security schemes in Tanzania are mostly compensatory. It is submitted that deliberate efforts are needed to incorporate preventative, mitigatory, compensatory and re-integrative measures as part of adopting a more comprehensive social security concept for Tanzania. As Pieters concisely states:

Benefits can aim at preventing the social risk, at restoring the situation preceding the occurrence of the social risk or at compensating for the social risk. One should first try to prevent any damage which might result from the occurrence of a social risk; it is only at a second stage that an attempt

<sup>232</sup> GEPF has only about 18,000 members whose contributions are very low to allow GEPF to extend coverage to other benefits. See also Kashonda, *op cit*, at p. 23 and the Tanzanian *National Social Security Policy*, 2003, para 2.3.

<sup>233</sup> See part 2.2 of chapter two of this thesis for more details.

<sup>234</sup> For instance AAR advises people on healthy ways of living and on how to take care of themselves. Based on personal interview with the AAR Customer Relations Manager, *ante*, (see footnote no. 77), and other beneficiaries of this health scheme.

<sup>235</sup> Pieters, *op cit*, at p. 38.

should be made to reinstate the previous situation of the party involved, only at the latest stage ought one to compensate for the damage inflicted by the occurrence of the social risk.<sup>236</sup>

Following Pieters' argument, it is further advised that the adoption of a hybrid social security concept, incorporating the ILO and World Bank approaches, would be ideal to achieve comprehensive social protection in Tanzania.

#### 3.4 EXTENSION OF COVERAGE: A Hybrid of the ILO and the World Bank Approaches

It is indisputable that the formal sector in Tanzania is small and it is shrinking.<sup>237</sup> Most workers are self-employed, in atypical employment, and concentrated in the informal, agricultural and peasantry sectors, thus falling outside the scope of many social security schemes.<sup>238</sup> This has a direct bearing on the questions of who is covered by the existing schemes and what the reasons for exclusion are. What should be done to remedy the situation? We have already looked at the first two questions. This part seeks to explore the last question.

Extension of coverage cannot occur in a vacuum. It is dependent upon a number of factors. These include the method of financing, the country's level of economic development, the size of the formal sector, the capacity of the social security administration, and the political will of the government.<sup>239</sup>

To begin with the method of financing, extension of coverage depends on whether the scheme is contributory or not. The ILO argues that it is possible to have universal coverage where the social security scheme is funded from general taxes and is non-contributory.<sup>240</sup> This is because in developing countries the majority of the people are in the excluded sectors where earnings cannot easily be monitored and contributions collected. In most countries, universal coverage is achieved through

<sup>236</sup> *Ibid.*

<sup>237</sup> For instance, by 2003, NSSF, PPF, PSPF and LAPF had about 450,000 members, 90,000 members, 193,000 members and 45,000 members respectively. By the end of 2005, NSSF, PPF, PSPF and LAPF had 367,948 members, 59,000 members, 168,861 members and 61,000 members respectively. Although LAPF coverage has increased, NSSF, PPF and PSPF coverage has decreased.

<sup>238</sup> Reynaud, *op cit.*, at p. 4. See also International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit.*, at p. 1. See further Bailey, *op cit.*, at p. 12.

<sup>239</sup> Gillion, *op cit.*, at p. 41. See also the International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit.*, at p. 67.

<sup>240</sup> Bailey, *op cit.*, at p. 16.

social assistance. Social assistance is mainly funded from taxes and is means-tested.<sup>241</sup>

Additionally, the ILO foresees two designs of financing social security schemes: a mixture of defined benefit and defined contribution schemes and a notional defined contribution scheme. The first design comprises four tiers: a bottom anti-poverty tier, a pay-as-you-go defined benefit tier, a mandatory defined-contribution-based tier and a voluntary defined-contribution-based tier.<sup>242</sup> The second design differs from the defined contribution scheme in that “the interest rate applied is not the market rate of interest but some other indicators, such as the rate of growth of GDP or of wages.”<sup>243</sup> In a similar vein, the World Bank advocates “a rapid and complete shift to a mandatory funded system, and a gradual shift to a multipillar” social security system.<sup>244</sup> The multipillar approach dictates that contributory schemes, which are in the first and second pillars, should be supplemented by non-contributory and voluntary schemes, which are the zero and third pillars respectively.<sup>245</sup> The ILO’s social assistance and anti-poverty tier seem to be the same as the World Bank’s zero pillar.

In essence, it is believed that a combination of the ILO’s universal coverage approach and the World Bank’s zero pillar will work well for Tanzania. The combination will ensure that at least every individual has some form of social protection. The formal sector will be protected by their compulsory and contributory schemes and supplementary schemes, the excluded who are able to contribute will be protected by their specially designed voluntary schemes, and those who are poor and are unable to contribute to any of the mentioned schemes will be protected through the zero pillar by the devised social assistance and universal coverage schemes.

In Tanzania, the social security system is mainly contributory. The contributory nature is found in both the compulsory formal social security schemes and in the voluntary schemes for the excluded. At times, even social assistance

<sup>241</sup> For instance, in South Africa, social assistance is means-tested and funded from taxes. See the *Social Assistance Act* of 2004, Act No. 13 of 2004. See also Olivier and Kalula, “Scope of Coverage” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 139.

<sup>242</sup> Gillion, *op cit*, at p. 62.

<sup>243</sup> *Ibid*. For more details on differences between defined benefit and defined contribution schemes see part 1.9 of chapter one of this thesis.

<sup>244</sup> R. Holzmann, “The World Bank approach to pension reform,” *International Social Security Review*, Vol. 53 No.1, 2000, pp. 11-34, at p. 11.

<sup>245</sup> Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at pp. 17-18.

schemes require some kind of contribution through "cost sharing" mechanisms.<sup>246</sup> The contributory method of financing has affected extension of coverage in Tanzania as the formal social security system faces "enforcement of compliance" challenges as far as the few members covered from the excluded sectors are concerned.<sup>247</sup> Among other reasons, the existing social security schemes were initially designed to cover the formal sector, where compulsory affiliation and compliance is guaranteed. Where affiliation is optional, in this case for the self-employed and the informal sector, compliance cannot be guaranteed and contribution evasion is common.<sup>248</sup> As the formal social security schemes indicated, contribution evasion causes high spending by the social security fund to enforce compliance which may cost more than the contributions being sought.<sup>249</sup> Dau concisely states that:

[e]xtending coverage to the informal sector workers in the urban and rural areas will result in higher administration costs due to additional costs in dealing with individuals. The extra costs are a result of a number of activities related to compliance of these members. Under the normal environment, it might be difficult to finance these high expenses, compared to the amounts of contributions that can be realised as contributions of most members under informal sector.<sup>250</sup>

It is submitted that the creation of separate voluntary schemes or a third pillar, to use the World Bank's terminology, for the excluded may be a viable approach to achieving extension of coverage in Tanzania.<sup>251</sup> Although this option diverges from

<sup>246</sup> Cost sharing is common in health and educational facilities which were initially subsidised by the government and were free of charge. However, for children below 5 years, pregnant mothers and the elderly above the age of 60 years, health provision is free in government hospitals which mostly offer poor services. According to Tugaraza "[u]sers are more likely to report dissatisfaction with government providers than with private ones. Long waiting times, lack of drugs..." are the most common problems with government hospitals. See Tugaraza, *op cit*, at p. 194. See also "[Prime Minister] roots for elderly people's support, protection" *Tanzanian Guardian*, Tuesday, 3 October 2006 and "Conditions in our hospitals, clinics pathetic" *Tanzanian Sunday Observer*, Sunday, 15 October 2006.

<sup>247</sup> Similarly, there are employers, acting as social security agencies for collecting contributions, who default in remitting the contributions to the schemes. See "TAZARA fails to remit 4bn/- to NSSF" *Tanzanian Daily News*, Monday, 27 February 2006.

<sup>248</sup> Gillion, *op cit*, at p. 44.

<sup>249</sup> See Dau, *op cit*, at p. 7. See also Gillion, *op cit*, at p. 59.

<sup>250</sup> See Dau, *op cit*, at p. 7.

<sup>251</sup> See Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at pp. 19-20 where it is stated that "there is a large group of low-income countries, where a rapid increase in coverage has to be achieved through setting up social insurance schemes directly financed and managed by informal sector workers." See also Baruti, *op cit*, at p. 14.

the solidarity principle,<sup>252</sup> and creates a dualistic social security system, it seems it would work better in Tanzania than formal social security schemes extending coverage to the excluded irrespective of the latter's administrative capacity.<sup>253</sup> However, the questions remain, why do the excluded sectors evade contributions? And why are separate schemes for the excluded a better option?

Firstly, the formal sector shares the responsibility of making contributions with employers while the excluded have to bear the whole burden themselves. When the excluded are registered with the formal sector they are required to contribute the employer's share and their own shares. This is considered a disincentive for the excluded to join the existing schemes. Extension of coverage by the formal schemes to the excluded can only work if the government subsidises the employer's contributions for the excluded that wish to be registered. Subsidisation would reduce the burden borne by the excluded who could afford to contribute to the existing formal schemes.<sup>254</sup> An example of how subsidization can motivate the excluded to join social security schemes is the positive response of people to CHF: many households are joining this scheme for health insurance. Alternatively, where the subsidisation is not guaranteed, then the excluded should have their own schemes

<sup>252</sup> Reynaud, *op cit*, at p. 3.

<sup>253</sup> See Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 10 where it is stated that by 2005, NSSF had registered only 2,000 voluntary members from the excluded sectors and PPF had registered only 500 voluntary members. See also "Gerezani petty traders to become NSSF members" *Tanzanian Daily News*, Thursday, 24 August 2006. However, there are a number of mutual societies and self-help groups that are mushrooming in Tanzania, including the UMASIDA in Dar es Salaam which provides health insurance, the Kilombero Marketing Co-operative in Arusha for helping members in times of need and UWAMBE in Mbeya for helping retired officers when they face social risks. Additionally, s. 216(1)(e) of the proposed *Social Security Act* of 2005 (by the international experts) envisages "adoption of flexible, special and targeted mechanisms, processes, procedures, contributory regimes, qualifying criteria and benefit packages in order to accommodate the variety of categories or groups of informal sector workers and self-employed persons in Tanzania as extensively and effectively as possible" for the excluded sectors and that the proposed private sector funds should maintain separate portfolios, schemes and accounts for those sectors. See s. 223(1). However, ss. 54 and 55 of the proposed *Social Security Act* of 2005 (by the social security institutions) suggest that the excluded would be covered by mandatory schemes but differentiated and irregular contributory rates would be possible. See also Pienkos, *op cit*, at p. 18. See further Singh, S. and Ashraf, M., *Alternative Mechanisms of Social Protection for the Unorganised Sector in India*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 8 where it is stated that "...in order to become effective, the social security scheme for the unorganised sector should be locally managed and controlled."

<sup>254</sup> See Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at pp. 16-17 where he states that "[s]ome special schemes for the excluded workers tend to have more success, particularly if the government is willing to subsidize them." (italics is mine). See also See Riazi and Mahdavi, *op cit*, at p. 6 and Etminan and Chaker-ol-Hosseini, *op cit*, at pp. 13-14. See further Mesa-Lago, 2007, *op cit*, at p. 11 where it is stated that "[In Costa Rica] 45 per cent of the self employed population are affiliated to social insurance because the State provides a subsidy (in lieu of the employer's contribution) to those with low income."

which could develop their own contributory patterns to suit their own needs and priorities.

Secondly, most of the excluded live on a day to day basis and are “psychologically engrossed in their problems of immediate survival to such an extent that any concern or motivation to provide for a distant eventuality gets almost obliterated.”<sup>255</sup> As such they are “likely to take a dim view of being forced to save for distant contingencies such as retirement, when they are living a marginal existence.”<sup>256</sup> This being the case, it is thought that the excluded would be better protected by separate schemes which will deal with their immediate problems and priorities than by the formal social security schemes which concentrate on protecting workers against the conventional social risks. Hence, it is submitted that by adopting the ILO approach to having separate schemes for the informal sector and the World Bank’s multipillar approach, it is possible for Tanzania to extend coverage to the excluded majority.

The level of economic development is another factor relevant to the extension of coverage, since extension of coverage corresponds to the economic development of a particular country.<sup>257</sup> This linkage is premised on the fact that availability of resources determines the level of coverage. Among other reasons, this is why the developed countries have higher levels of coverage than developing countries.<sup>258</sup> This argument accords with the classical development theory which “assumes that as economies grow, most workers will eventually be employed in regular wage employment in the formal sector.”<sup>259</sup> While this may be true for middle-income developing countries, the trend has not been the same for low-income countries. In low-income countries the economies are growing very slowly and the excluded sector is growing rapidly. The classical development theory does not seem to work for

<sup>255</sup> H. Singh, “ISSA studies on extension of social security to unprotected groups in Asia and the Pacific,” in Sankaran, T. S. et al (eds.), *Social security in developing countries*, Har-Ahmand Publications, New Delhi, 1994, as quoted in Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 10.

<sup>256</sup> Murphy, *op cit*, at p. 11. See also Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, 1999, *op cit*, at p. 11. See further, Ghai, *op cit*, at p. 4.

<sup>257</sup> Reynaud, *op cit*, at p. 4. See also Mesa-Lago, 2007, *op cit*, at p. 13. For a rather different line of argument, see Nikoopour, H., *Business Cycles and Policy Making for Extension of Insurance Coverage: The Case of Iran*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 2 where it is noted that “...without extending social security to whole population, achieving the economic growth is so difficult.”

<sup>258</sup> Gillion, *op cit*, at p. 41.

<sup>259</sup> Bailey, *op cit*, at p. 11.

countries like Tanzania where informalisation of employment is increasingly high because of, among other things, economic globalisation, the World Bank and IMF conditions and structural adjustment programmes which compel states to reduce public expenditure through retrenchments and reduction of government subsidies.<sup>260</sup>

In the words of Rwegoshora:

[d]espite the persistence of poverty among the majority of Tanzanians, the on going economic globalization continues to pose challenges through changing labour markets and technological challenges. These changes are displacing full time regular employment and changing the nature of work. Most new jobs being created are in the informal sector or of a part time, casual, temporary or home based nature. There is a growing army of unemployed and underemployed. The socio economic challenges facing Tanzania [are] made more ominous by the danger that, the dynamics of globalization which further strain these existing relations of increasing poverty, vulnerability and exploitation and exert pressure to intensify them. Hence, in a situation where the liberalized economies (*like that of Tanzania*) no longer tolerate a state that makes provision for sophisticated network of tax based social security system, the task of addressing the question[s] of poverty and deprivation is one of the central features of the country's social security system. If the question of poverty alleviation is not properly addressed, the consequence is likely to be growing poverty, inequality, social polarization, job insecurity and crime in the country.<sup>261</sup>

All these factors have contributed to low levels of coverage in Tanzania and this situation will persist for a long time as the current "social security ...resembles the situation in the developed countries a century earlier."<sup>262</sup>

However, the theory of insurance which states that "the viability of the scheme increases with the size of the insured group"<sup>263</sup> seems to have some bearing on the situation in Tanzania. The NSSF which has more contributors than any other existing social security scheme in Tanzania is the only scheme that offers more benefits to its members in terms of numbers. Nevertheless, NSSF covers a negligible number of the informal sector: only 2,000 members of its 367,948 members are from the informal sector. As extension of coverage by the existing formal schemes to the excluded is still far off, it is believed that separate social security schemes for the excluded would

<sup>260</sup> International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit*, at p. 4.

<sup>261</sup> Rwegoshora, *op cit*, at pp. 6-7.

<sup>262</sup> Gillion, *op cit*, at p. 60.

<sup>263</sup> International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit* at p. 53.

be a viable and probably a timely approach as the Tanzanian economy is still in transition and it may remain so for some time.

The political will of the country and the level of democracy also have a bearing on the level of coverage of social security schemes.<sup>264</sup> While political will dictates the national priorities, the level of democracy builds confidence of the contributors and ensures compliance in making contributions. All these factors guarantee adequacy of benefits and good governance.<sup>265</sup> Where democracy prevails, the social security scheme will always have funds to offer benefits and, where possible, increase the levels of benefits, and there will be minimal contribution evasion and hence minimal administrative costs.

Every government has its priorities. Extension of coverage is very dependent on the importance that the government attaches to social protection.<sup>266</sup> Where social security is prioritised, the government is involved in regulating and supervising social security matters. People trust their governments. Whenever the government has a hand in something, people tend to believe that it is genuine.<sup>267</sup> In the case where the government regulates social security schemes, people are likely to contribute diligently to the schemes and therefore increase the number of people covered and the financial base of the scheme. The government, the ILO argues, has the primary responsibility as the ultimate guarantor of national social security schemes. This places the responsibility upon the government to regulate and supervise the social security schemes in order to guarantee financial stability of the schemes. Extension of coverage therefore can only be achieved where the government is willing to cooperate, and where the contributors, through their representatives, have a say in the undertakings of the democratically governed scheme.<sup>268</sup>

It is political will, therefore, which is needed in Tanzania, to reach the ultimate goal of extension of coverage to the excluded. The policy measures adopted recently show the government's commitment to social protection although the measures are yet to materialise. These policy measures include the *National Social Security Policy* of 2003 and the *National Strategy for Growth and Reduction of Poverty* (NSGRP) of 2005. The latter embraces the Tanzania Social Action Fund (TASAF) and the

<sup>264</sup> Reynaud, *op cit*, at p. 4. See also International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit*, at p. 67. See further, Mesa-Lago, 2007, *op cit*, at p. 12.

<sup>265</sup> Bailey, *op cit*, at pp. 13-14.

<sup>266</sup> Gillion, *op cit*, at p. 41. See also Pal, K., *et al, op cit*.

<sup>267</sup> International Labour Conference, *89<sup>th</sup> Session, Report VI, op cit*, at p. 11.

<sup>268</sup> Gillion, *op cit*, at p. 41. See also Reynaud, *op cit*, at p. 18.

Property and Business Formalisation Programme for Tanzania (PBFPT - MKURABITA). All these policy documents show the government's commitment to extending coverage to the excluded through self-help initiatives and poverty reduction programmes initiated and sponsored by the government. As such, TASAF is set to enhance, among other things, "capacity and skills among rural and peri-urban communities," and to create "a temporary safety net for the poorest sections of the communities."<sup>269</sup>

Although these are short-term provisions, it is thought that in the long run, enhancement of capacity and skills would help the majority of the population to either participate in the current social protection measures or devise ways to protect themselves against the social risks. This will particularly help the vulnerable groups like women and children. Likewise, MKURABITA, which is primarily aimed at formalising informal businesses and enabling the poor to use their property to access credit facilities, has diverse implications in social security.<sup>270</sup> This is based on the fact that it is believed that people whose businesses are formalised will escape poverty and be able to participate in the existing social security system or be able to devise their own specialised schemes for social security provisioning.

The ILO argues that extension of coverage depends on the size of the formal sector.<sup>271</sup> As illustrated earlier, the formal social security schemes in Tanzania cover the formal sector which is less than 6 per cent of the total labour force.<sup>272</sup> The ILO notes that extension of coverage should go hand in hand with enlarging the formal sector because as the economy grows, the labour market becomes stronger.<sup>273</sup> However, from another point of view, the ILO provides that where formalisation of informal employment cannot be achieved, special programmes should be devised to protect the excluded workers.<sup>274</sup> In Tanzania, formalisation of the excluded sectors is far from being achieved and, following the ILO's suggestion, it is proposed that the excluded should have specialised schemes to suit their circumstances which are full of complexities and difficulties which can hardly be solved by the existing social

<sup>269</sup> See <http://www.tasaf.org>, last accessed on 26 September 2006.

<sup>270</sup> See Programme Management Unit, *Property and Business Formalisation Programme for Tanzania (MKURABITA)*, State House, 16/04/2005. Accessed through <http://www.povertymonitoring.go.tz/downloads/new/mkurabita.doc>, on 26 September 2006.

<sup>271</sup> Gillion, *op cit*, at p. 41. See also Mesa-Lago, 2007, *op cit*, at p. 13.

<sup>272</sup> See part 3.1 of this chapter.

<sup>273</sup> Reynaud, *op cit*, at p. 18.

<sup>274</sup> Gillion, *op cit*, at p. 45.

security schemes. For instance, it is difficult to determine who is an employer and an employee in the informal sector. In addition, social security needs vary from one excluded group to another.<sup>275</sup> For example, the needs and priorities of the rural informal sector may be different from the needs of the urban informal sector as they face different kinds of risks.

Moreover, the capacity of the social security administration also influences extension of coverage. According to Gillion, social security administration affects the credibility and the viability of the scheme.<sup>276</sup> Where administration is poor, extending coverage is impossible because non-members cannot be motivated to join a scheme which is not well administered. Secondly, as a rule of thumb, before a scheme can consider covering the excluded, it must adequately protect the existing members. Adequacy of benefits, which entails a close link between the contributions and what members receive upon the occurrence of social risks, may encourage the excluded to join the scheme. Where there is no connection between the contributions and the benefits received, extension of coverage cannot be achieved. In Tanzania, where the members of the social security schemes complain about the inadequacies of the benefits they receive and consider social security administration as ineffective and inefficient, extension of coverage may be intricate.<sup>277</sup> The option remains to devise specialised schemes for the excluded as they have negative attitude towards the existing formal social security schemes.

### 3.5. A SUMMARY OF OPTIONS FOR EXTENSION OF COVERAGE IN TANZANIA

Although separate and specialised schemes for the excluded appear more favourable than extending the existing formal schemes, there should be links and coordination between the formal social security schemes and those covering the excluded groups because levels of informalisation of employment in Tanzania are high and the formal sector is shrinking.<sup>278</sup> While a large number of the employees in

<sup>275</sup> See Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, 1999, *op cit*, at p. 11. See also Riazi and Mahdavi, *op cit*, at p. 10.

<sup>276</sup> Gillion, *op cit*, at p. 45.

<sup>277</sup> More discussion follows in the subsequent chapter.

<sup>278</sup> Coordination issues are discussed in detail in chapter five of this thesis. See also Kaseke, E., "Informal Social Security in Eastern and Southern Africa," in *Towards the Development of Social Protection in the SADC Region*, Proceedings and Outcomes of a Conference Held at the Helderfontein Conference Centre, Johannesburg, South Africa, 17 – 19 October 2001.

the formal sector are joining the excluded sectors, there are few people moving from the informal sector to the formal sector. Regrettably, the *National Social Security Policy* of 2003 and a number of statutes allow the withdrawal of contributions made to different schemes.<sup>279</sup> As indicated in part 3.3.8 of this chapter, it is proposed that there should be portability measures, not only between the formal schemes, but also between the formal schemes and the informal schemes. Withdrawals in both schemes should not be allowed where a member has not reached a specified age. Where there are portability measures, the periods of contribution and the contributions made will be preserved, as is the case in the Philippines. In Philippines, where a member changes employment, say from private to public or vice versa, the period of contribution and the contributions made under one scheme are preserved until the employee is again entitled to benefits, and all periods and contributions made under both schemes are taken into account and the benefits are paid *pro rata*.<sup>280</sup>

However, despite the fact that specially designed schemes for the excluded are preferred, there are countries where extension of coverage of the existing formal social security to the excluded sectors has succeeded, for instance, Tunisia, Morocco and Namibia. In Tunisia, which is regarded as one of the best comprehensive social security providers in Africa,<sup>281</sup> social security institutions cover employees in the formal sector, in the informal sector, agricultural sector, fishing sector, small ship owners, small farmers, small-scale fishing workers and small artisans. However, domestic workers and public employees working on construction sites are excluded from the existing schemes. According to Boudahrain, plans for inclusion of these categories are under way.<sup>282</sup> In Morocco, coverage is still low compared to Tunisia because self-employed artisans and non-wage-earning agricultural workers are not covered by any statutory social insurance scheme.<sup>283</sup> In Namibia, coverage is

<sup>279</sup> See part 3.3.8 of this chapter for more details. See further Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 26. Further, it is surprising that Sub-Part IV of the proposed *Social Security Act* of 2005 (by the social security institutions) myopically envisages payment of 40 per cent of accumulated contributions as partial withdrawals for development purposes, at five-year intervals.

<sup>280</sup> See part 2.2.3.1 of chapter two of this thesis for more details.

<sup>281</sup> Butare and Kaseke, *op cit*, at pp. 3-4.

<sup>282</sup> A. Boudahrain, "Social security pensions in the Maghreb: A study of Morocco and Tunisia," *International Social Security Review*, Vol. 56, Nos. 3-4, 2003, pp. 121-138, at p. 137.

<sup>283</sup> *Ibid.* at p. 124.

extended to “those who are formally employed for at least two days per week,” farm workers, domestic workers and *shebeen* owners.<sup>284</sup>

One question remains: How do we ensure that the excluded are motivated to join their specialised social security schemes? As earlier indicated, subsidisation is the major incentive for the excluded to join social security schemes, as is the case with the CHF. The second motivation is better benefits packages and extended coverage of their prioritised risks and needs. It is submitted that awareness creation and better offers will encourage employees in all sectors falling under a specialised scheme to demand social security protection which will mean more employees will be registered and better packages of benefits will be guaranteed. Thirdly, it is thought that consultation and involvement of beneficiaries in decision making in the social security schemes would boost their morale to join the said schemes. Lastly, social security schemes will have to inspire public confidence if wide coverage is to be achieved and maintained.<sup>285</sup>

There are essentially four general policy options for extension of coverage. These include concentrating on extending and adapting statutory social insurance schemes, encouraging voluntary coverage through contributory schemes, introducing universal benefits or services financed from taxes, and establishing or extending means-tested benefits or services also financed from taxes.<sup>286</sup> Specifying extending coverage to the excluded sectors, Gillion provides for five policy options. Extending the existing schemes to cover excluded groups without a significant modification of the contribution and benefit structure, restructuring or adapting existing schemes to facilitate coverage of excluded groups, designing special schemes for excluded groups, introducing tax-based universal or targeted schemes, and encouraging the development of special schemes based on self-help or mutual insurance principles.<sup>287</sup> This study submits that, as earlier noted, designing special schemes for excluded groups, introducing tax-based universal or targeted schemes, and encouraging the development of special schemes based on self-help or mutual insurance principles are

<sup>284</sup> Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, (eds), 2003, *op cit*, pp. 655 – 678, at p. 667. A *shebeen* is an unlicensed drinking establishment; see <http://dictionary.reference.com/search?r=2&q=shebeen>, accessed on 9 October 2006.

<sup>285</sup> Reynaud, *op cit*, at p.19.

<sup>286</sup> See Bailey, *op cit*, at p. 16 and Reynaud, *op cit*, at p. 19. See also Holzmann, Sherburne-Benz and Tesliuc, *op cit*, at pp. 17-18.

<sup>287</sup> Gillion, *op cit*, at p. 45

the viable options that can be adopted by Tanzania in order to extend coverage to the excluded.

This study further submits that social security should be regarded as a fundamental human right in Tanzania because Tanzania subscribes to the *Universal Declaration of Human Rights* of 1948 and is party to the *International Covenant on Economic, Social and Cultural Rights* of 1966. Both international instruments require that social security should be regarded as a fundamental human right. The possibility of entrenching this right in the URT Constitution of 1977 exists; an example can be drawn from the South African Constitution of 1996 which in Article 27 provides that:

- (1) [e]veryone has the right to have access to...social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights...

Regarding social security as a fundamental human right has made a difference in South Africa where social security rights are justiciable in courts of law.<sup>288</sup> The justiciability of social security rights had been a contentious issue in South Africa: there were challenges based on the separation of powers and the limits of adjudication of socio-economic rights.<sup>289</sup> The inclusion of socio-economic rights in the Constitution was objected to on the basis that it was a breach of Constitutional Principle VI on the separation of powers. The Constitutional Court of South Africa summarised the answers to these challenges in the *First Certification Judgment*:

It is true that the inclusion of socio-economic rights may result in Courts making orders which have direct implications for budgetary matters. However, even when a court enforces civil and political rights such as equality, freedom of speech and the right to a fair trial, the order it makes will often have such implications. A court may require the provision of legal aid, or the extension of state benefits to a class of people who formerly were not beneficiaries of such benefits. In our view it cannot be said that by including socio-economic rights within a bill of rights, a task is conferred upon the Courts so

<sup>288</sup> See the cases of *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC), *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC), *Khosa & others v. The Minister of Social Development and others*, CCT 12/03, and *Mahlaule & others v. The Minister of Social Development & others*, CCT 12/03. See also Sankaran, *op cit*, at p. 211 where it is stated that "presenting labour law [and social security law] violations as violations of constitutional or human rights has made redress easier and swifter."

<sup>289</sup> I. Currie, et al, *The Bill of Rights Handbook*, Fifth Ed, Juta and Co, Lansdowne, South Africa, 2005, pp. 566-598, at p. 569.

different from that ordinarily conferred upon them by a bill of rights that it results in a breach of separation of powers... Nevertheless, we are of the view that these rights are, at least to some extent, justiciable... The fact that socio-economic rights will almost inevitably give rise to such implications does not seem to us to be a bar to their justiciability... In the light of these considerations, it is our view that the inclusion of socio-economic rights in the New Constitution does not result in a breach of the Constitutional Principles.<sup>290</sup>

As indicated in part 1.3 of chapter one, socio-economic rights in Tanzania are not enforceable as they are part of the directives of state policy.<sup>291</sup> It is submitted that to achieve the ultimate goal of social security provision for the majority, Tanzania should consider social security as a fundamental right under the URT Constitution of 1977. This recommendation, however, is based on an understanding of the challenges that Tanzania is currently facing and the limitations of social security provisioning. Irrespective of the challenges, this study argues that Tanzania can offer social security to the citizenry depending on the available resources as South Africa does, and that this can be achieved once social security provisioning is prioritised. In the words of Kanywanyi,

[i]t is more a question of policy (prioritization) than one of resource availability. For resources that are channeled in satisfying the conspicuous consumption habits and desires of the political, bureaucracy and academic elites in the country can partly be directed towards relieving the poor of this country of some of the social and economic burdens that the current lopsided...system of resource allocation tends to impose on them. This would...have its own positive kick-back impact (sic) on the economy in that broader social redistribution of resources would enhance some significant degree of local economic growth.<sup>292</sup>

This policy option, it is believed, will also deal with the problems associated with considering social security benefits as mere privileges rather than rights of the members of the existing social security schemes.

Tanzanian social security schemes could also consider extending coverage to the excluded through the Ministers who could make use of the powers bestowed on them by social security legislation. Under current social security legislation the

<sup>290</sup> *Ex parte Chairperson of the Constitutional Assembly: in re Certification of the Constitution of the Republic of South Africa* 1996 (First Certification Judgment) 1996 (4) SA 744 (CC) para 77-8.

<sup>291</sup> See Articles 8 and 11 of the URT Constitution of 1977 as amended.

<sup>292</sup> Kanywanyi, *op cit*, at p. 52.

Ministers responsible for social security schemes are empowered to give direction to the schemes on any matter concerning the scheme. Extension of coverage to the excluded is one of those matters as the *National Social Security Fund Act* of 1997 exemplifies: section 6(4) provides that “[t]he Minister may by order in the *Gazette*, provide for the conditions and procedure under which any persons who is not eligible to become an insured person may so become.”

Achieving extension of coverage depends on the strategies that are put in place. Bailey argues that the strategies for extension of coverage should take into account the national economic, social and political environment.<sup>293</sup> He also stresses that the strategies should be based on realistic choices as to what can be done, what can be achieved, and the needs and wishes of the stakeholders in social security institutions.<sup>294</sup> The first ILO strategy is extension, based on classical social security mechanisms which include social insurance, universal benefits and systems, and social assistance programmes. The second strategy is promotion of and support for the development of decentralised systems deriving from local initiatives, in particular micro-insurance. The last strategy is the design of linkages and bridges between decentralised systems and other forms of social protection and public initiatives.<sup>295</sup> The World Bank’s social risk management strategies, *inter alia*, preventive, mitigation and coping strategies also play an immense role in reaching the excluded via its multipillar approach. All these strategies are being considered in Tanzania although they are still in their infancy.<sup>296</sup> As indicated by the 2002/03 Tanzania

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[m]ost shocks and stresses can be prevented from happening. Thus farmers have adopted a variety of techniques to stop soil erosion; people have invested in bed nets to prevent malaria; and they have changed reproductive practices to avoid HIV/AIDS, etc. These and other *ex ante* measures work, even if some...offer less than one hundred per cent protection. As such they play a vital role in reducing people’s vulnerability. Nonetheless, some impoverishing forces cannot be prevented; and others can be averted only through the intervention of powerful actors with little regard for conditions in Tanzania. In such cases, people focus on mitigating, or lessening, the impact of shocks and stresses. Some of these efforts take place prior to the onset of

<sup>293</sup> Bailey, *op cit*, at p. 10.

<sup>294</sup> *Ibid.*

<sup>295</sup> Reynaud, *op cit*, at p. 2.

<sup>296</sup> See the *National Strategy for Growth and Reduction of Poverty* (NSGRP) of 2005.

hardships...for instance livestock keepers diversify their herds and farmers plant specific crops to sustain their households in times of drought. People also try to build up assetbase to provide for them in old age...in contrast, other mitigating strategies, such as the application of fertilisers to compensate for reduced soil fertility, take place as shocks or stresses unfold. Though these activities do not prevent hardships from occurring, they can lessen their impact. People then have to cope with the consequences. At individual and household levels, this has lead people to sell assets...for cash and withdraw children from school so that they can contribute to family income. At community level, it has led people to pool resources so that they can care for HIV/AIDS orphans. These *ex post* coping strategies help people survive but also form a critical step in preparing them to recover from impoverishing forces and reclaim their wellbeing.<sup>297</sup>

However, there are challenges related to the outlined strategies. The first challenge is related to the state's intervention in social security provision. States in the developing world can intervene in social security matters very minimally because of financial constraints.<sup>298</sup> This being the case, in Tanzania, extension of coverage according to the principles of social insurance will continue to benefit the small and shrinking formal sector. The social assistance and universal benefits strategy may also take a long time to materialise because of financial constraints. Relaxing the principles of social insurance for the inclusion of the informal sector in the existing schemes may be another option for developing countries generally and Tanzania in particular.

Achieving national solidarity is another challenge.<sup>299</sup> Decentralised mechanisms of social protection tend to create different social security schemes for different classes of people in the society and when the ILO encourages development of micro-insurance, it is doubtful that solidarity can be achieved. While encouraging personal savings works well for a few people, it may not work for the many who take a short-term view, at least for old age risks. The savings may be quickly consumed and the state may end up being held responsible for old age support. The alternative would be for the state to ensure that every individual who is capable of working

<sup>297</sup> Research and Analysis Working Group, *Vulnerability and Resilience to Poverty in Tanzania: Causes, Consequences and Policy Implications*, 2002/03 Tanzania Participatory Poverty Assessment (TzPPA): Main Report, Mkuki na Nyota Publishers Ltd, 2004, at pp. 142-143.

<sup>298</sup> Gillion, *op cit*, at p. 39.

<sup>299</sup> *Ibid.*

contributes for his/her old age pensions to whatever scheme is devised. This study, in line with the ILO and the World Bank strategies and the challenge at hand, submits that specialised schemes still should be preferred although national solidarity may be at stake. This is because extension of the existing social insurance scheme to cover the excluded may not work for Tanzania.<sup>300</sup> It is submitted that national solidarity may be sought through the tax system and coordination between different schemes covering different groups of people.<sup>301</sup>

Another challenge for extending coverage to the excluded is the issue of compliance. It is extremely difficult to ensure compliance of people working in the excluded sectors. As indicated earlier on, many workers in these sectors have no employers or someone who can be identified as such.<sup>302</sup> This makes it difficult to collect contributions from these workers. Another problem is identification of the priorities, needs and contributory capacity of different categories of workers in the informal sector.<sup>303</sup> Where the social security scheme does not address their immediate needs, workers in the excluded sectors tend to avoid payment,<sup>304</sup> because future social security protection, like provision of old age pensions, is not their priority. It is further proposed that specialised social security schemes should be designed for the excluded sectors which would take into account their pressing needs and priorities such as loans for education and health purposes, and old age benefits.<sup>305</sup> It is also recommended that the government should subsidise these mutual schemes as it does to the CHF's. In this way, the excluded will not feel marginalised and the government will have minimised the costs of providing social assistance to the needy in the society, as many people will be motivated to contribute to these specialised schemes.

An additional challenge for the extension of coverage of social security to the excluded is that of the rural excluded who are mainly pastoralists and agriculturalists. The specialised schemes which are suggested for the excluded might need to consider the disparities that exist between the rural and urban excluded groups in terms of the priorities and the risks that they face. For instance, while cash benefit measures may

<sup>300</sup> Gillion, *op cit*, at p. 44.

<sup>301</sup> More details to follow in chapter five of this thesis.

<sup>302</sup> Reynaud, *op cit*, at p. 7. For instance, employers, the self-employed, small farmers and fishermen in most cases work on their own account. Even for domestic servants, home workers, casual workers and contract workers, it is not easy to identify their employers, especially where brokering is involved. See also Pienkos, *op cit*, at p. 19.

<sup>303</sup> Reynaud, *op cit*, at p.7. See also Pienkos, *op cit*, at p. 19.

<sup>304</sup> *Ibid*. See also ILO, *Social Security: A new consensus*, 2001, Geneva, at p. 2.

<sup>305</sup> See Dau, *op cit*, at p. 6.

be welcomed in urban settings, in rural areas the priorities are mostly “*animal* and crop insurance, natural disasters insurance, assisted marketing and better health services.”<sup>306</sup> The ILO provides that:

... [a]ny extension of coverage to the *pastoral and* agricultural community implies that schemes have to be introduced into a very different setting, and the type of need may in fact be very different from that of the urban wage earner...the extension of a conventional programme of social security to the rural area is by no means an easy task, nor is it necessarily a sufficient answer to the social security protection of persons in those areas...<sup>307</sup> (*italics are mine*)

As such, the suggested specialised social security schemes for the informal sector may need to be sectoral-based, say for example, a social security scheme for casual labourers in urban areas and for pastoralists and peasants/farmers in the rural areas.

Other challenges facing the Tanzanian social security system are the HIV/Aids pandemic “which condemns the extended family to shoulder a burden far beyond its capacity”,<sup>308</sup> natural disasters, high administration costs, seasonality and lack of permanency of the income of the excluded, low contribution capacity, lack of enough incentives to encourage the excluded sectors to register, lack of necessary legislative arrangements for inclusion of the excluded, low levels of awareness and the absence of employer-employee relationships in the excluded sectors.<sup>309</sup> Lack of domestic opportunities to invest large social security funds is another challenge facing administrators of social security funds.

### 3.6. CONCLUSION

In Tanzania, social security protection is reserved for the privileged few who are in the formal sector. The majority of people, about 90 percent of the whole population, are excluded from the current social security coverage. Among other reasons, exclusion of the majority is justified mainly by the unreliability and low levels of their remuneration, hence low contributory capacity and legislative exclusion. Those who are covered have steady, reliable and high income patterns and

<sup>306</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 17. See also Riazi and Mahdavi, *op cit*, at p. 10.

<sup>307</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at pp. 15-16.

<sup>308</sup> Rwegoshora, *op cit*, at pp. 6-7.

<sup>309</sup> See Dau, *op cit*, pp. 7-8. See also Olivier, M. P. and Mpedi, L. G., *Extending Social Security to Families in the African context: The Complementary role of formal and informal social security*, Paper presented at the 4<sup>th</sup> International Research Conference on Social Security, Antwerp, 5 – 7 May 2003, at p. 27.

are therefore in a position to contribute regularly to social security. By way of conclusion, Olivier and Kaseke note:

...it is apparent that the coverage of employment-based social security system at 5.4 per cent of the labour force is very low. Consequently, there is the problem of social exclusion. The self-employed and informal sector workers are largely excluded from coverage because of the lack of an employer-employee relationship and also their low incomes. The challenge, therefore, is to extend coverage to those who are currently excluded with a view to promoting social inclusion. Also, the coverage in terms of contingencies is not comprehensive enough...<sup>310</sup>

Although people in the formal sector are less than 6 percent of the total population, there are numerous schemes covering isolated groups of employees and at times scrambling and competing for customers. As such, enforcement of compliance is difficult and some dubious employers fail to register their employees with any of the schemes.

However, employees are not able to take advantage of this competition and choose the scheme which suits their interests and needs. It is the employer who chooses the scheme with which he/she will register the employees. There are efforts, however, by the government to extend coverage to the excluded and also individuals themselves are agitating for inclusion in social protection through self-help initiatives and mutual societies. With the government's commitment to making social security a top priority, extension of coverage can be achieved in the near future.

Fragmentation has inevitably affected social security beneficiaries who depend on the social security scheme to which they are subjected. The qualifying conditions, levels and packages of benefits are different from one scheme to another. As such, "these *schemes* need to be harmonised in order to enable members to enjoy the same minimum levels of social protection. The same principle should be applied to benefit package across the schemes based on core or priority risks and benefits linked to the costs of living."<sup>311</sup>

The list of social risks covered by a particular scheme determines the social security benefits available to its members. In Tanzania, despite the fact that the existing schemes follow the ILO conventional risks, there is no scheme which

<sup>310</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *ap cit*, at p. 25.

<sup>311</sup> *Ibid*, at p. 26.

protects its members against all nine risks, although the NSSF provides for at least six of the ILO risks. The study has discovered that some schemes provide for additional benefits apart from the ILO list of benefits. These include funeral grants and educational benefits. Research has shown that withdrawal benefits are offered by almost all the social security schemes in Tanzania, because of, among other reasons, the lack of portability measures for social security benefits from one scheme to another. It is indicated that this practice negatively affects the members of these schemes as they lose their periods of contributions which are as important as the contributions made when it comes to satisfying the minimum period needed to qualify for certain benefits. Mostly, retirement and invalidity pensions are dependent on the length of time one has spent with the scheme and the contributions made. When the contributions are withdrawn and the periods lost, it is unlikely that a member who is changing employment will ever qualify for such benefits. In short, lack of portability arrangements hampers labour mobility.

The study has outlined the policy options available for consideration by the Tanzanian government and the challenges involved in the extension of coverage. Among others, adoption of specially designed social security schemes for the excluded is considered as a viable option in the current economic conditions in Tanzania, taking into account the challenges faced by the current schemes to extend coverage to the excluded. Dau outlines these challenges to include high administration costs, seasonality and lack of permanency of the income of the excluded, low contribution capacity, lack of necessary legislative arrangements for inclusion of the excluded, low levels of awareness and the absence of employer-employee relationships in the excluded sectors and lack of enough incentives to entice the excluded sectors to register.<sup>312</sup> As such, "social security in [Tanzania] requires a multiple approach."<sup>313</sup>

The next chapter looks at the adequacy of the benefits package offered by the existing social security schemes. It looks at why the social security benefits are inadequate and whether the current social security schemes can provide adequate benefits for their members. Consideration is given to the current levels of benefits and

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<sup>312</sup> Dau, *op cit*, pp. 7-8.

<sup>313</sup> Guhan, *op cit*, at p. 38.

protection of these benefits against high inflation which is bound to increase in Tanzania.<sup>314</sup>

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<sup>314</sup> The current President confirmed this assertion when he stated that the "inflation rate could rise from the current five per cent to six or even seven per cent" because of food shortages and power cuts "coupled with rising prices of petrol at the world market." See "Inflation could spiral, JK warns" *Tanzanian THISDAY*, Saturday, 18 March 2006. See also "Inflation in May highest in 8 years" *Tanzanian Daily News*, Monday, 3 July 2006 where it was noted that "inflation in May shot up to 7.7 per cent." See further "Inflation rate hits 7.3pc" *Tanzanian Guardian*, Tuesday, 24 April 2007.

## CHAPTER FOUR

### ADEQUACY OF SOCIAL SECURITY BENEFITS IN TANZANIA

*Nothing in the history of social policy has transformed the life of the common man more radically than the assurance that, in the event of loss of income through accident, poor health, unemployment, death of the breadwinner or any other misfortune, he will not be forced into destitution.<sup>1</sup>*

#### 4.0. INTRODUCTION

Chapter one gave the general introduction and background to this study. The importance of this study was shown and justified. Research methodology was outlined and the objectives of this study highlighted. This was followed by a summary of each chapter and definitions of important terminologies. Chapter two went on to describe research issues to answer the question: what does literature say about the issues under consideration? Literature indicated that there are gaps between the available literature and social security issues which are prevalent in Africa, more specifically, in sub Saharan Africa. Literature review was in line with the chosen issues, *inter alia*, scope of coverage, adequacy of social security benefits, non-transferability of social security benefits and lack of coordination between social security schemes, the problem of fragmentation of social security schemes and lack of good governance in social security institutions. It was in chapter two where the need for a comprehensive social security concept for Africa was considered.

The previous chapter discussed in detail the scope of coverage of social security schemes in Tanzania. It was reported that social security schemes in Tanzania cover mainly the formal sector which is less than 6 per cent of the total labour force. It was also observed that Tanzania's social security system follows closely the ILO approach in terms of the groups of people covered, the types of social risks covered and the benefits available. This finding was informed by the current trends of social security provisioning in Tanzania which follows the ILO's three tier approach, namely, social assistance, social insurance and voluntary schemes. In chapter three it was suggested that Tanzania needs a hybrid of the ILO and World Bank approaches to

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<sup>1</sup> Wilfred Jenks, *Social Security as a World Problem*, Occasional Papers in Industrial Relations, No. 6, Industrial Relations Centre in conjunction with the New Zealand Institute of International Affairs, Victoria University of Wellington, 1972, as quoted in ILO, *Introduction to Social Security*, International Labour Office, Geneva, Switzerland, 1989, at p. 19.

social security provisioning so as to reach the ultimate goal of protecting the majority of the excluded sectors from the vagaries of social risks.

This chapter discusses in detail the current levels of social security benefits in Tanzania, and seeks to establish whether the benefits are adequate. The findings reported in this chapter form the basis of the argument that those who the social security institutions purport to cover should be protected against poverty and destitution through the provision of adequate benefits.

Additionally, this chapter argues that there is well-established connection between the inflation rates and the levels of benefits. In this respect, it is argued that adequacy of social security benefits in Tanzania can only be achieved where the benefits are indexed to prices and/or benefits.

Apart from identifying indexation as a means for guaranteeing adequacy of benefits, it is argued in this chapter that solidarity principles should be taken on board for any meaningful adequate protection of the vulnerable groups. This argument stems from the fact that in a poor country like Tanzania, there is a need to embrace redistribution of income amongst people of different generations, between the rich and the poor, and between the able-bodied and the vulnerable groups. As such, it is submitted that protecting the working population and inactive workers from becoming destitute depends on solidarity measures.

The question whether social security benefits are adequate is addressed by considering the following factors: *inter alia*, scope, level and value of benefits; use of indexation to protect benefits from inflation and the application of solidarity principles in the determination of benefits.

#### 4.1. SCOPE, LEVEL AND VALUE OF BENEFITS

We can determine the adequacy of benefits in Tanzania from the pre-colonial era to the present. The adequacy of social security benefits before colonialism can be ascertained with reference to the ability of the traditional social protection institutions to protect people from social risks. The pre-colonial social security institutions included the domestic group, the kinship organisation, the neighbourhood community and the chief.<sup>2</sup> A member would be adequately protected where the means for

<sup>2</sup> Bossert, *op cit*, at pp. 27-37. See also Mpedi, L. G., "Indirect social security," in Olivier, Smit and Kalula (eds), 2003, *op cit*, pp. 535-558 and Dekker, A. H. and Olivier, M. P., "Informal Social Security," in Olivier, Smit and Kalula (eds), 2003, *op cit*, pp. 559-593, at p. 560.

subsistence was guaranteed by these institutions. At the domestic level, an individual's protection against social risks depended on the number of children he/she had. Although the traditional social security institutions operated on solidarity principles, the childless, the disabled and the invalid received inadequate protection from the existing social security institutions, because "the childless and the disabled held no ritual authority and therefore had no effective sanctions to assure their protection in the case of insufficient assistance. In addition, disabled persons were often suspected of being connected with witchcraft."<sup>3</sup> As they could not protect themselves at the domestic level, they had to depend on the mercy of the king, their neighbours or the chief.

During colonialism, adequate social protection was guaranteed for the colonialists who were expatriates and were employees in the colonial government. Apart from a few, indigenous people who were employed by the colonial government encountered inadequacy of benefits. The laws which were promulgated during colonialism bear witness to these assertions. For instance, under the *Pensions Ordinance* of 1954 it was only the officers employed on pensionable terms who were entitled to a meaningful pension: the maximum pension was two-thirds of "the highest pensionable emoluments."<sup>4</sup> Any officer who was not covered by the *Pensions Ordinance* of 1954 was provided for by the *Provident Fund (Government Employees) Ordinance* of 1942. Employees under the local authorities were covered by the *Provident Fund (Local Authorities) Ordinance* of 1944. While pensions under the *Pensions Ordinance* of 1954 were non-contributory, the two latter schemes were both contributory. As the former mainly covered expatriates, it offered handsome benefits while the latter offered only lump sum payments to their members in the event of the covered social risks occurring.<sup>5</sup>

Soon after independence, the colonial benefit structure more or less continued, save that it was the few elite who had adequate protection as they had "extremely high income."<sup>6</sup> Among other things, this state of affairs led to social transformation to

<sup>3</sup> Bossert, *op cit*, at p. 42. For a discussion on social security in other traditional societies, see Schmid, *op cit*, at p. 20 where it is stated that "[i]n traditional societies children are quite openly seen as an asset helping to insure against poverty or dependency in old age and against disability, and chronic illness." See also Magnani, E. and Rammohan, A., *The effect of Elderly Care-giving on Female Labour Supply in Indonesia*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?

<sup>4</sup> See s. 11(1) of Cap 371 of the Revised Laws of Tanganyika.

<sup>5</sup> For more details on the social risks covered, see chapter three of this thesis.

<sup>6</sup> Bossert, *op cit*, at p. 87.

attendant problems and effects of inadequacy of benefits which are caused by, among other things, high inflation, do not affect this class of benefits. The problem lies with the long-term benefits which are calculated depending on the salary scale of the beneficiary in the past. As the ILO puts it:

In the case of short-term benefits, where the average claim does not last very long and where the level of benefit reflects the level of the claimant's recent wages, no great difficulty arises unless inflation is catastrophically rapid....It is with the long-term benefits that the major problem is found. Here the claimant may suffer a double blow if nothing is done to adjust the pension in line with current levels of earnings or living costs. *Frequently the level of pension itself is calculated on past earnings over the employment life of the claimant. Unless these past earnings are reassessed to give them adequate current value, the rate of pension may be unduly low in relation to wages or to the cost of living at the time it is awarded. Once in payment, unless some adjustment is undertaken from time to time, the value of the pension will depreciate more and more during periods of inflation.*<sup>13</sup> (Emphasis is mine).

The levels of long-term benefits remain stagnant for years, which raise the question: are the current social security benefits adequate? It should be noted, therefore, that this discussion about adequacy of social security benefits refers to long-term benefits, *inter alia*, retirement/old age pensions, invalidity/disability pensions and survivors' pensions although in most cases the focus is on retirement pensions. There are a few references to short-term benefits.

#### 4.1.1. Scope of Benefits

As indicated in chapter three, the available benefits in Tanzania are based on the ILO's list of benefits. The benefits available include maternity benefits, educational benefits, employment injury benefits, withdrawal benefits, special lump sum/gratuity benefits, funeral grants, death benefits, sickness benefits, medical care, retirement/old age benefits, invalidity/disability benefits and survivors' benefits.<sup>14</sup> Unemployment benefits and family allowances which appear on the ILO list of benefits are excluded by the Tanzanian social security schemes.

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2006, Act No. 1 which provides for funding of funeral ceremonies without referring to the levels of salaries of the deceased leaders.

<sup>13</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 26.

<sup>14</sup> See part 3.3 of chapter three of this thesis.

It is noteworthy that the fragmented social security schemes in Tanzania provide different benefits to their members<sup>15</sup> and there is no single scheme that provides all the ILO benefits, let alone the benefits which are needed by the excluded majority of Tanzanians and which are not part of the ILO list of benefits. These priority benefits for the excluded include housing, food, children's education, natural disasters insurance, animal and crop insurance, insurance for loss of assets and working tools and better health services.<sup>16</sup> As the current social security schemes provide benefits which are not the priorities of the excluded, extension of coverage has been severely hampered.

It is submitted that the current list of social security benefits is inadequate as they do not consider the priorities of the prospective members of the social security institutions who are in the excluded sectors. Kamuzora concludes that:

the benefits are narrow in scope – the social security schemes are not comprehensive enough to address the wide range of protection needs of the population...by their nature, the benefits lack mechanisms for promotion of effective social security protection.<sup>17</sup>

#### 4.1.2. Levels and Value of Benefits

Level of benefits refers to the quantum of the benefits offered by the social security schemes and addresses the issue of whether the quantum of benefits received by a member is adequate. Adequacy of the benefits is determined by reference to the standard of living which the social security scheme promised to guarantee and protect when a member was capable of working and contributing to the scheme as "income-based social security schemes... aim at maintaining the standard of living of the beneficiary on a certain level."<sup>18</sup> There are two determinant factors for the adequacy of benefits, namely, "economic, philosophical or ideological approach to the systems, their function and aims," and "differences in attitudes, traditions and financial practices."<sup>19</sup>

Each social security scheme in Tanzania is built upon a separate ideology and operates within its predetermined aims. These ideologies and aims range from

<sup>15</sup> While NSSF, as the leading social security scheme, provides for six ILO benefits, other schemes offer three or less benefits. See part 3.3 of chapter three of this thesis.

<sup>16</sup> See part 3.5 of chapter three of this thesis.

<sup>17</sup> Kamuzora, *op cit*, at pp. 99 -100.

<sup>18</sup> Scheinin, M., "The Right to Social Security," in Eide, A., *et al*, (eds), 2001, *op cit*, at p. 212.

<sup>19</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at pp. 25 and 24 respectively.

individual savings to collective responsibility.<sup>20</sup> For instance, while the LAPF and GEPF promote individual savings, PPF, NSSF and PSPF promote collective responsibility by pooling all the resources of members for disbursement when any member faces old age, invalidity/disability and death. Thus, each scheme provides benefits depending on the purpose for which it was established and its financial status. As the ILO states:

The explanation for the difference in benefit levels between one country and another, or between one scheme and another, lies in the economic, philosophical or ideological approach to the systems, their functions and aims. It is to be expected that, where the approach is to encourage personal rather than collective responsibility, the system will emphasize voluntary supplementation of basic protection. In such cases, the basic social security system will be geared to providing a minimum level of benefit, though in some instances there is mandatory association with a second tier system providing earnings-related cover, up to certain earning limit. Other countries have taken the view that social protection should be all-embracing and leave little or no room, or necessity, for augmentation by savings, private insurance or supplementary schemes.<sup>21</sup>

Consequently, in Tanzania, the levels of benefits differ from one scheme to another because the schemes are established for different purposes and they tend to provide for more or less different categories of beneficiaries. For instance, with the aim of protecting the members from the effects of social risks, NSSF provides 80 per cent of the national statutory minimum wage as the minimum level of pension benefits and PPF provides for a fixed amount of Tshs. 10,000 (about US\$8), while GEPF and LAPF have no minimum levels as they are provident funds based on personal contributions to individual accounts. Aims and functions, therefore, constitute the major factors which determine the levels of benefits.

Secondly, levels of benefits are determined by differences in attitudes, traditions and financial practices. It is argued that in Tanzania the social security institutions tend to assume that social security beneficiaries receive help from their extended family structures.<sup>22</sup> Another misguided assumption is that upon retirement,

<sup>20</sup> See Scheinin, M., "The Right to Social Security," in Eide, A., *et al.*(eds), 2001, *op cit*, at p. 212 where it is indicated that there are other ideological choices, including those which "advocate reduced public spending" in social security spending.

<sup>21</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 25.

<sup>22</sup> Personal interviews with some administrators and beneficiaries of social security schemes, *op cit*. (See footnotes 16, 21, 24, 27, 30, 36, 44, 51, 77 and 211 of chapter three of this thesis). The

people change their lifestyles and their needs are fewer.<sup>23</sup> Traditionally, parents would depend on their children and relatives for social protection if they faced social risks.<sup>24</sup> To date, this is the attitude the social security schemes use to justify their inability to provide adequate benefits. As the ILO summarises it:

A lower level of benefit for old-age pensions is frequently found. The justification put forward for this is that needs in old age are fewer and that lifestyles change in retirement. The contrary view is that the pension is the sole source of income for most people, probably for many years. It is reasoned that a higher rather than a lower income is needed since the pensioner becomes increasingly dependent on others as the years advance.<sup>25</sup>

It is believed that "it is...important to take into account cultural changes in the relationship with time and the future when thinking about the prospects for intergenerational contract."<sup>26</sup> Now that family ties are breaking down, these assumptions are unjustifiable and the approach of the social security schemes needs to change. For instance, where a member of a social security scheme receives Tshs. 10,000 as a monthly pension (equivalent of US\$8 a month in December 2005), this person obviously cannot fulfil his/her basic needs. At the very least, accommodation costs Tshs. 10,000 a month per room, food costs on average Tshs. 30,000, apart from medical expenses, which may increase to about Tsh. 25,000 on average.<sup>27</sup> All these figures assume that the beneficiary is living alone and taking care of only himself/herself, which is very unlikely as one beneficiary may be responsible for about five or more family members.<sup>28</sup> If the retiree is unable to look after his/her dependants, it is highly unlikely that they will be able to take care of him/her.

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administrators indicated that although the benefits are meagre, the beneficiaries would have other sources of income, including relatives and small businesses which augment their pensions. See also "[Prime Minister] roots for elderly people's support, protection" *Tanzanian Guardian*, Tuesday, 3 October 2006 where the Prime Minister of Tanzania stated that "the communities [that the elderly] live with should support them..." See further Van Ginneken, *op cit*, at p. 11 and Kamuzora, *op cit*, at p. 105.

<sup>23</sup> *Ibid.* See also ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 24.

<sup>24</sup> Bossert, *op cit*, at p. 42. See also Kanywanyi, *op cit*, at p. 3.

<sup>25</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 24.

<sup>26</sup> A. M. Guillermand, "Equity and redistribution between generations: A challenge for the future of pensions and all social protection schemes," *International Social Security Review*, Vol. 52 No. 3, 1999, pp. 69–92, at p. 90.

<sup>27</sup> These figures are estimates based on the interviews conducted with pensioners who receive the minimum levels of pensions from the schemes. See for example, footnote 69 of chapter three of this thesis.

<sup>28</sup> See Kanywanyi, *op cit*, at p. 69. See also Bonnerjee, A., *the Impact of HIV/AIDS on Social Security*, World Bank, HDNSP, February 2003, at p.2.

Therefore, current levels of benefits must be equivalent to the current costs of living, as the traditional attitude that a person can rely on his/her children for support is no longer valid. Firstly, there is no guarantee that children will outlive their parents because of the HIV/Aids pandemic, and the youth in turn leave their young children to be taken care of by their grand parents.<sup>29</sup> Secondly, unless the parents were in a position to pay for the education of their children, surviving children will not be in a position to help their elderly parents when they are struggling to meet their own needs.<sup>30</sup> In such cases, the beneficiary will only be adequately provided for where the level of benefits takes into account actual living expenses; otherwise, the beneficiary who is not able to work will remain destitute for the rest of his/her life.<sup>31</sup>

The financial practices adopted by social security institutions in Tanzania also account for the current low levels of social security benefits. The schemes have different timeframes for the review of benefits and actuarial evaluation, and different investment portfolios.<sup>32</sup> These factors lead to different financial returns and hence the limited ability to review the levels of benefits and bring them into line with minimum living standards.<sup>33</sup> Where investment opportunities are limited and the returns from investment are poor, it is unlikely that the social security schemes will be able to offer adequate levels of benefits that “match minimum standards of living.”<sup>34</sup> As noted earlier, social security schemes are not allowed to invest offshore/across borders and investment opportunities in the country are limited. This has led to a stagnation of the levels of benefits. The argument has always been that “the scheme does not have the

<sup>29</sup> See “[Prime Minister] roots for elderly people’s support, protection” *Tanzanian Guardian*, Tuesday, 3 October 2006, where it was stated that “...in many parts of the country, many elderly people were taking care of orphaned children without financial support from anyone.”

<sup>30</sup> See also Johnson, J. K. M. and Williamson, J. B., “Do Universal non-contributory old-age pensions make sense for rural areas in low-income countries?” *International Social Security Review*, Vol. 59, No. 4, 2006, pp. 47 – 65, at p. 47 where it is stated that there is “weakening of family support networks.”

<sup>31</sup> Personal interview with a retired officer of the defunct East African Community, at Dar es Salaam on 20 December 2005. The same views were shared by about 45 per cent of the beneficiaries of the social security institutions. See the ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 24. It should be noted that by 2005, the estimated monthly living expenses were between Tshs.120,000 and 180,000 (this equals US\$ 96 and 144 respectively). Kanywanyi, *op cit*, at p. 64. See also part 3.4 of the *Tanzanian National Social Security Policy* of 2003.

<sup>32</sup> International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit*, at p. 12.

<sup>33</sup> For instance, the NSSF Investment Policy of 2001 provides that “[i]n each particular year the Fund shall set aside at least 75 percentum of its funds generated in a year for investment purpose. The remaining 25% shall be used for benefit payments, administrative expenses and for capital development expenditure.” See Part III (3.1.2).

<sup>34</sup> The United Republic of Tanzania, *Workshop on Tripartite Governance of Social Security Institutions*, Held in Zanzibar, from 31 January – 3 February 2006, at p. 3.

financial capacity to change the levels of benefits or the actuarial evaluation does not envisage review of benefits in the near future.<sup>35</sup> Additionally, administrative costs have been cited as another clog to better levels of benefits.

There are two approaches to determining the level of benefits: the earnings-related approach and the approach based on the cost of subsistence.<sup>36</sup> The earnings-related approach means that the scheme calculates benefits for members according to their salary levels. The cost of subsistence approach is used where the scheme "is intended to provide flat rate subsistence levels of benefits."<sup>37</sup> Both approaches are used within the fragmented social security system in Tanzania. Different schemes use different approaches to determine the levels of benefits; some schemes use a combination of the two approaches. For instance, the NSSF, PSPF and PPF use both approaches while the PSRB uses only the earnings-related approach.

With regard to the earnings-related approach, social security schemes in Tanzania offer benefits by referring to the previous salary of a member. NSSF and PPF look at the member's period of employment for the 10 years prior to retirement and use "the best" 5 years' salary to determine the level of benefits.<sup>38</sup> Likewise, PSPF calculates the long-term benefits owed to a member by considering his/her previous salaries for the 15 years of contributions.<sup>39</sup> The only exception under PSPF is benefits which are payable to the former Chief Justice of Tanzania which are calculated according to the salary of the serving Chief Justice.<sup>40</sup> As with the Chief Justice's benefits under PSPF, PSRB provides for earnings-related benefits to political leaders on the basis of the salaries of the incumbent office bearers, and not according to the previous earnings of the beneficiaries.<sup>41</sup>

Thus, it is the high-wage-earner who benefits substantially from this approach, as opposed to the low-wage-earner whose benefits are calculated using the "flat rate" subsistence approach. This approach necessitates setting a minimum level of benefits taking into account the actual cost of living in the country. In Tanzania, for instance, the NSSF pegs its minimum pensions to 80 per cent of the national statutory minimum wage, which means that Tshs.52,800 is the minimum pension at the current

<sup>35</sup> Personal interview with a NSSF managerial official, *op cit*.

<sup>36</sup> See ILO Convention No. 102.

<sup>37</sup> See the ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 25.

<sup>38</sup> See s. 24(1) of Act No. 28 of 1997 and s. 28 of Act No. 14 of 1978 respectively.

<sup>39</sup> See s. 22(2) of Act No. 2 of 1999.

<sup>40</sup> See s. 21 of Act No. 2 of 1999.

<sup>41</sup> See ss. 9, 12, 14 and 18 of Act No. 3 of 1999.

national statutory minimum wage of Tshs.66,000,<sup>42</sup> while PSPF and PPF provide for pre-set figures of Tshs.20,000 and Tshs.10,000 respectively.<sup>43</sup> There is an obvious difference between minimum pensions under PPF or PSPF and under NSSF, although none of the schemes provides adequate minimum benefits to guarantee a decent life and minimum living standards.<sup>44</sup>

Although the NSSF pegs its minimum pension to the national statutory minimum wage, and it is on the higher side relatively speaking, it is a fact that “the minimum wage in the country does not even approximate to a living wage.”<sup>45</sup> As argued in the previous chapter, it is unfair to subject members to different treatment. It is thus proposed that the Tanzanian Government should consider harmonisation of the social security laws and regulations to uphold the constitutionally protected principle of equality.<sup>46</sup> In the words of Marshall:

If the state makes insurance compulsory for a large section of the community, it has a responsibility towards the insured greater than that of a private company just because they are not free to take it or leave it. The terms enforced must be such that they can afford to meet them and *the benefits must bear some relation to real needs*. The only way in which they can protest against terms which they consider unfair is through political action, through parliament. *Consequently, the fixing of the terms is primarily a political decision and only secondarily an actuarial one.*<sup>47</sup> (Emphasis is mine)

As such, social security schemes “should relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to

<sup>42</sup> See s. 24 of Act No. 28 of 1997. See also NSSF, *the NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, Benefit Administration Department, NSSF Head Office, Dar es Salaam, at p. 4. This was the minimum wage in August 2006.

<sup>43</sup> Tungaraza, *op cit*, at p.184.

<sup>44</sup> *Ibid*.

<sup>45</sup> Kanywanyi, *op cit*, at p. 44. See also page 64 where it is stated that “while the minimum monthly wage currently...stands at Tsh.48,000.00, the Government estimates of a living wage (i.e., one to afford basic needs) for an average family of five persons in Dar es Salaam and other urban centres in Tanzania range between Tshs.120,000.00 and 180,000.00.” (These figures were valid by December 2004).

<sup>46</sup> See Article 13 of the URT Constitution of 1977. The proposed *Social Security Act* Bill of 2005 considers harmonisation to be one of the important issues. However, it is noted that “...it wouldn't be an easy task because the schemes have different legislations (sic), operational rules, procedures, contribution rates, qualifying period and benefit package.” The United Republic of Tanzania, *Workshop on Tripartite Governance of Social Security Institutions*, Held in Zanzibar, from 31 January – 3 February 2006, at p. 3.

<sup>47</sup> T. H. Marshall, *Social Policy*, Hutchinson, London, 1965, at pp. 48–49, as quoted by Petersen, J. H., “Financing Social Security by Means of Taxation” in International Social Security Association, *Methods of Financing Social Security: Their Economic and Social Effects*, Studies and Research No. 15, ISSA, Geneva, 1979, pp. 25–60, at p. 31.

work (including old age) or to obtain remunerative work, or by reason of the death of the bread winner."<sup>48</sup> Nevertheless, one question remains: Why are social security benefits inadequate in Tanzania?

The earnings-related approach determines the adequacy of social security benefits by setting the minimum and maximum levels of benefits that a member is entitled to upon the occurrence of a social risk. Social security schemes in Tanzania provide mostly for the minimum level of pensions rather than the maximum level of pensions, with the exceptions of NSSF and PPF which prescribe both the minimum and maximum levels to their beneficiaries.

Each social security scheme in Tanzania has its own formula for determining a payable pension. Under NSSF, normal retirement and invalidity pensions are awarded at a rate of 30 per cent of the average monthly earnings of the retired or invalid member.<sup>49</sup> While the maximum retirement pension is set at 67.5 per cent of the average earnings of the member, the minimum pension is 80 per cent of the national statutory minimum wage.<sup>50</sup> As indicated earlier, average earnings are calculated using "the best five years in the last ten years prior to pensionable age."<sup>51</sup> Similarly, PPF and PSPF provide for the calculation of retirement and disability/invalidity pensions using the previous salaries of a member during the contributory period.<sup>52</sup> These calculation formulae have an immense effect on the level and value of benefits in Tanzania.

Therefore, the major cause of inadequate benefits in Tanzania is the calculation of benefits on the basis of "past average earnings." In a country where the rate of inflation is very high, it is illogical to calculate average earnings with reference to the past salaried years as the value of money changes very rapidly. For instance, the employee who was receiving a salary equivalent to US\$300 on his/her first appointment will eventually receive the equivalent of US\$200 on retirement which will form the basis of his/her pension.<sup>53</sup> This is partly because salaries are not

<sup>48</sup> Van Ginneken, *op cit*, at p. 5. See also the ILO Income Security Recommendation, 1944 (No. 67).

<sup>49</sup> See s. 24(1) and 29(1) of Act No. 28 of 1997.

<sup>50</sup> See s. 24 of Act No. 28 of 1997. See also NSSF, *the NSSF Profile: Coverage, Benefits payable and Qualifying Conditions*, *op cit*, at p. 4.

<sup>51</sup> See s. 24(2) of Act No. 28 of 1997.

<sup>52</sup> See s. 28 of Act No. 14 of 1978 and s. 22 of Act No. 2 of 1999.

<sup>53</sup> For instance, the exchange rate on 28 April 2006 was US\$100 to Tshs.122,570. In July 2000, the exchange rate was US\$100 to Tshs.79,931 and in May 1998 the exchange rate was US\$100 to Tshs.66,932. Also based on a personal interview with Mr. Joe Ole Kuwai, a retired chief research officer of the Ministry of Wildlife Natural Resources and Tourism, on 18 February 2006 in Arusha.

reviewed with reference to the inflation rate and, moreover, even if they are reviewed, the retirees continue to receive the level of benefits based on the “previously” determined rate at the time of retirement, and not at the current value of their salaries.

The determination of benefits on the basis of previous earnings has led to inequalities between pensioners, because where the benefits are not adjusted in accordance with actual living costs, today’s pensioner will apparently receive more valuable benefits than the pensioner of preceding years. As Scholz and Drouin note:

...pension schemes which use a final-average earnings formula in order to determine benefits may have to face the following problem in the case that benefits-in payment are not properly indexed: inequality among pensioners may increase because of newly awarded pensions which are calculated on the basis of the latest value of wages whereas those of older pensioners were calculated on the basis of their previous earnings which, by assumption, have not been properly readjusted.<sup>54</sup>

The adequacy of a survivor’s pension is similar to the adequacy of retirement benefits, except that while other pension schemes provide for lifetime survivors’ pensions, PPF offers a survivor’s pension for only 3 years.<sup>55</sup> Once again, the discrepancies caused by fragmentation and a lack of harmonisation are noticeable here: the quantum of benefits is different from one social security scheme to another and even the life span of the benefits differs, mainly depending on the establishing legislation.<sup>56</sup> Thus, beneficiaries end up destitute. Therefore “[considering the] drastic changes in the world economy and the rapid declining value of money there is a need to provide for [a] better mode of indexing the benefits [and] pensions...”<sup>57</sup>

Other causes of low levels of benefits in Tanzania are the method of financing, contribution evasion, double taxation, lack of indexation of benefits and restrictive investment policies. As to the method of financing, with the exception of PSRB and

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The retiree indicated that in 1960, when he was first employed, his salary was equivalent to US\$200 and upon his retirement in 1999, his salary was equivalent to US\$150 and hence, his retirement benefits were calculated at the rate of US\$150. Also, Mr. J. L. Mwakando, who retired in 1993, by February 2006 was receiving the same rate of benefits as of 1993. This interview took place in Mbeya region. Also see Msalangi, *op cit*, at p. 6.

<sup>54</sup> W. Scholz and Drouin, A., “Regular adjustment of financial parameters of social protection systems in volatile inflationary environments,” *International Social Security Review*, Vol. 51 No. 1, 1998, pp. 47-71, at p. 56. The Brazilian pension for public servants, which is “readjusted in the same way as the salaries of active workers,” offers a good example of how social security schemes ought to reward their previous contributors. See Savoia, *op cit*, at p. 3.

<sup>55</sup> See s. 40(4) of Act No. 14 of 1978. See also PPF, *PPF Guide*, Dar es Salaam, at p. 17.

<sup>56</sup> See chapter six of this thesis for more details on fragmentation.

<sup>57</sup> Rwegoshora, *op cit*, at p. 31.

the Defence Forces Pensions and Gratuities Scheme, all social security schemes are financed from contributions by employers and their employees.<sup>58</sup> This means that the financial standing of the social security schemes depends primarily on the number of members each scheme has and their earning levels. Therefore, where the majority of contributors are low-wage-earners, the financial base of the scheme is automatically depleted. Salaries are reviewed at the pleasure of political leaders who are not legally compelled to do so. Also, despite the changes in the economy and the inflation rate, salary scales may remain static for quite a long time which means that the social security schemes will collect low contributions which will result in meagre benefits. As Kashonda points out, with the “persistently low income in Tanzania, it is practically not possible...to grant adequate pensions.”<sup>59</sup> Civil servants and public service employees receive lower salaries than private sector employees. While NSSF by and large covers the private sector, PSPF and PPF cover civil servants and public sector employees respectively. It follows therefore that NSSF is able to offer more and relatively better benefits than other contributory schemes.<sup>60</sup> The method of financing thus constitutes the second cause of low levels of benefits in Tanzania.

In contrast, the non-contributory government-funded schemes provide more generous benefits: this is the case with the PSRB and the Defence Forces Pensions and Gratuities Scheme.<sup>61</sup> Under the Defence Forces Pensions and Gratuities Scheme, the minimum pension is determined by the President. The Chief of the Defence Forces gets a full monthly basic salary paid as a pension, and other officers of the rank of Major-General or above get 80 per cent of their basic monthly salary paid as a pension.<sup>62</sup>

It is submitted that the government should not fund the PSRB in full, since political leaders are salaried employees and they should be able to contribute towards their retirement benefits. Moreover, in most cases, their salaries are higher than those of the majority of the workers who have to contribute for their social security

<sup>58</sup> See chapter three of this thesis for further details.

<sup>59</sup> M. Kashonda, *Labour and Legal Reform Phase II, Social Security*, 2005, at p. 10.

<sup>60</sup> See part 3.3 in the previous chapter for more details on benefits.

<sup>61</sup> The only known complaint about the PSRB was when one of the political leaders mentioned the pension benefits of parliamentarians in public. The members of parliament were furious because now the public, who receive meagre benefits, knew what their political leaders received. See the Second Parliamentary session, 8<sup>th</sup> Sitting, 16 February 2006, Hansard No. HS-2-8-2006, at p. 100. See also “*Parliamentarians almost swallowed their fellow MP*” *Tanzanian Mtanzania*, Saturday, 18 February 2006, (translation supplied).

<sup>62</sup> See GN NO. 52 of 1966, as amended.

protection.<sup>63</sup> It is further advised that the government should use the funds for the excluded majority of the population who need social assistance. At the same time, the funds can be used to expand the coverage of the excluded if the government subsidises their contributions as a blanket employer.<sup>64</sup> This is a more justifiable and noble use of public funds than providing for political leaders who already have the best social protection scheme while others are marginalised.

Thirdly, where contributions from members and their contributing employer are the main source of funds for social security schemes, contribution evasion is one of the problems which has a huge impact on the levels of benefits. In such circumstances, the schemes may experience high spending in order to enforce compliance. High spending will automatically lead to low levels of benefits, because in most cases enforcement of compliance will cost more than the value of the contributions being sought.<sup>65</sup>

Double taxation also leads to inadequacy of social security benefits. Section 48 of the *Parastatal Pensions Act* of 1978 exempts the payment of stamp duty on PPF's transactions. There is no exemption from income tax for the contributions and benefits payable under PPF, while contributions and benefits payable under the NSSF, PSRB, PSPF and LAPP are exempt from income tax.<sup>66</sup> It seems possible that the benefits offered by PPF are being diminished by beneficiaries having to pay income tax, although it is certainly not being suggested that those schemes whose benefits are exempt from income tax are paying adequate benefits. It should be noted that the contributions which are payable to the social security schemes are already taxed as part of the gross income of the employee. When the benefits payable are taxed again it becomes double taxation on the same income.<sup>67</sup> It is recommended that the *Parastatal Pensions Act* of 1978 should be amended to avoid double taxation and also to help the

<sup>63</sup> In 2006, a member of parliament received Tshs.1,200,000 per month while the minimum-wage-earner received only Tshs.66,000 a month. While the latter must make social security contributions, the former's social security benefits are fully funded by the government budget. (The exchange rate in August 2006 was US\$100 for Tshs.132,000.)

<sup>64</sup> This is because most of the excluded cannot afford to pay double contributions - for the employer and on their own behalf - to the existing social security schemes. See part 3.1 of chapter three of this thesis for more details.

<sup>65</sup> Dau, *op cit*, at p. 7. See also Gillion, *op cit*, at p. 59.

<sup>66</sup> See s. 90(b) of Act No. 28 of 1997, s. 24 of Act No. 3 of 1999, s.7 of Act No 2 of 1999 and s. 54(b) of Act No. 6 of 2000 respectively.

<sup>67</sup> Personal interviews with PPF beneficiaries in Dar es Salaam, Mbeya and Arusha. (See Appendix A). The interviews were conducted between December 2005 and early March 2006. About five of these interviewees (names withheld) indicated that double taxation affects the level of their benefits. They also stated that they do not know why they should pay tax when they contribute *and* when they receive the benefits.

beneficiaries whose benefits are meagre and still have to pay "double" income tax. There is no clear protection of contributions and benefits payable from income tax for GEPP. It is likewise advised that the *Provident Fund (Government Employees) Ordinance* of 1942 should be amended to embrace tax exemption clauses.

Apart from social security schemes being financed by contributions from employees and their employers, the establishing legislation allows the schemes to invest the monies collected. The proceeds and profits from investment also form part of the schemes' funds. Social security schemes in Tanzania are subjected to restrictive investment policies which adversely affect the levels and value of benefits. Investment is only allowed within the country and not offshore.<sup>68</sup> Nevertheless, in-country investment is also limited to some extent.<sup>69</sup> A former Minister of Labour once had to defend NSSF's decision to invest a large sum of money within the country, in a business venture that some parliamentarians thought was a dubious deal.<sup>70</sup> He stated that "NSSF must do business to meet obligations of retirement benefits for its members...without doing business, this won't be possible."<sup>71</sup> This shows that raising the levels of benefits will be impossible in Tanzania unless investment policies are changed and awareness is raised to change people's perceptions. It is argued that investment avenues in the country are limited, the financial returns are also limited and sometimes even the invested money cannot be recovered in the short term.<sup>72</sup> It is therefore recommended that investment policies should be revisited to take into account offshore investment and the challenges posed by the regional cooperation movements to which Tanzania is a party.<sup>73</sup>

Careless investment decisions also have an effect on the value and level of benefits. Social security schemes in Tanzania have been involved in dubious

<sup>68</sup> Personal interviews with the administrators of the social security schemes, *op cit.* (See footnote 22 of this chapter). As for the NHIF, which is not part of the present discussion, it is only allowed to invest in the short term investments and not long term investments.

<sup>69</sup> International Confederation of Free Trade Unions African Regional Organisation (ICFTU-AFRO), 1999, *op cit.*, at p. 12.

<sup>70</sup> See Hansard of 25 July 2005, 34th Parliamentary sitting.

<sup>71</sup> Hansard of 25 July 2005, 34th Parliamentary sitting. See also "Unions are furious over wasted money" Tanzanian *THISDAY*, Saturday, 18 March 2006; one paragraph reads: "[s]ocial security funds in the country are under pressure to invest pensioners' money more transparently following revelations that the National Social Security Fund may have sunk 47.5bn/- into a project that could take close to a century to pay back." Similar concerns were raised for the PSPF which also sank Tshs.36.0 billion in acquiring Quality Plaza Building. See "Public Service Pensions Fund: public notice" Tanzanian *SUNDAY CITIZEN*, Sunday, 2 April 2006.

<sup>72</sup> See "Unions are furious over wasted money" Tanzanian *THISDAY*, Saturday, 18 March 2006.

<sup>73</sup> Tanzania is a member of the East African Community and the Southern African Development Community.

investment practices which, in some ways, have impacted on the levels of benefits. There are incidences where social security schemes have authorised “huge loans to individuals without collateral,”<sup>74</sup> and the schemes have been blamed for “sinking” peoples’ money in questionable investments. For instance, PSPF and NSSF have been accused of investing Tshs.36.0bn (US\$29,591,635.43) and 47.5bn (US\$39,054,149.60) respectively in “overvalued” ventures.<sup>75</sup> It is stated that NSSF acted in “defiance” of the advice of the government officials, including the then Minister and Deputy Minister of the Ministry of Trade and Industry, which was responsible for the venture in which NSSF invested.<sup>76</sup>

Levels of benefits cannot be increased if investments are not properly directed. Placing peoples’ money in uncertain investments, it is submitted, causes low levels of benefits, because the realisation of returns cannot be guaranteed, let alone the profits which could be used for raising the levels of benefits. It is further submitted that even though restrictive investment causes low levels of benefits, there should be some controls and checks and balances on the ventures in which social security schemes can invest. The recent investment ventures embarked upon by NSSF and PSPF have attracted the attention of the Parliamentary Committee of Finance and Economic Affairs, trade unions and the contributors.<sup>77</sup> It is proposed that all interested/affected

<sup>74</sup> See “Government plans to regulate schemes” Tanzanian *THISDAY*, Tuesday, 28 March 2006 where the Deputy Minister for Finance is quoted when he was speaking about the government’s plans for social security schemes. See also “Treasury finally queries fat loans at NSSF” Tanzanian *THISDAY*, Thursday, 21 September 2006, and “NSSF staff cry foul over loans” Tanzanian *THISDAY*, Thursday, 21 September 2006.

<sup>75</sup> See “Another suspect deal” Tanzanian *THISDAY*, Thursday, 23 March 2006, “The day PSPF ‘walked’ into unknown liabilities” Tanzanian *THISDAY*, Thursday, 24 August 2006, “Despite paying billions, PSPF doesn’t fully own Quality Plaza” Tanzanian *THISDAY*, Friday, 25 August 2006, “The 36bn/- dodgy deal” Tanzanian *THISDAY*, Wednesday, 23 August 2006, and “Government distances itself from NSSF’s allegations” Tanzanian *Kulikoni*, 1 – 7 September 2006. (Translation is mine). However, NSSF maintained that the purchase was a “clean deal,” see *NSSF says godowns purchase clean deal* Tanzanian *Daily News*, Saturday, 1 April 2006.

<sup>76</sup> See “NSSF flew in the face of government advice” Tanzanian *THISDAY*, Tuesday, 28 March 2006. NSSF falls under the Ministry responsible for Labour Matters. See section 2 of Act No. 28 of 1997. See also Hansard of 25 July 2005, 34th Parliamentary sitting, where the concerns about the dubious relationship between NSSF and Quality Group Limited were raised in Parliament by the opposition. It is noted that Hon. Shoka Hamis Juma, the then shadow Minister for Labour, Youth Development and Sports stated “...that Quality Group Limited...has been given loans worth billions of shillings from contributors’ money... this should be closely scrutinised by the [NSSF] Board.” (Translation is mine)

<sup>77</sup> The Parliamentary Committee of Finance and Economic Affairs summoned the managers and Directors of NSSF and PSPF to appear before it and produce documents about how the investment deals were concluded. Although the government “was investigating circumstances under which the deal [between NSSF and Quality Plaza] was made,” PSPF counteracted the information saying that they were never summoned by the said Committee. See “Tell us the truth: Pensions funds summoned to Dodoma” Tanzanian *THISDAY*, Tuesday, 21 March 2006 and “Public Service Pensions Fund: public notice” Tanzanian *SUNDAY CITIZEN*, 2 April 2006 respectively. See also “Yes, NSSF is under probe,

parties should be involved in investment decisions,<sup>78</sup> because placing social security schemes under fragmented ministries appears to have “failed.” For instance, despite the professional advice from the then Minister of Trade and Industry, the former Minister for Labour, Youth Development and Sports permitted NSSF to go ahead with a “dubious” investment venture.<sup>79</sup>

Sixthly, lack of indexation of benefits is another root cause of low levels of benefits in Tanzania. As indicated in chapter two of this thesis, indexation is one of the main principles to be considered in the administration of social security benefits. It embraces two alternative objectives for maintaining the value of benefits, namely, “to preserve the real value (purchasing power) of a benefit over time or to maintain the relative amount of a benefit constant over time in relation to a suitably chosen exogenous variable.”<sup>80</sup> The first alternative is linked to “price index” while the second alternative is linked to “per capita wage developments.” As Scholz and Drouin indicate, “[u]nder the first objective ... the policy aim is to maintain the standards of living of beneficiaries regardless of the real income development of contributors, while, under the second objective ... beneficiaries should not be better off (or worse off) than contributors on average.”<sup>81</sup>

In Tanzania, it appears that neither of the objectives is pursued.<sup>82</sup> However, to a limited extent, the second policy objective seems applicable to almost all the schemes though in different degrees. Nevertheless, the objective is not used specifically to protect the beneficiaries from becoming “worse off” than the active workers. With the exception of the PSRB for specified political leaders, and the PSPF for the Chief Justice, the NSSF, PPF and PSPF for the rest of the beneficiaries cannot be said to protect the beneficiaries from being “worse off than contributors on average.” This finding is based on the fact that while the PSRB and the PSPF for the Chief Justice peg calculation of benefits to the salaries of incumbent office bearers, the rest of the schemes calculate benefits based on the past earnings of the

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*says Minister*” Tanzanian *THISDAY*, Tuesday, 21 March 2006. See also “*Finally, Bunge agrees to probe PSPF suspect deal*” Tanzanian *THISDAY*, Monday, 30 October 2006.

<sup>78</sup> See “*Unions are furious over wasted money*” Tanzanian *THISDAY*, Saturday, 18 March 2006, where Mr. Saidi Wamba, the Secretary-General of the Conservation, Hotels, Domestic and Allied Workers Union (CHODAWU) “decried the lack of participation of members in investment decisions over their money.”

<sup>79</sup> See Hansard of 25 July 2005. See also “*Haw Kapuya defended the deal between Quality Group Limited and NSSF in Parliament*” Tanzanian *THISDAY*, Thursday, 30 March 2006.

<sup>80</sup> Scholz and Drouin, *op cit*, at p. 48.

<sup>81</sup> *Ibid*.

<sup>82</sup> See also Rwegoshora, *op cit*, at p. 31.

beneficiary. For these schemes, it does not matter whether the salary scales of the incumbent office bearer have changed in response to economic conditions in the country or not. The benefits offered are always pegged to past earnings; even the rate used 10 years ago may still apply today. For instance, a beneficiary who retired in 1986 under PPF was receiving a pension of Tshs.276.25 per month until 31 December 1998 even though the minimum pension was raised to Tshs.8,000 on 1 March 1995.<sup>83</sup> In this way, the levels of benefits remain low for most of the beneficiaries for a long time. This finding takes us to the next discussion on protecting social security benefits from inflation.

#### 4.2. USING INDEXATION TO PROTECT BENEFITS FROM INFLATION

Inflation is defined as “the rate at which the general level of prices for goods and services is rising, and, subsequently, purchasing power is falling.”<sup>84</sup> In the present study, inflation affects the beneficiaries of social security schemes because their benefits are pegged to their “previous earnings.” In a country where there is high inflation, the value of money decreases rapidly and beneficiaries are particularly affected where the benefits received from the social security schemes remain stagnant. The effects of inflation have a direct impact on the deteriorating living standards of beneficiaries and the rising levels of poverty in Tanzania. Social security benefits can be protected from inflation by way of indexation which maintains the value of benefits.<sup>85</sup> It is recommended that the social security institutions should consider using the two policy alternatives, namely, the price index and national average wage, when calculating/disbursing social security benefits, rather than the traditional “previous earnings” approach.

Indexation is defined as “a technique to adjust income payments by means of a price index. This is to keep up the purchasing power of the public after inflation.”<sup>86</sup> There are two methods of indexation: indexation of prices and indexation of benefits. Indexation of prices means that “contributors are entitled to benefits which reflect the

<sup>83</sup> Personal interview with Mr. F. X. Kataya, *op cit.* (See footnote 69 of chapter three of this thesis). In 1986, Tshs.276.25 was equivalent to US\$16.25 while in July 1998, Tshs.276.25 was equivalent to US\$2.42.

<sup>84</sup> <http://dictionary.reference.com/search?q=inflation>, accessed on 3 May 2006.

<sup>85</sup> There are two versions of the draft *Social Security Act* of 2005, one of which was drafted by the international experts and the other by the social security institutions. Ss. 90(4) and 60(4) of these versions respectively, provide that “[b]enefits shall be indexed to the increase in annual gross income.”

<sup>86</sup> <http://en.wikipedia.org/wiki/Indexation>, accessed on 3 March 2006.

real value of their contributions” while indexation of benefits “reflects the view that pensions should be adjusted to take account of price movements and possibly also movements in real wages.”<sup>87</sup> Indexation of benefits also means that “retirees are entitled to a share of the general growth of productivity as well as protection against inflation.”<sup>88</sup>

It is argued that adequate protection can only be achieved where indexation methods are employed to determine social security benefits. The realisation of adequate protection requires social security schemes to provide benefits which can meet the basic needs of their members. Rwegoshora notes that:

[o]ne of the basic goals of social security is to provide adequate protection and satisfaction of the basic needs of the society. In particular, any meaningful form of social security must provide a minimum level of protection...<sup>89</sup>

In effect, adequate protection cannot be achieved where indexation, either based on prices or benefits, is not applied, especially in countries where levels of inflation are high. As noted earlier, social security schemes in Tanzania do not use indexation to determine the benefits which are due to their members.<sup>90</sup>

Nevertheless, there are limited occasions where indexation can be said to be used in Tanzania. While indexation of prices is not used, social security schemes have sometimes attempted to use the indexation of benefits method. This is particularly true for the benefits under PSRB for the former President, Vice President, Prime Minister and Speaker of the National Assembly, whose pensions depend, as already noted, on the salary scales of the incumbent office bearers.<sup>91</sup> Under PSPF, the former Chief Justice also receives a pension which is adjusted according to the salary scale of the incumbent office bearer.<sup>92</sup> Apart from these leaders, who are adequately protected,

<sup>87</sup> Gillion, *op cit*, at p. 39.

<sup>88</sup> Gillion, *op cit*, at p. 39-40.

<sup>89</sup> Rwegoshora, *op cit*, at p. 11. See also Savoia, *op cit*, at p. 8 where it is stated that “social security benefits [should] be readjusted by a price index related to the cost of living...”

<sup>90</sup> See Hansard of 13 June 2006 where a Member of Parliament of Serengeti constituency, referring to NSSF, inquired about “the fact that [accumulation of] NSSF’s contributions take long before a person can get pension, and the fact that the value of our currency is devalued at a very high speed, what steps does NSSF take to ensure that a member’s pension is protected against devaluation of our currency?” (Translation is mine). See also “Inflation could spiral, JK warns” *Tanzanian THISDAY*, Saturday, 18 March 2006, “Inflation in May highest in 8 years” *Tanzanian Daily News*, Monday, 3 July 2006, and “Inflation rate hits 7.3pc” *Tanzanian Guardian*, Tuesday 24 April 2007.

<sup>91</sup> See ss. 9(1)(a), 12(1)(a), 14(1)(a) and 18(b) of Act No. 3 of 1999.

<sup>92</sup> See ss. 21(1)(a) of Act No. 2 of 1999. See also the *Judges (Remuneration and Terminal Benefits) Act* of 2007, Act No. 16 which empowers the President to review the benefits of the specified officers of the judiciary and that during the review “the President shall have regard to the national economy and

other social security benefits are based on one's "past earnings." It is believed that adequacy of benefits cannot be guaranteed:

[u]nless these past earnings are reassessed to give them adequate current value, the rate of pension may be unduly low in relation to wages or to the cost of living at the time it is awarded. Once in payment, unless some adjustment is undertaken from time to time, the value of the pension will depreciate more and more during the periods of inflation.<sup>93</sup>

Besides indexation of benefits, PSRB provides that social security benefits under this scheme must be reviewed at least every five years.<sup>94</sup> The *Public Service Retirement Act* of 1999 provides that the President may vary or modify the levels of benefits payable by the PSPF and the minimum pension payable under the repealed *Pensions Ordinance* of 1954 when he deems fit.<sup>95</sup> The President can do this only after consultation with the Retirement Benefits Committee and the Minister responsible for Finance. Section 48 of the *National Social Security Fund Act* of 1997 provides that the Board shall review and adjust the benefits from time to time on the basis of the actuarial valuation of the NSSF. Under LAPF the Board is mandated to fix the rate of interest on the contributions from members from time to time.<sup>96</sup> The interest rate under GEPF is fixed biannually, i.e. 30 June and 31 December every year.<sup>97</sup> The *Parastatal Pensions Act* of 1974 is silent on this issue. Following from this state of affairs, it is argued that when there is laxity in the legislation and the mandate for the adjustment of benefits is vague, there is no guarantee that such adjustment will take place. It is advised that the law should set out clearly the time frame basis within which the benefits should be reviewed. PSRB and GEPF offer examples in this respect.

However, the GEPF example is considered a better approach when considering time frames for review, while PSRB offers a good example of adopting indexation of benefits by aligning social security benefits with the current salary levels. The five-year interval for review of benefits under PSRB, it is believed, may lead to absurd results where the benefits are not pegged to current salaries. This is

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any other consideration necessary for arriving at or making appropriate decision." See s.s 5 and 6 of Act No. 16 of 2007.

<sup>93</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 26.

<sup>94</sup> See s. 24 of Act No. 3 of 1999.

<sup>95</sup> See s. 30 of Act No. 2 of 1999.

<sup>96</sup> See s. 25 of Act No. 6 of 2000.

<sup>97</sup> See s. 8(1) of Cap 51 of the Revised Laws of Tanganyika.

because the value of benefits is dependent on many factors, including the economy of the country and the levels of inflation, and where the level of inflation is high, the reviewed benefits, even after a year, may be inadequate.<sup>98</sup> Considering the economic situation in Tanzania, it is submitted that the GEPF basis for review should be adopted. The PSRB example can be adopted only where the social security schemes are able to link benefits with the existing levels of salaries. It is only in this way that adequacy of benefits may be guaranteed.<sup>99</sup>

The functions of social security include guaranteeing adequate living standards and minimum income protection, safeguarding acquired standards of living and guaranteeing protection against worsening of living standards.<sup>100</sup> It is doubtful whether social security schemes in Tanzania are performing any of those functions. To attain these goals, indexation must be used to ensure adequate social security benefits. Social security makes no sense if it does not perform the mentioned functions. As Kaseke observes:

Social security schemes can only be considered relevant if they are able to guarantee social protection in the event of one being exposed to an unavoidable want. Thus the beneficiaries need to feel secure and such security can only be realised if the benefits given under social security are seen to be adequate. The adequacy of any social security benefit is measured against the extent to which such benefit enables one to meet his/her needs or the needs of the family.<sup>101</sup>

In order to guarantee adequate benefits, as concisely put by the ILO, there is:

the need not only to set initial levels and rates of benefit correctly but also to maintain these levels once the benefits are in payment. In a period of rapid inflation...the erosion of the purchasing power of social security benefits can have dramatic and unfortunate consequences. *A social security scheme which does not adapt its benefits to change in the value of money is not fulfilling its original purpose.*<sup>102</sup>  
(Emphasis is mine)

<sup>98</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 26.

<sup>99</sup> Both versions of the draft *Social Security Act* of 2005, by the international experts and the social security institutions, by virtue of ss. 90(2) and 60(2) respectively, propose that "benefit rates shall be reviewed from time to time by the Authority in consultation with the Board and be adjusted in line with an actuarial evaluation of the Fund." This study proposes to do away with this kind of laxity and instead adopt the GEPF time frame for review of benefits.

<sup>100</sup> Kaseke, 1995, *op cit*, at p. 59. See also Rwegoshora, *op cit*, at p. 13.

<sup>101</sup> Kaseke, 1995, *op cit*, at p. 59.

<sup>102</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 26.

The importance of indexation to guarantee adequate protection was also the rationale behind the ILO *Income Security Recommendation* No. 67 of 1944. This Recommendation suggests that review should be guaranteed upon the occurrence of substantial changes in the general level of earnings or in the cost of living.<sup>103</sup> The Recommendation has also influenced some recent statutes in Tanzania, including the *Public Service Retirement Benefits Act* of 1999, in the case of the former Chief Justice, and the *Political Service Retirement Benefits Act* of 1999 to adopt the method of indexation of benefits to ensure adequate benefits for the beneficiaries. However, this approach does not feature in any other social security legislation.

Similarly, the *Income Security Recommendation* of 1944 provides that social security schemes should aim to "relieve want and prevent destitution by restoring, up to a reasonable level, income which is lost by reason of inability to work (including old age) or to obtain remunerative work or by reason of the death of a breadwinner."<sup>104</sup> Tanzanian social security schemes have failed to adopt this approach as shown by the fact that many beneficiaries are destitute.<sup>105</sup> The beneficiaries are not protected against "worsening of living standards" as they cannot depend on the meagre benefits they receive; some of them turn to their relatives for help, and some to the state for limited social assistance.<sup>106</sup> For instance, in December 2005, retired professors at the University of Dar es Salaam were receiving meagre benefits, as low as Tshs.2,000 a month (US\$1.60), while the highest was Tshs.33,000 (US\$26.40).<sup>107</sup>

<sup>103</sup> See Article 1 of Recommendation No. 67 of 1944.

<sup>104</sup> See Article 24(11) Recommendation No. 67 of 1944.

<sup>105</sup> Personal interviews with the retirees of the defunct East African Community, *op cit*, who received meagre lump sum payments after a long fight with the Government. They indicated that their counterparts in Kenya and Uganda received their benefits long ago, in 1987 and 1995 respectively. It was also stated that for reasons of old age and infirmity, some beneficiaries "collapsed when they were paid peanuts." See also "EAC retirees give fresh ultimatum" *Tanzanian Guardian*, 16 November 2005. See also Baruti, *op cit*, at p. 21 where the story of a widow of a retired civil servants is quoted: "when her husband retired from the Government Service in 1992, on a pension of less than US\$3 per month, the family became destitute, surviving largely on handouts and assistance from the National Social Welfare Unit where [the widow] had registered."

<sup>106</sup> Personal interviews with retirees who either receive monthly pensions or received lump sums who stated that the benefits they receive do not help them in any way and they cannot even provide for themselves. Most of the complaints came from beneficiaries of provident funds and those who received lump sums from pension funds because they did not meet the qualifying conditions. The issue here is "whether social security benefits should be granted to those who actually need them or be awarded, instead, to those who satisfy the general conditions set." See Pieters, *op cit*, at p. 29.

<sup>107</sup> Personal Interviews with retired Prof. J. L. Kanywanyi on 8 December 2005 in Dar es Salaam and Prof. Kimambo, *op cit*. and two others whose names are withheld. Those whose names are withheld indicated that if they had known what they would receive at the end of their teaching careers, they would have opted for other employment. These benefits are calculated on the basis of their "previous earnings" which were very low compared to present salaries which can support a decent standard of living. See also the University of Dar es Salaam, *Final Report on the Proposal for Reform of*

In addition, in December 2004, PPF's minimum pension was Tshs.10,000 (US\$8), PSPF's was Tshs.20,000 (US\$16) and NSSF's was Tshs.38,400 (US\$30.72). Despite these low levels of benefits and the national statutory minimum wage being Tshs.48,000 (US\$38.40), the Government estimated that between Tshs.120,000 and 180,000 (US\$96 to 144) per month was needed to support an average family of five persons in urban centres.<sup>108</sup> Minimum benefits offered currently are far from adequate for a decent standard of living. Adequacy of benefits will only be achieved where benefits are adjusted in accordance with the rise in the cost of living and the rate of inflation. To honour the social security promise to people – which is to protect them from becoming destitute – there is a need to “incorporate legislative provisions for the automatic adjustment of their benefits in line with the general level of prices or wages.”<sup>109</sup>

Moreover, it is submitted that it is possible for social security schemes in Tanzania to adopt indexation methods. As to the indexation of prices, the existing social security schemes can link benefits to the value of contributions through honouring the implied contract between the working population and the retirees.<sup>110</sup> When the retirees were actively working, they paid for the benefits of the then retirees; hence, today's retirees should also be taken care of by the working population.<sup>111</sup> In countries like Tanzania, the working population is greater than the retired population because of, among other things, life expectancy (an average of 45 years) thereby making it easier for the active population to take care of the retirees.<sup>112</sup> In addition, indexation of prices helps to maintain the value of the benefits so that the contributors are not disadvantaged for being retirees at a time when the inflation rate is very high and yet the benefits are static. As the current contributors are charged contributions according to their current salaries, their contributions should be able to

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*Retirement Benefits Schemes for Academic Staff and Pensionable Technical and Administrative Staff*, Institutional Transformation Programme, PMU/UDSM-2000, May 1997, Appendix I, at p. 190.

<sup>108</sup> Kanywanyi, *op cit*, at p. 64.

<sup>109</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 26. See also Scholz and Drouin, *op cit*, at p. 49 where it is argued that automatic adjustments protect the value of benefits.

<sup>110</sup> See Gillion, *op cit*, at p. 48. See also p. 49 where Gillion states that “consumption of today's pensioners is drawn from the consumption of today's workers.” See further Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 29.

<sup>111</sup> Personal interview with the Deputy Coordinator of PUT (2), *op cit*. Similar arguments were raised by other beneficiaries in Mbeya and Arusha. (See Appendix A of this thesis). They indicated that today's retirees are worse off than those who retired earlier on because the benefits which were awarded then, when the economy was stronger are the same as what they receive today when the economy is weaker.

<sup>112</sup> See [www.indexmundi.com/tanzania/life\\_expectancy\\_at\\_birth.html](http://www.indexmundi.com/tanzania/life_expectancy_at_birth.html), accessed on 27 April 2005.

fund the benefits for the beneficiaries. It is proposed that changes in salary scales should take care of the retirees because they are living alongside today's salaried employees.

Nevertheless, there are challenges associated with the indexation of prices, namely, the HIV/Aids pandemic, the low level of economic development in the country and the high levels of informalisation of jobs. The HIV/Aids epidemic threatens the working population and today's children. Social security institutions are strained by having to pay benefits prematurely because the deaths of a number of their members, and in some cases they have to pay survivors' pensions.<sup>113</sup> Also, the levels of claims for withdrawal benefits have increased as ailing HIV/Aids patients prefer to cease their membership and receive their withdrawal benefits which they can use for medical expenses.<sup>114</sup> Likewise, the schemes cannot project future contributions as the deadly disease is killing the working population: "the epidemic has struck more the most economically active group of adults, those aged 15-45."<sup>115</sup> This is the crisis faced by the social security institutions.<sup>116</sup> From another perspective, the current working population has no guarantee that the social contract will be honoured by the future working population as the level of HIV/Aids infection is growing on a daily basis. For instance, the levels of infection "rose from 25,503 at the end of 1990 to 88,667 in 1996. Over 80% of the reported AIDS cases were in the age group 20 - 44 years."<sup>117</sup> Mac Andrew succinctly summarises this and states:

...the HIV/AIDS pandemic from a social security perspective is resulting in a significant reduction of our contribution base as persons, who would have contributed to organisations for a number of years are being slashed away or not able to work or simply not allowed to work...On top of this, young women between ages 15 and 19 years are 3 to 6 times more vulnerable than young men in the same age group, meaning that reproduction of the population will suffer with severe

<sup>113</sup> Personal interviews with the social security administrators, *op cit.* (See footnote 22 of this chapter). See also "Special Supplement for Social Security Funds," Tanzanian RAI, 23 - 29 March 2006, where it is stated that "the problem of HIV/AIDS has affected a large number of members which has necessitated PSPF to pay huge amounts of death benefits." (Translation supplied).

<sup>114</sup> Personal interview with the social security administrators, *op cit.* (See footnote 22 of this chapter)

<sup>115</sup> [http://www.tanzania.go.tz/hiv\\_aids.html](http://www.tanzania.go.tz/hiv_aids.html), last accessed on 26 May 2006.

<sup>116</sup> Social security administrators indicated that HIV/Aids is a big challenge to the operation of their schemes. It was pointed out that one of the reasons the number of members of the schemes is decreasing is because of deaths caused by HIV/Aids-related diseases.

<sup>117</sup> [http://www.tanzania.go.tz/hiv\\_aids.html](http://www.tanzania.go.tz/hiv_aids.html) last accessed on 26 May 2006.

consequences for our future work force and also the future contribution base of social security organisations.<sup>118</sup>

The fears of the current working population are also prompted by the startling levels of informalisation. Social security institutions worry about the high increase in the payment of benefits as against the decreasing number of contributors because of HIV/Aids-related deaths, diminished reproduction and high informalisation of jobs. It is because of these challenges that social security institutions fail to equate benefits with the real value of contributions. In a way, they are trying to save and invest money so that when the working population retires, there is something to offer them.<sup>119</sup>

With the indexation of benefits, it is submitted that social security institutions in Tanzania can align pensions with wage increases "to keep the level of benefits, once awarded, constant in relation to average wage."<sup>120</sup> Alignment of benefits with the wages of incumbent office bearers will protect beneficiaries against inflation.<sup>121</sup> This is in line with the commitment statement in the Tanzanian *National Social Security Policy* of 2003 which provides that "social security schemes shall have a minimum number of benefits offered and indexed to the current levels of earnings of contributors."<sup>122</sup> The PSRB has adopted this approach for former Presidents, Vice Presidents, Prime Ministers and Speakers of the National Assembly. It is recommended that other schemes should follow this approach. This approach, however, is subject to the financial constraints that are associated with high levels of inflation, slow economic development, and restrictive investment policies. Considering these challenges, it is submitted that the social security schemes need not use the percentages used by PSRB. Other lower percentages could be adopted, aimed

<sup>118</sup> See S. Mac Andrew, *Key note address on the CARICOM Single Market and Economy (CSME) and the Free Movement of Labour across the Region and its Implications for Social Security*, delivered on the occasion of the Thirty-Seventy Anniversary of the National Insurance Office, 8 June 2004, Bridgetown, Barbados, at p. 10. Accessed through <http://www.caricom.org/archives/csme/csme-macandrew.html>, on 2 August 2005. See also Bonnerjee, A., *The impact of HIV/AIDS on social security*, World Bank, HDNSP, 19 February 2003, at p. 24.

<sup>119</sup> Personal interview with the social security administrators, *op cit.* (See footnote 22 of this chapter).

<sup>120</sup> Scholz and Drouin, *op cit.*, at p. 55. See also the United Republic of Tanzania, *Workshop on Tripartite Governance of Social Security Institutions*, Held in Zanzibar, from 31 January – 3 February 2006, at p. 3.

<sup>121</sup> See ss. 89(1) and 59(1) of the proposed *Social Security Act* of 2005, by both the international experts and the social security institutions, respectively, which provide that "[b]enefits to which a contributor is entitled shall have a reasonable relation to contributions paid and shall provide an appropriate level of income." See also "Inflation rate hits 7.3pc" *Tanzanian Guardian*, Tuesday, 24 April 2007.

<sup>122</sup> Part 3.4 of the *National Social Security Policy* of 2003.

at maintaining and safeguarding acquired standards of living and minimum income protection for beneficiaries. Indexation of benefits will "enable people to maintain, while on benefits, a standard of living reasonably comparable to that which they had enjoyed while at work."<sup>123</sup>

However, the two methods of indexation assume that the economy and the labour market are stable.<sup>124</sup> Also, it is assumed that the number of contributors in the formal sector is constant and possibly growing, as social security "has been constructed around a dominant model of employment, centred on the long term and assuming permanent and stable relations between workers and employers."<sup>125</sup> As indicated earlier on, the HIV/Aids pandemic, the informalisation of employment, and the rather slow economic growth in Tanzania are challenges for adequate social security benefits. Indexation and protection of benefits from inflation may be impossible if these challenges are not addressed. Extension of coverage to the excluded groups of people, which will increase the number of contributors, is considered a viable approach for dealing with the problem of decreasing number of contributors caused by the informalisation of jobs and HIV/Aids-related deaths, provided that the government subsidises their contribution. It is further argued that prioritisation of social protection issues may be another means by which the Tanzanian social security system can provide adequate benefits.<sup>126</sup>

To conclude, it is submitted that social security schemes in Tanzania should consider adopting both approaches so as to give real meaning to the pension benefits. A choice between the two methods of indexation can be made once attention is paid to the identified challenges and the financial ability of the social security schemes to adopt indexation. Adoption of indexation will ensure that there is:

a closer link between wage movements, the earnings ceiling and benefits in payment. Thus, the finances of social security and the individual benefits would be more directly linked to economic development.<sup>127</sup>

<sup>123</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 24.

<sup>124</sup> See Scholz and Drouin, *op cit*, at p. 65 where they state that "[a] social security system cannot operate properly unless the economy is stable. Reforms of social protection systems aiming at the short term restructuring of their financial parameters bear little meaning unless accompanied by the reform of the general economy to stabilize the development of income generation, the labour market, prices, etc." See also pp. 49-60.

<sup>125</sup> Guillerard, *op cit*, at p. 84.

<sup>126</sup> See Kanywanyi, *op cit*, at p. 52.

<sup>127</sup> Scholz and Drouin, *op cit*, at p. 56. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 65.

It is further proposed that indexation should be provided for in the statutes establishing the social security schemes so as to remove “systems which set ceiling as arbitrarily equal to a fixed amount which is adjusted on an ad hoc basis without legal provisions for regular updates.”<sup>128</sup> Additionally, incorporating the principles for comprehensive social security may also help in ensuring adequate social security benefits and, more importantly, solidarity and redistribution principles.

#### 4.3. THE SOLIDARITY PRINCIPLE

Solidarity is defined as “a union of interests, purposes, or sympathies among members of a group; fellowship of responsibilities and interests.”<sup>129</sup> Along similar lines, Pieters defines *social security* as “the body of arrangements shaping the solidarity with people facing (the threat of) a lack of earnings (income from paid labour) or particular costs.”<sup>130</sup> This means that solidarity is one of the important aspects of social security, and even more so for adequacy of social security benefits.<sup>131</sup> As such, adequacy of social security benefits requires people of either the same group or different groups to share some responsibilities in the course of ensuring everybody else is protected. In the absence of solidarity among people of the same or different age groups, adequacy of benefits cannot be achieved.

Solidarity is one of the basic principles for upholding comprehensive social security provisioning,<sup>132</sup> and entails relationships between the rich and the poor, one age group and another and one generation and another.<sup>133</sup> Moreover, solidarity embraces the principles of redistribution of income and intra/inter-generational equity. Adherence to the two components of solidarity is important in order to ensure adequacy of social security benefits. As Olivier and Kaseke suggest, “social security should incorporate and display a sufficient measure of solidarity and redistribution in order to ensure the meaningful flow of adequate resources to the poor and vulnerable.”<sup>134</sup> The fact that the existing social security schemes in Tanzania operate

<sup>128</sup> Scholz and Drouin, *op cit*, at p. 51. This is the reality for most of the social security schemes in Tanzania.

<sup>129</sup> See <http://dictionary.reference.com/search?q=solidarity> accessed on 8 June 2006.

<sup>130</sup> Pieters, *op cit*, at p. 2.

<sup>131</sup> See part 2.1 of chapter two of this thesis for more details.

<sup>132</sup> See part 2.1.2 of chapter two of this thesis for more details.

<sup>133</sup> See Pieters, *op cit*, at p. 28.

<sup>134</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 29.

on the principle that “the higher the contributions, the higher the benefits” negatively affects low-wage-earners. As Olivier and Kalula argue:

...while the scope of coverage tends to be fairly broad, there are also internal distribution vulnerabilities, which provide the most vulnerable workers with a smaller share of the benefits. The poorest, who are most in need of social insurance, can usually not contribute as much. Their benefits would therefore be less than those who contribute more'.<sup>135</sup>

The questions we need to consider are: What is the current practice in Tanzania? What can be done to guarantee adequate benefits? The answers to these questions emerge from considering the way the solidarity principle is embraced in the Tanzanian social security system.

#### 4.3.1. Redistribution of Income

Redistribution of income is principally an “economic theory or policy that advocates reducing inequalities in the distribution of wealth.”<sup>136</sup> In as far as social security provisioning is concerned, redistribution leads to the reduction of inequalities between the highest wage earners and the lowest wage earners. Social security schemes should use this principle to set the minimum and maximum levels of benefits one can receive. Likewise, redistribution of income enables the re-establishment of “social cohesion and solidarity between the generations by sharing working time, training and compensated inactivity in a more equitable manner between the different population ages.”<sup>137</sup>

In Tanzania, redistribution of income is revealed by the existence of both minimum and maximum levels for long-term benefits. As previously indicated, NSSF provides for a minimum pension at the rate of 80 per cent of the national statutory minimum wage. NSSF also provides that the maximum limit of a pension will be 67.5 percent of the “previous average earnings.”<sup>138</sup> The limitation is intended to ensure that the highest wage earner, who contributes more to the NSSF, shares his/her income

<sup>135</sup> Olivier and Kalula, “Scope of Coverage” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at pp. 138-139. See also Schedule 4 of the South African *Compensation for Occupational Injuries Act* of 1993, Act No. 130 which provides that the monetary ceiling on the amount of remuneration is to be taken into account for purposes of calculating benefits.

<sup>136</sup> <http://dictionary.reference.com/search?q=redistribution>, accessed on 6 May 2006. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 39.

<sup>137</sup> Guillermand, *op cit*, at p. 91.

<sup>138</sup> See s. 24(1) and (2) of Act No. 28 of 1997.

with the lowest wage earner,<sup>139</sup> as the lowest wage earner might not have contributed enough to deserve 80 per cent of the minimum wage. In this way, the highest wage earner supplements the lowest wage earner's pension by being awarded a standard percentage.

Under PPF, both minimum and maximum limits for pensions are set. As we have previously discussed, the maximum retirement pension under PPF is an amount not exceeding "two thirds of the highest pensionable emoluments drawn by the beneficiary at any time in the course of his service."<sup>140</sup> Literally, this maximum limit can be translated to 66.6 per cent of the beneficiary's highest salary. Like its NSSF counterpart, PPF also ensures redistribution of income from the highest wage earners to the lowest wage earners. It should be noted that PPF offers a different maximum limit for a survivor's benefit, which is "equal to three-fourths of the specified amount."<sup>141</sup> Nonetheless, it is doubtful whether redistribution principles underlie PPF's undertakings as the scheme purports to offer a relatively high maximum pension and a very low minimum pension.<sup>142</sup>

PSPF offers a minimum pension of Tshs.20,000 and a maximum pension of "one five hundred and fortieth of [the member's] emoluments for each complete month of his/her pensionable service."<sup>143</sup> Redistribution of income is thus achieved by stipulating the minimum and maximum pension a beneficiary can receive. Conversely, there seems to be no redistribution of income under the PSRB as all the benefits are offered as a percentage of the salary of serving office bearers. PSRB prescribes a flat-rate percentage that a beneficiary can receive, which is 80 per cent.

Redistribution of income, from the rich to the poor or, rather, from the highest wage earner to the lowest wage earner, is practised in Tanzania, though with limited positive results. It is submitted that setting up minimum and maximum pensions is not sufficient to guarantee redistribution of income, contrary to what Pavard suggests, that "[t]he only way in which redistribution helps the most disadvantaged categories is by providing a minimum pension."<sup>144</sup> As we have seen, the minimum pensions offered

<sup>139</sup> See Tugaraza, *op cit*, at pp. 185 and 188.

<sup>140</sup> See s. 29 of Act No. 14 of 1978.

<sup>141</sup> See s. 40(2) of Act No. 14 of 1978.

<sup>142</sup> The minimum pension in December 2005 was Tshs.10,000 per month which is equal to US\$8 a month.

<sup>143</sup> See s. 22(2) of Act No. 2 of 1999.

<sup>144</sup> F. Pavard, "Social Security Financing through the Contribution Method" in International Social Security Association, *Methods of Financing Social Security: their economic and social effects*, Studies and Research No. 15, Geneva, 1979, pp. 13-24, at p. 15.

by all the schemes, with the exception of the PSRB, are very low compared to the national statutory minimum wage, not to mention the estimated actual cost of living.<sup>145</sup> Redistribution of income cannot be said to have been achieved where there is a big gap between the highest wage earner and the lowest wage earner. Among other things, this discrepancy is caused by the fact that each scheme has its own structure of benefits and uses different rules to determine both minimum and maximum pensions. The lowest wage earner under NSSF is better off than the lowest wage earner under PSPF, and far better than the lowest wage earner under PPF. Yet again, the problem of fragmentation of social security schemes in Tanzania is causing discrepancies and inadequacy of benefits.<sup>146</sup>

This system needs to be reformed so that beneficiaries are not disadvantaged by belonging to one scheme rather than the other, which is something over which they have no control.<sup>147</sup> It is time for the Tanzanian government to consider setting a minimum pension for all the schemes in order to uphold the constitutional principle of equality.<sup>148</sup> South Africa offers good lessons about setting a minimum pension for all social security schemes.<sup>149</sup> The *Pensions Fund Act* of 1956 obliges every registered fund to provide the prescribed minimum benefits, thus, not less than the minimum individual reserve. This means that all the pensioners, although under different social security schemes, receive the prescribed minimum benefits.<sup>150</sup> It is therefore submitted that it is possible and desirable, having regard to the South African example, that the government should establish a minimum pension for all social security beneficiaries.

It is believed that adherence to the redistribution of income principle will reduce the vast gap that exists between high income earners and low income earners. In essence, this will reduce the levels of inequalities that are widespread among social security beneficiaries in Tanzania. Additionally, the suggested minimum pension

<sup>145</sup> See Kanywanyi, *op cit*, at p. 64. See also Guhan, *op cit*, at p. 45 where it is stated that "minimum wages determine minimum pensions," but this is not the case for Tanzania's social security system where the minimum pensions are far lower than the minimum wage which itself is below the average estimates for actual living expenses.

<sup>146</sup> See chapter six of this thesis for more details on fragmentation.

<sup>147</sup> The employees never choose their schemes; it is their employers who choose for them. This is evidenced by the fact that about 98 per cent of the 51 interviewees in the categories of beneficiaries and formal sector employees indicated that it was the employers who imposed a particular scheme on them.

<sup>148</sup> Article 13 of the URT Constitution of 1977, as amended.

<sup>149</sup> See s. 14A of the *Pensions Fund Act* of 1956, Act No. 24 (as amended from time to time).

<sup>150</sup> Both versions of the Draft *Social Security Act* of 2005, by both the international social security experts and the social security institutions, envisage the setting of a uniform benefit rate under ss. 90(1) and 60(1) respectively.

should take into account actual living costs and the need to protect social security beneficiaries from destitution, which is the primary aim of social security protection.

Benefits under the provident funds are also inadequate. GEPF and LAPF do not uphold the redistribution of income principle since each and every contributor gets his/her contributions and those of the employer plus the interest earned thereon. This means that the higher your income, the more substantial your lump sum will be. The problems of inadequacy of benefits which are associated with provident funds and lump sum payments are alarming. As indicated in chapter three, there is a need to convert these provident funds into pension schemes as the lump sums are spent rapidly and “tend to leave a beneficiary ... ill-provided [for] ... when he/she needs cash support.”<sup>151</sup> Changing provident funds to pension funds will uphold the redistribution of income principle and reduce the inequalities existing between members of provident funds and members of pension funds. In addition, the envisaged transformation will do away with the existing discriminatory state of affairs between the beneficiaries under pension funds and provident funds. The beneficiaries of provident funds always ask: “if all employees have similar needs and problems, what rights are there for some workers to deserve pensions and others lump sums? Why has the government allowed such discrimination between workers?”<sup>152</sup>

Together with provident funds, pension schemes pay lump sums where the conditions for entitlement to a pension are not met. For instance, PPF pays a pension only where a member has contributed for at least 10 years, while PSPF and NSSF offer a pension where a member has contributed for a minimum period of 15 years.<sup>153</sup> A beneficiary or a member who does not fulfil this condition is paid a lump sum. It is submitted that the inability to fulfil the conditions for pensions is fuelled by, among other factors, the existing problems of non-transferability of periods of contributions and social security benefits from one social security scheme to another.<sup>154</sup> Therefore, to ensure adequacy of benefits, there is need for coordination between the social security schemes in order to ensure transferability of benefits and periods of contributions. As long as the fragmented social security system continues to operate

<sup>151</sup> Kanywanyi, *op cit*, at p. 17. See also Kamuzora, *op cit*, at p. 100.

<sup>152</sup> See “*Is it social security or old age pension?*” *Tanzanian RAI*, 23 – 29 March 2006.

<sup>153</sup> See part 3.3 of chapter three of this thesis for more details.

<sup>154</sup> See chapter five of this thesis for more details on non-transferability of social security benefits in Tanzania.

without coordination, the majority of workers who change employment and are subjected to different social security schemes cannot be guaranteed adequate benefits.

From another perspective, it should be noted that redistribution of income in Tanzania is done through taxation as those who earn more pay higher taxes.<sup>155</sup> Examples of redistribution of income in the social security context include using government revenue to subsidise social assistance programmes and the existence of the government-subsidised CHF's.<sup>156</sup> The government matches the contributions to CHF's from taxes and its general budgets.<sup>157</sup> In this way, inequalities in Tanzania may be minimised. Nevertheless, the ability of the government to collect taxes is the primary determining factor as to whether income redistribution to guarantee adequate social protection is practicable or far-fetched. As Petersen summarises, "the government's ability to collect taxes sufficient to provide adequate social security benefits in the future depends on the maintenance of a sound tax system in a growing economy."<sup>158</sup>

Additionally, to achieve maximum redistribution of income in the country, it is proposed that extension of coverage to the excluded should be prioritised and the "[g]overnment should ... work towards enhancing the ability of the [excluded] to contribute fully towards their own social protection."<sup>159</sup> Once the excluded are covered, most people will be guaranteed adequate social security benefits through the redistribution of income from high wage earners.

Apart from redistribution of income, intragenerational and intergenerational equity also serves the purpose of adequately protecting different age groups, classes of people and various generations.<sup>160</sup>

#### 4.3.2. Intragenerational and Intergenerational Equity

Equity is the "state, quality, or ideal of being just, impartial, and fair."<sup>161</sup> Intragenerational equity, insofar as adequacy of social security benefits is concerned,

<sup>155</sup> See the *Income Tax Act of 2004*, Act No. 11, Part III.

<sup>156</sup> These programmes in Tanzania include programmes that take care of vulnerable groups, including women, children, orphans, the elderly, the youth and disabled people. See the Research and Analysis Working Group, *Poverty and Human Development Report 2003*, *op cit*, at p. 75.

<sup>157</sup> See part 3.1 of chapter three of this thesis.

<sup>158</sup> J. H. Petersen, "Financing Social Security by Means of Taxation" in International Social Security Association, *Methods of Financing Social Security: their economic and social effects*, Studies and Research No. 15, Geneva, 1979, pp. 25-60, at p. 31.

<sup>159</sup> Kaseke, 1995, *op cit*, at p. 36.

<sup>160</sup> See Pieters, *op cit*, at p. 28.

<sup>161</sup> <http://dictionary.reference.com/search?q=equity>, accessed on 7 May 2006.

entails justice and fairness within “one or the same generation,”<sup>162</sup> thus, between the highest wage earner and the lowest wage earner. Intragenerational equity is similar to the principle of redistribution of income, and therefore will not be discussed at length. It suffices to say that adequacy of benefits requires intragenerational equity to ensure that there is justice and fairness between people of the same generation.

Intergenerational equity entails justice and fairness between people of different generations. Although it is closely related to the principles of redistribution of income and intragenerational equity, intergenerational equity is distinct in that, in as far as adequacy of social security benefits is concerned, it “implies that the younger, more active parts of the population are willing to meet the social security (notably pension) claims of previous generations; but it also implies that the present generation is willing to abstain from claims that would constitute an unreasonable burden on the generation to come.”<sup>163</sup> Intergenerational equity builds a sense of responsibility between one generation and another in that the active working population has a responsibility to the elderly and to other beneficiaries, including the youth. When the erstwhile youth start working, their responsibility will be to protect the old, the youth and other beneficiaries. Therefore, intergenerational equity “requires rather a longitudinal analysis, over the long term, of the contributions made and the benefits received by successive generations, throughout the life cycle.”<sup>164</sup> We need to embrace intergenerational equity in social security provisioning so as to guarantee adequate social security benefits.

In the traditional African context, intergenerational equity was/is embraced by the societies as a means to protect each other against the harshness of nature. This was based on the fact that an individual was not able to provide for himself/herself against the then prevalent social risks.<sup>165</sup> As such, dependence was on the communal measures which were founded on the principles of solidarity, reciprocity and mutuality.<sup>166</sup> In a nutshell, these principles ensured that each able-bodied individual participated in communal activities which, among other things, would involve caring for mothers who had given birth and the children, and providing for the elderly and

<sup>162</sup> Pieters, *op cit*, at p. 28.

<sup>163</sup> Pieters, *op cit*, at p. 28.

<sup>164</sup> Guillermand, *op cit*, at p. 70.

<sup>165</sup> See parts 1.1 and 1.2 of chapter one of this thesis for more details of the risks that were prevalent in early societies.

<sup>166</sup> *Ibid*

the disabled.<sup>167</sup> By taking care of all vulnerable groups in the society, including the children and the elderly, intergenerational equity was upheld.

However, alongside the modern social security schemes, there are some organised groups, prevalent in both urban and rural areas, providing social protection to their members on the basis of solidarity, reciprocity and mutuality.<sup>168</sup> Most of these groups operate as informal social security schemes and what Mpedi calls “indirect social security.”<sup>169</sup> The example of schemes that adopt features of the African traditional social security system is where “members of a particular sector or trade, for example street vendors paying a daily fee into a fund, which serves as a form of health insurance when members of their families become ill.”<sup>170</sup> Other examples include the Self-Employed Workers Union (SEWU) of South Africa, Mwananyamala Scheme and UMASIDA of Tanzania.<sup>171</sup> Additionally, in Tanzania “when a Masai man loses his cattle by reason of a disaster such as drought, the extended family will give him some cattle, since cattle are seen as a form of social security.”<sup>172</sup> This means that a mix of intergenerational and intragenerational redistribution principles have an influence on the majority who are excluded by the existing social security schemes.

The modern intergenerational redistribution of income has its roots in the 19<sup>th</sup> century where the Bismarckian approach was founded. As indicated in chapter two, this approach hinged on the principle of social solidarity where the working population’s social security contributions would provide for the inactive workers, among other groups.<sup>173</sup> The trend spread in many European countries and was also introduced in their colonial territories, many of which were in Africa in the 20<sup>th</sup> century.<sup>174</sup> Similar trends are observed in the 21<sup>st</sup> century although some quarters argue that intergenerational redistribution is no longer sustainable because of the

<sup>167</sup> *Ibid.* See also Nyerere, 1966, *op cit*, at p. 164 and Bossert, *op cit*, at p. 6.

<sup>168</sup> See Dekker and Olivier, “Informal Social Security,” in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 560.

<sup>169</sup> Mpedi, “Indirect social security,” in Olivier, Smit and Kalula (eds), 2003, *op cit*, pp. 535-558.

<sup>170</sup> Dekker and Olivier, “Informal Social Security,” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 563.

<sup>171</sup> Dekker and Olivier, “Informal Social Security,” in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at pp. 573-574. See also part 3.1 of chapter three of this thesis for more details on coverage of the Tanzanian informal sector schemes. See further, Kannan, *op cit*, at p. 28.

<sup>172</sup> Dekker and Olivier, “Informal Social Security,” in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 577.

<sup>173</sup> See part 2.1.1 of chapter two of this thesis.

<sup>174</sup> In the case of Tanzanian social security provisioning under colonialism, see part 1.1 of chapter one of this thesis. The ILO’s basis of intergenerational redistribution is also founded on the Bismarckian approach. See Gillion, *op cit*, at p. 51.

current demographic trends which are affected by envisaged low fertility rates and high life expectancies.<sup>175</sup>

Following from the changes in demographic trends, it is argued by the World Bank, from one point of view, that there should be a gradual shift from the pay-as-you-go schemes which are built on the basis of defined benefits and favour of intergenerational redistribution to the fully funded schemes built on defined contributions.<sup>176</sup> In essence, it is argued that intergenerational equity cannot be upheld where the challenges for demographic trends are immense. The World Bank therefore states that:

some intergenerational redistributive effort may have a justification after wars and during economic transition, but repeated increases in the level of generosity can only reduce capital formation and, hence, the output level for current and future generations. This is particularly pressing when demographic "shocks", such as the baby-boom generations, either create an important burden for the future working generation when the baby-boomers retire, or leave the baby-boomers worse off because pension promises are adjusted downward.<sup>177</sup>

The World Bank rationalises the shift to individual account-based defined contribution schemes by referring to the supposedly many advantages of these schemes: "raise the capital stock and future output,"<sup>178</sup> reduce labour market distortions through "improved compliance, improved financial markets and ...higher aggregate savings, compensate,"<sup>179</sup> as opposed to the defined benefit schemes which face "persistent deficits, delayed payments and large infusion from the government budget."<sup>180</sup> It is argued that dependence on the government magnifies the political risks which are inherent in defined benefit schemes.<sup>181</sup> In counteracting this argument,

<sup>175</sup> Holzmann, 2000, *op cit*, at pp. 14 and 16. See also Gillion, *op cit*, at p. 51.

<sup>176</sup> Holzmann, 2000, at p. 16. For more details on the World Bank approach to social security reform, see part 3.4 of chapter three of this thesis. See also Heller, P. S., *Rethinking Public Pension Reform Initiatives*, a working paper of the International Monetary Fund, paper presented at the APEC Regional Forum on Pension Fund Reforms, Cancun, Mexico, 4 – 6 February 1998, at p. 6 where it is stated that "[f]or workers under the [defined contribution] system, their income in retirement would be determined by the amount of contributions made over their working life (with a government-mandated minimum contribution rate specified) and by the rate of return earned on the investment of these contributions."

<sup>177</sup> Holzmann, 2000, *op cit*, at p. 16.

<sup>178</sup> *Ibid*, at p. 15. See also Heller, *op cit*, at p. 4.

<sup>179</sup> Holzmann, 2000, *op cit*, at p. 22. See also Heller, *op cit*, at p. 7.

<sup>180</sup> Holzmann, 2000, *op cit*, at p. 13. See also Houssi, C., "Reality and challenges of pension schemes in Tunisia," *International Social Security Review*, Vol. 58 No. 1, 2005, pp. 99-120, where similar arguments are raised.

<sup>181</sup> *Ibid*, at pp. 16 and 19.

the IMF argues that both the defined benefits and the defined contributions are prone to political risks which come with the government's influence on the operations of the schemes. Under the defined contribution approach, which rejects any form of redistribution, the government has to play a supervisory and regulatory role unless the individual accounts/defined contribution schemes are voluntary and do not constitute the main source of income for the "covered" upon occurrence of social risks.<sup>182</sup> On the basis of the government's role in defined contribution schemes, political risks are abound in terms of the "conjectural liabilities" which the government undertake by supervising and regulating defined contribution schemes.<sup>183</sup> This means that political risks cannot be avoided by changing the *modus operandi* of the social security schemes: both defined contribution and defined benefit schemes need government involvement of some sort.<sup>184</sup> On this, the IMF argues that while defined benefit schemes should be the main schemes operating in any social security system, the possibilities of exploring the adoption of defined contribution schemes as a supplementary system should not be ignored.<sup>185</sup> The question remains: how is adequacy of social security benefits guaranteed in the two types of schemes?

Emphasis must be put on the issue of whether the advantages of defined contribution guarantee adequate benefits to the beneficiaries. While the investment returns, negative or positive, may be shared between members of a defined benefit scheme, under a defined contribution scheme investment returns are placed on an individual's account. As the ILO puts it:

Some forms of pension financing, especially those in which benefits are related to the investment performance of accumulated savings, place the risks on the pension recipient. Other forms of financing, especially pay-as-you-go schemes, pass the risk back to the community as a whole.<sup>186</sup>

It follows therefore, that an individual's benefits are dependent on the performance of the capital market where his/her accumulated contributions are invested. The World Bank assumes that there will always be positive returns from investments and that the

<sup>182</sup> Heller, *op cit*, at p. 15.

<sup>183</sup> *Ibid*, at p. 10. See also Matijascic and Kay, *op cit*, at p. 9 where the authors report that "[t]he government seizure of pensions fund deposits [in Argentine] demonstrated that privately held deposits were not immune from arbitrary state action."

<sup>184</sup> Heller, *op cit*, at pp. 8-22.

<sup>185</sup> *Ibid*, at p. 27.

<sup>186</sup> Gillion, *op cit*, at p. 39. See also Willmore, 2007, *op cit*, at p. 2.

contributors will be assured of "high returns on some of their contributions."<sup>187</sup> The ILO disputes this assumption on the basis of market performance which looks at the rate of interest on the invested contributions and the amount of contributions invested.<sup>188</sup> The ILO states that: "one of the features of defined contribution, fully funded pension schemes concerns the risk to the individual that his/her accumulated lifetime saving may not be sufficient to fund an adequate pension."<sup>189</sup>

Similarly, the IMF notes that "the invested contributions may not, in fact, earn a higher rate of return over a pensioner's working life (net of administrative costs) relative to the implicit return that would have been associated with a [defined benefit] system."<sup>190</sup> As such, adequacy of benefits under the defined contribution scheme will depend on what one earns, which determines the amount of contributions and hence the investment interest rate. This means that where the capital market is not developed to the extent of being able to absorb the accumulated contributions on a profitable basis, defined benefits may still be preferable. Additionally, because of its dependence on performance of the market and the ability of the active population to buy the acquired assets, under a defined contribution system:

it is not possible to make room for more retirees without either reducing other components of GDP or reducing the implied per capita replacement rate. Since the implied pension contract, between actives and inactive, is framed in terms of *relative* standards of living, this amounts to breaking the contract and risks offending people's sense of equity and justice about promises made some considerable time earlier...[t]hus for all practical purposes...consumption of today's pensioners is drawn from the consumption of today's workers.<sup>191</sup>

As indicated in chapter three, disability/invalidity benefits may be part of long-term benefits. The question here is how the defined contribution scheme takes into account the adequacy of benefits of a member, who has not contributed sufficiently to gain from the accumulated contributions *and* investment returns and be

<sup>187</sup> Holzmann, 2000, *op cit*, at p. 22.

<sup>188</sup> Gillion, *op cit*, at p. 53.

<sup>189</sup> *Ibid.* See also Ross, *op cit*, at p. 11 where it is indicated that "[f]or those more concerned with the adequacy of benefits, the preference is for redistribution to provide a greater benefit for the same contribution to lower lifetime earners, as with traditional social insurance schemes."

<sup>190</sup> Heller, *op cit*, at p. 8.

<sup>191</sup> Gillion, *op cit*, at p. 49. See also Matijascic and Kay, *op cit*, at p. 11 where it is indicated that "[t]he structure and capacity of each capital market are critical from converting savings into investment. Small and ill-structured markets like those found in many developing countries are not going to stimulate growth unless they channel funds into productive investment."

able to escape the poverty trap? It is submitted that in the absence of intergenerational equity, other vulnerable groups may not be adequately protected against social risks. In a similar vein, the ILO argues that “children...[people with] disabilities, many women...[t]his entire group of inactive people constitutes a body of dependants who must be supported, one way or another, from the incomes of the economy as a whole – chiefly from the incomes of the active population.”<sup>192</sup> This is another challenge for a shift from defined benefit schemes and their intergenerational redistribution principles to the defined contribution schemes in developing countries.

In contrast, the World Bank argues that there should be a clear demarcation between income replacement measures, which are the primary role of social security schemes, and poverty alleviation programmes/measures.<sup>193</sup> The World Bank argues that income replacement schemes have little or no role to play in poverty alleviation measures and thus, the two should be separately funded.<sup>194</sup> In view of this, defined contribution schemes, which emphasise on privately-managed individual-savings accounts, will better protect the working population without necessarily placing the burden on the working population to provide for the “baby-boomer” retirees who will eventually outnumber the working population because of the demographic challenges posed by low fertility rates and high life expectancies.

However, much as the main aim of social security remains protecting the inactive workers against destitution, it is proposed that income replacement measures should also focus on providing adequate protection to inactive workers so that they do not have to rely on poverty alleviation measures. It is submitted further that irrespective of the fact that most affected inactive workers under defined contribution schemes will be low income earners, intergenerational redistribution should be upheld so that this group is not disadvantaged by their low levels of contributions which directly affects the rate of interest they can receive from the investment of their contributions. As the ILO puts it, “collective financing is indispensable to ensure that money is available to support the incomes of the most vulnerable.”<sup>195</sup> This will serve

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<sup>192</sup> Gillion, *op cit*, at p. 51. See also Scheinin, M., “The Right to Social Security,” in Eide, A., *et al*, (eds), 2001, *op cit*, at p. 213.

<sup>193</sup> Holzmann, 2000, *op cit*, at p. 20.

<sup>194</sup> *Ibid*.

<sup>195</sup> Gillion, *op cit*, at p. 39. See also Ross, *loc. cit*.

the "original anti-poverty motivations for pension schemes."<sup>196</sup> As Olivier summarises:

As far as redistribution is concerned, it has been noted that pure private (sector) market provision and regulation of social security is insufficient. Such would appear to be incapable of meeting certain basic income-maintenance needs and performing certain functions which are deemed necessary from a social, economic or political point of view...it should be one of the major objectives of social security to progressively redistribute resources from the rich to the poor – something which the private market is unable to do sufficiently. This should help to fulfil some of the overriding national objectives, which include the diminishing of social and economic discrimination and a concentration on helping those whose need is greatest. It is important to note in this regard that much more than merely creating or restoring equity is needed. At the very root of social security lies the imperative of adequate protection: social security must also provide a minimum level of protection, in particular with reference to those who are economically and/or socially deprived. Redistribution can be achieved through the careful construction of the contribution and benefit structure of public insurance funds [and not private ones].<sup>197</sup>

Other challenges of defined contribution schemes include "high administrative costs and bad asset management deriving from either inadequate regulation or explicit government interventions,"<sup>198</sup> non-predictability of the amount of pensions,<sup>199</sup> non-indexation of benefits,<sup>200</sup> underdeveloped regulatory and monitoring by the state, and difficulties in democratic management.<sup>201</sup>

In developing countries, particularly in Tanzania, *res ipsa loquitur*, defined contribution schemes cannot be opted because even the semblance of these, the

<sup>196</sup> Gillion, *op cit*, at p. 38. See also Kannan, *op cit*, at p. 32.

<sup>197</sup> Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at pp. 41-42.

<sup>198</sup> Holzmann, 2000, *op cit*, at p. 15. See also Gillion, *op cit*, at p. 57. See further Casey, B. and Dostal, M., *Pension reform in Nigeria: How not to "learn from others."* Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 19 where it is stated that "it is clear that, although the [Chilean] system was supposedly private, its survival depended upon the support from the state."

<sup>199</sup> Gillion, *op cit*, at pp. 39 and 61. At p. 61 it is noted that "one of the most important fundamental principles is that the retirement income of workers should be predictable and guaranteed. Defined contribution schemes cannot achieve this."

<sup>200</sup> Gillion, *op cit*, at p. 61. See also Heller, *op cit*, at p. 7 and Holzmann, 2000, *op cit*, at pp. 19-20.

<sup>201</sup> Gillion, *op cit*, at p. 62. See also Casey and Dostal, *op cit*, at p. 17, where it is stated that high administrative costs and lack of transparency prevails in the individual accounts pension systems.

provident funds, are being phased out for defined benefits schemes.<sup>202</sup> This is because many individuals, even the working population, are low income earners so when their income replacement is based on their earnings, this is insufficient to relieve them from the poverty trap. As Van Ginneken notes:

India and the United Republic of Tanzania converted at least part of their provident fund into PAYG social insurance pension scheme. These countries wanted to increase solidarity within the scheme, and to ensure that all pensioners would receive regular payments of pension benefits.<sup>203</sup>

As argued earlier on, this is the reason why income redistribution is considered important in Tanzania. As we have seen, provident funds, not only provide insufficient income replacement, but also perpetuate dependence of the inactive workers on the government's limited social assistance and these workers become a burden to the community at large.<sup>204</sup> Although the World Bank's multipillar approach may be embraced as shown in chapter three, a move from the defined benefit schemes

<sup>202</sup> Personal interviews with the senior administrators of Local Authorities Provident Fund and Government Employees Provident Fund, *op cit.* (See footnote 24 and 27 of chapter three respectively). On the changes expected of the LAPP, see also "New Pension scheme on the drawing board" *Tanzanian Sunday Observer*, Sunday, 9 July 2006 and Bill No. 6 of 2006 on *Local Authorities Pensions Fund Act* of 2006. Admittedly, the World Bank notes that "countries with low pension coverage can ... have problems implementing funded systems if they have a limited tax base and high levels of government debt." See World Bank, *Pension Reform and the Development of Pension Systems: An Evaluation of World Bank Assistance*, World Bank, Washington, DC, 2005, at p. 22.

<sup>203</sup> Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed), 1999, *op cit.*, at p. 16. It may be interesting to note that even the renowned defined contribution Chilean model seem to have failed its purpose: "In Chile, itself, satisfaction with the existing system, in terms of its cost and failure to make adequate provision for many of the old, had been a persistent theme of the winning candidate's campaign in the 2005-6 presidential elections. By the end of 2006, the new administration was announcing wide-ranging changes to pension provision, placing greater emphasis on solidarity and tax financing and tighter controls on the operation of the providers of the individual accounts to which employees are required to subscribe..." See Casey and Dostal, *op cit.*, at p. 3. As such, in its attempt to remedy the situation, "the Chilean government is about to introduce social pensions termed 'basic solidarity pension.'...Its introduction is an acknowledgement that, after 25 years, the system of funded pensions has failed to address the pension needs of the majority of the Chilean citizens." Casey and Dostal, *op cit.*, at p. 25. See also Barr, N., *Strategic policy directions for social policy*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 - 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 3, where it is reported that "the government in Chile...has proposed a tax-financed solidarity pension alongside the existing system of individual accounts." It is also reported that Nigeria's social security reform has recorded sluggishness in delivering the promises and expectations from the "copied" Chilean model of social security provision. Casey and Dostal, *op cit.*, at p. 25. See further Matijascic, M., Ospina, M. and Kay, S., *Pension Systems and Labor Markets in Latin America and the Industrialised Countries*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 - 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 2, where it is stated that "[d]espite the extensive process of reform in [Latin America] the same policy challenges remained: low rates of coverage, falling density of contributions, low pension levels, and high disparities in benefits..."

<sup>204</sup> See part 3.3 of chapter three of this thesis for more details on the retirement benefits from provident funds.

to defined contribution schemes may still be far from reach for the Tanzanian social security situation. In essence, the intergenerational redistributive nature of the defined benefit schemes, it is submitted, should still be preferred in place of defined contributions so that the solidarity and responsibility between generations remains.

It should be noted, nevertheless, that all these arguments arise as a measure to ensure that adequacy of social security benefits is guaranteed. As we have seen, while the IMF and the ILO are of the view that defined benefits guarantee adequacy of benefits, the World Bank notes that adequacy of benefits is only guaranteed in the defined contribution where "correspondence between contributions and benefits" is achievable.<sup>205</sup> The World Bank's view is based on the fact that there will be less microeconomic distortions and that "workers would perceive a direct link between the contributions made and the benefits ultimately received. Thus, there is a greater likelihood of compliance in making contributions. In contrast, payments in [defined benefit] systems are typically simply seen as payroll taxes that bear no relationship to benefits ultimately received."<sup>206</sup>

Conversely, the ILO and the IMF argue that these perceptions are unfounded as "with a defined contribution scheme, the risk is wholly on the participant" while under defined benefits, redistribution principles apply and the loss is shared by all members of a particular scheme.<sup>207</sup> As such, the World Bank's view that defined contribution schemes guarantee adequacy of benefits is doubtful as the assumption is that the financial/capital market will always perform better and there will be no losses in investment portfolios. It is on the basis of risks associated with poor performance of the market that the IMF and the ILO argue that defined benefit schemes, which can guarantee adequate benefits for the beneficiaries, through intergenerational redistribution of income between the working population and the pensioners and "split risks more evenly between contributors and pensioners," should be maintained.<sup>208</sup>

Although the Tanzanian social security system is mostly built on defined benefit principles, the principles of intergenerational equity are considered only to a limited extent. There is practically no relationship between the working population

<sup>205</sup> Holzmann, 2000, *op cit*, at p. 14. See also World Bank, 2005, *op cit*.

<sup>206</sup> Heller, *op cit*, at p. 7. See also Holzmann, 2000, *op cit*, at p. 14.

<sup>207</sup> Heller, *op cit*, at p. 16.

<sup>208</sup> See Gillion, *op cit*, at p. 62. See also Heller, *op cit*, at p. 26 where it is stated that "there is a need for a primary pillar which goes beyond only that segment of the population that has contributed directly to the social insurance system." See also Ross, *lo.cit*.

and the retired population or other social security beneficiaries. The working population is protective of its *status quo*, just as the retired population was when they were active.<sup>209</sup> There is no direct responsibility placed on the working population to protect those who are no longer in active employment. The active population is content with what they receive and the attitude is that what other social security beneficiaries receive is not their concern. It is this situation which causes frustration when the active population becomes inactive. The benefits offered become inadequate and the feeling that the social security schemes have failed them grows. Had intergenerational equity principles been considered, the active population would demand adequate protection for the inactive population, as the former would know that if they do not provide for the latter, they are also going to face similar problems when they change their status. Lack of intergenerational equity is one of the major causes of inadequate social security benefits.

Similarly, the youth look forward to starting work and to providing for themselves rather than the retiring population. Therefore, it is recommended that social security schemes in Tanzania should consider that a "retirement pension is the recompense for the employee's work during his life" and that the responsibility to protect the elderly is on the current active population.<sup>210</sup> It is based on this premise that this study argues that there should be indexation of benefits to reflect the actual living expenses of the beneficiaries. Where the benefits received are so much less than actual living expenses, justice and fairness will never be achieved in any given social security system. The beneficiaries will lead worse lives than the working population and the maintenance of their living standards will be impossible.

It should not cause offence to conclude that currently Tanzanian social security is unfair and unjust to a pensioner who receives the minimum pension benefits. The pensioner who receives the minimum pension benefits cannot maintain an acceptable standard of living and, to be precise, they also live below the poverty line as they survive on less than a dollar a day.<sup>211</sup> A pensioner who receives the

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<sup>209</sup> Personal interviews with the University of Dar es Salaam Professors and the Deputy Coordinator of PUT (2), *op cit.* (See footnotes 69 and 128 of chapter three of this thesis).

<sup>210</sup> Pavard, *op cit.*, at p. 22.

<sup>211</sup> Living on less than US\$1 a day is one of the indicators of poverty. It should be noted that "living for under US\$1 a day" should be understood as having a daily total consumption of goods and services comparable to the amount of goods and services that can be bought in the US for US\$1, not the amount that can be bought in the respective country for the national equivalent of US\$1. Self-produced goods and public services are included in this measure." See [http://en.wikipedia.org/wiki/poverty\\_line](http://en.wikipedia.org/wiki/poverty_line), accessed on 10 May 2006.

minimum pension benefits today receives Tshs.10,000 under PPF, Tshs.20,000 under PSPF and Tshs.52,800 under NSSF. Since the exchange rate is US\$1 to Tshs.1,245.85, it is evident that under PPF, a pensioner who receives the minimum pension benefits can hardly survive for 8 days a month, under PSPF he/she can survive for 16 days a month and under NSSF, which provides for the highest minimum pension, a pensioner can survive for 30 days on one dollar a day.<sup>212</sup>

It should be noted, in addition, that the pensioners have families to take care of and need the basic amenities of life. How are they supposed to pay their water and electricity bills? Maintain their cars? Pay for the education of their children? In Tanzania, there are no services for a pensioner who receives the minimum pension benefits which are cheaper; there are no shops, no markets, and no hospitals that are designed to serve this class of people. Yet they have worked and contributed to the development of the economy of the country in some ways.

It is submitted that the pensioners should be adequately protected and their services to the country honoured. Benefits should be equivalent to actual living expenses, the benefits that a pensioner first received in 1990 should not remain static, and neither should the pensioner retiring in 2000 receive benefits according to the 1990 rate. The Tanzanian social security laws should aim to end the usual pensioner's lament that "retiring in Tanzania is getting your death warrant." The working and active population should be reminded that "everyone will go through all the phases in the life cycle and will be first young and then old in our society."<sup>213</sup> The social security schemes should facilitate intergenerational equity through providing a just and fair share of adequate benefits to the beneficiaries. Surprisingly, despite all these problems associated with low levels of benefits offered, Kashonda argues that "the benefits offered by NSSF look handsome and one wonders if such huge benefits are actuarially supported and can be sustained over a long term."<sup>214</sup>

It is further submitted that the social security principles should be flexible to accommodate other beneficiaries who for some reason have not managed to meet the strict minimum contributory period. The formulae should be flexible so that pensions are offered to as many beneficiaries as possible. For instance, under the principles of

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<sup>212</sup> The exchange rates by 7 May 2006, accessed through <http://www.bot-tz.org/FinancialMarkets/ExchangeRates/ShowExchangeRates.asp> on 7 May 2006.

<sup>213</sup> Guillermand, *op cit*, at p. 72. See also "Temeke District Commissioner gives strategies to prevent stroke among the retirees" *Tanzanian Alasiri*, Saturday, 19 March 2007. (Translation is mine).

<sup>214</sup> Kashonda, *op cit*, at p. 15.

justice and fairness, it should be possible to offer pension benefits to retirees who have contributed for more than half the minimum period, provided that the calculated pension arrives at the specified minimum pension under a specific scheme. An example can be drawn from section 27(3) of the *National Social Security Fund Act of 1997* where it is stated that an early retirement pension cannot be awarded if the calculated amount due is below the minimum pension.

Similar conditions may be adopted for beneficiaries who have not made contributions for the minimum contributory period but have made sufficient contributions to qualify for a minimum pension. This is necessary because, as earlier noted, lump sum payments do not help beneficiaries in the long run: they are useful for a very short period of time after retirement; thereafter, retirees become destitute. Quick consumption of lump sum benefits is envisaged "since workers have various needs which may not be taken care of by any social security provision, [and] the lump-sum payment is likely to be spent on current needs instead of saving it for the intended contingency."<sup>215</sup> Equating lump sum payments to provident fund payments, Kamuzora states that:

...provident funds do not provide adequately for retirement. The system is based on a lump sum payment rather than on periodic benefits. This payment bears little or no relation to need, and inflation is likely to erode its value, leaving members without adequate resources throughout the retirement period.<sup>216</sup>

However, challenges which may affect the adoption and implementation of inter-generational equity are, *inter alia*, high levels of informalisation of jobs, high inflation and the HIV/Aids pandemic.<sup>217</sup> In Tanzania, because of these challenges, the working population may be worried whether the youth will be able to honour their responsibility to them. As Guillermand notes:

In a society caught up in the acceleration of time and in which the life course no longer fits into a long time scale with fixed and standard chronological benchmarks, one can no longer count on reciprocal commitments between generations to the same extent. Employed workers are beginning to doubt whether the younger generations will pay for their pension with the same commitment that they themselves show making contributions for the pensioners of

<sup>215</sup> Kamuzora, *op cit*, at p. 100.

<sup>216</sup> *Ibid*.

<sup>217</sup> See part 4.3 of this chapter for more details.

today...Younger generations can no longer believe in retirement as a mode of organizing the social phases across the life cycle and as a mode of social transfer.<sup>218</sup>

It is on this basis that some countries have adopted personal social security savings accounts based on defined contributions instead of the pay – as – you – go schemes which offer defined benefits.<sup>219</sup> “Because of the noticeable slowdown in the growth rate, the drop in inflation and low levels of contributions and benefits,”<sup>220</sup> the working population wants to save for itself and that the children should do likewise. However, private social security ideas have caught the retired by surprise as they did not save for themselves while active, but rather provided for those who were retired at the time.<sup>221</sup>

Nevertheless, it is argued that the performance of a privatized social security system depends on the ability of the financial market to absorb the contributions and invest them.<sup>222</sup> It is also the performance of the market, exchange rates and interest rates which determine what the social security beneficiary will receive. This means that if one retires when the market is performing well, then one has the advantage, but if the market is performing poorly, the benefits may be very low. Hence, there can be no guarantee that adequate benefits will be available when the worker retires under a defined contribution scheme.<sup>223</sup> It is submitted that as the financial and capital market in Tanzania is still in its infancy, privatised social security schemes may not be a viable approach, at least for now. Therefore, defined benefit schemes may still have to take the lead in current social security provisioning.

<sup>218</sup> Guillermand, *op cit*, at p. 89.

<sup>219</sup> Chilean, Brazilian and Mexican private social security schemes are relatively doing well and the United States of America is also considering “individually controlled and voluntary personal retirement accounts” in its modernisation of social security programmes. See <http://www.csss.gov/>, accessed on 8 May 2006. For a different opinion, see footnotes 201 and 203 of this chapter and Matijascic and Kay, *op cit*, at pp. 4-5, where it is noted that defined contributions are clouded by high administrative costs and failure to improve rates of pension coverage, among others.

<sup>220</sup> Guillermand, *op cit*, at p. 72.

<sup>221</sup> See *Twelve Reasons Why Privatising Social Security is a bad idea*, accessed through <http://www.csss.gov/> on 8 May 2006.

<sup>222</sup> Gillion, *op cit*, at p. 53. See also Casey and Dostal, *op cit*, at p. 14 where it is stated that “[t]he necessary infrastructure [for an individual account pension system] includes effective banks and life assurers that can operate as providers and custodians and a transparent and well-functioning equities and securities market in which pension assets can be invested.” See further “BoT Governor calls for enhanced public access to social security” *Tanzanian Guardian*, Monday, 26 March 2007 where it is stated that Tanzania’s Dar es Salaam Stock Exchange (DSE) is in its infancy stage and therefore not able to absorb the investment funds from social security schemes.

<sup>223</sup> See Gillion, *op cit*, at pp. 53-58. For instance anecdotal evidence from Nigeria indicates that the social security schemes are overwhelmed with huge amounts of contributions which the financial market is unable to absorb. For more details on defined benefits and defined contributions see part 1.9 of chapter one of this thesis.

#### 4.5. CONCLUSION

There are three salient features of the level of benefits in Tanzania. These features are a result of the fragmented social security system where each scheme operates according to its own rules. Firstly, there are discrepancies between the levels of benefits from one social security scheme to another. While NSSF offers a minimum pension of 80 per cent of the national statutory minimum wage (which was Tshs.66,000 in August 2006), PPF offers a fixed amount of Tshs.10,000 and PSPF offers Tshs.20,000. Secondly, indexation principles are generally not adhered to by the existing social security schemes in Tanzania. As we have seen, while most schemes offer retirement pensions based on the previous earnings of the beneficiaries, PSRB offers retirement benefits based on the current earnings of the office bearers and not on the past earnings of the beneficiaries. Thirdly, the current social security schemes do not take into account the primary goal of social security, which is to protect social security beneficiaries from poverty and destitution.

In the existing social security schemes in Tanzania there is little redistribution of income from the highest wage earners to the lowest wage earners. Efforts to incorporate intragenerational and intergenerational equity have also not been adequate. These efforts are overshadowed by the challenges of high inflation, informalisation of employment and the effects of the HIV/Aids pandemic. Following from these challenges, it is submitted that deliberate efforts should be made towards incorporating the principles of redistribution of income, intra-generational and intergenerational equity in order to ensure adequate social security benefits for the beneficiaries as opposed to the current inadequacy and poor quality of benefits. As Olivier and Kaseke suggest:

Social security should incorporate and display a sufficient measure of solidarity and redistribution in order to ensure the meaningful flow of adequate resources to the poor and vulnerable.<sup>224</sup>

It is further noted that the Tanzanian government needs to ensure that those who are supposedly covered by the current social security schemes are adequately provided for, especially at the times when they can no longer provide for themselves, for "if the formally employed are not adequately provided for, more so for the other groups that are marginalised thereby exacerbating poverty and inequalities in the

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<sup>224</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 29.

society.”<sup>225</sup> This goes along with the argument that those who are covered should be protected from becoming destitute and that “pension schemes should at least encompass the original aim of preventing poverty in old age...and protect income against inflation...”<sup>226</sup>

However, all these issues require the government’s commitment and prioritisation, since the Tanzanian government is charged with the primary responsibility of protecting its citizenry from destitution depending on its available resources.<sup>227</sup> As the ILO sums up, “[g]iven the widely differing pattern of needs and resources available, benefits levels must be geared in a realistic fashion to the various social and economic constraints which apply in different countries.”<sup>228</sup>

The problems and challenges posed by the non-transferability of social security benefits have been noted and the need for a coordinated social security system has been highlighted. The next chapter discusses, in detail, coordination between the fragmented social security schemes and emphasises the need for social security law to provide for transferability of benefits and totalisation of periods of contributions. As correctly summarised in the *National Social Security Policy* of 2003:

Benefit rights are not portable when a member moves from one scheme to another due to differing legislations (sic), operational rules and procedures. As a result members lose some of their benefit rights just by moving from one scheme to another...[t]here shall be regulated mechanisms established to enable portability of benefit rights when a member moves from one scheme to another.<sup>229</sup> (Emphasis is mine).

<sup>225</sup> Olivier and Kalula, “Scope of Coverage” in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, at p. 135. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 29 where it is stated that “[t]he social security system should further be aimed at the maintenance of appropriate level of income where contributory provision has been made for protection.”

<sup>226</sup> Gillion, *op cit*, at p. 37-38.

<sup>227</sup> See also the United Republic of Tanzania, *Workshop on Tripartite Governance of Social Security Institutions*, Held in Zanzibar, from 31 January – 3 February 2006 at p. 4, where it is stated that “[t]he country should be able to take care of its poor with its own resources.”

<sup>228</sup> ILO, *Introduction to Social Security*, 1989, *op cit*, at p. 23.

<sup>229</sup> See part 3.5 of the *National Social Security Policy* of 2003.

## CHAPTER FIVE

### COORDINATION AND PORTABILITY OF SOCIAL SECURITY BENEFITS IN TANZANIA

*As opportunities open up, the incidence of job change increases, whether external or migration from local to overseas employment and vice versa, internal or shift from public to private sector employment and vice versa, or both. With the mobility of workers, however, arises the need for government to ensure the preservation and promotion of workers' overall welfare in the pursuit of social justice. Fundamental to this is the provision of social security, particularly in providing a mechanism to ensure full entitlement to meaningful protection against contingencies, as a matter of state policy.<sup>1</sup>*

#### 5.0 INTRODUCTION

The previous chapter examined the current trends of adequacy of social security benefits in response to the questions of how many benefits are available in Tanzania and whether they are adequate. It was reported that in terms of the number of benefits and the quantum being offered, benefits in Tanzania are woefully inadequate as the benefits are few in number and they make little difference in the lives of the majority of the beneficiaries, especially the low wage earners. It was argued that adequacy of social security benefits may not be easily realised where there are no measures for coordination, between different social security schemes in a country and also between different social security systems of different countries.

This chapter reports on the current state of affairs in the Tanzanian social security system insofar as coordination is concerned. The chapter examines why there are problems with the transferability of social security benefits, both within the country and across borders.<sup>2</sup> It will be argued that lack of transferability of benefits in Tanzania adversely affects the supposedly "covered" formal sector employees. The effects of non-transferability are worse when the member is crossing borders for employment in the EAC and SADC regions. The periods of insurance are lost and the contributions made under previous schemes in different countries are lost. It is argued in this chapter that in order to have a meaningful coordination of social security, it is

<sup>1</sup> A. T. Cruz, *Portability of benefit rights: Portability of benefit rights in response to external and internal labour mobility: The Philippine experience*, International Social Security Association, Thirteenth Regional Conference for Asia and the Pacific, Kuwait, 8 – 10 March 2004, at p. 1.

<sup>2</sup> See part 1.3 of chapter one of this thesis.

advisable to look at what other regional bodies have done. In this respect, lessons are drawn from the European Union and the Caribbean Community.

In this chapter, “social security system” refers to a country’s total social security undertakings while “social security schemes” refers to institutions that cater for social security matters in a particular country.

The term “portability” in this chapter refers to the “ability of workers to preserve, maintain and transfer acquired social security rights towards the accumulation of the value of pension benefits when changing jobs, without bias to nationality, country of residence or sectoral affiliation.”<sup>3</sup>

“Transferability” means the ability of the member of any social security scheme to move with his/her periods of contributions and the contributions made under the sending scheme to the receiving scheme. In this chapter the terms “transferability” and “portability” are used interchangeably to show the ability of the social security schemes either to transfer or to receive a member’s social security rights to/from other schemes.

To avoid confusion, in this chapter, the terms “host or receiving country” and “home or sending country” are used to denote the countries to which a migrant worker migrates and where he/she comes from respectively.

## 5.1 IN-COUNTRY COORDINATION IN TANZANIA

In-country coordination entails the facilitation of freedom of movement of workers and the portability of their social security rights, *inter alia*, their benefits and periods of contribution in a particular country. It also embraces the principles of totalisation of the number of years of service of an employee, rewarding the employee who has contributed to the socio-economic and political development of the country, and not prejudicing the employee by the separate social security schemes that exist in the country.<sup>4</sup> Coordination deals with the problem of non-transferability of social security benefits and periods of contributions. Non-transferability “involves the possible loss of entitlement due to a non-coordination or insufficient coordination of consecutive professional social insurance systems.”<sup>5</sup> In Tanzania in-country

<sup>3</sup> Cruz, *op cit*, at p. 1.

<sup>4</sup> See Cruz, *op cit*, at p. 6. For a general discussion of these principles see part 2.2.3.1 of chapter two of this thesis.

<sup>5</sup> Pieters, *op cit*, at p. 25.

coordination principles were recognised to a limited extent in the colonial legislation, while they are ignored by the existing social security statutes.

During the colonial period, social security benefits were transferable or preserved for the employee. This ensured freedom of movement of the workers because their benefits were not lost if they moved from one job to another. This is exemplified by the *Pensions Ordinance* of 1954 which provided that where an employee resigned from public service to join a local authority he/she shall "...be eligible for a pension...based on the period during which he was in the service of Tanganyika and calculated with reference to the pensionable emoluments received during [his/her previous employment]."<sup>6</sup> Cap 371 also provided for the preservation of the social security rights of an employee who was compulsorily transferred from the service of Tanganyika to the service of the East Africa High Commission.<sup>7</sup> Although the principles of in-country coordination were not expressly provided for, the provisions of the *Pensions Ordinance* of 1954 show that a change of employment and a transfer from a position/country did not lead to a loss of social security benefits accrued during the previous period of employment.

Similarly, the *Provident Fund (Local Authorities) Ordinance* of 1944 provided for the portability of social security benefits in the case of the transfer of an employee from a local authority to the government under the *Provident Fund (Government Employees) Ordinance* of 1942 and vice versa.<sup>8</sup> The *Provident Fund (Government Employees) Ordinance* of 1942 provides for the preservation and portability of the social security benefits of employees under GEPF. For instance section 18(1) of Cap 51 provides that unless the scheme to which the member is going takes into account the periods of contributions under GEPF, the contributions made together with the periods of contributions will be preserved and paid to a member. Sections 19 and 20 provide that where a member is transferred to an office which falls under a different scheme, the contributions paid to GEPF, upon instructions from the member, might be transferred to the new scheme.

After independence, the *National Provident Fund Act* of 1964 which established the National Provident Fund, the predecessor to NSSF, provided for

<sup>6</sup> See s. 14(1) of Cap 371 of the Revised Laws of Tanganyika, repealed by Act No. 2 of 1999.

<sup>7</sup> See s. 21 of Cap 371 of the Revised Laws of Tanganyika.

<sup>8</sup> See s. 11 of Cap 53 of the Revised Laws of Tanganyika, repealed by s. 36(1)(b) of the *Local Government Service Act* of 1982, Act No. 10 of 1982 and s. 5(3) of Cap 51 of the Revised Laws of Tanganyika which is still in force.

across-border coordination as it gave a mandate to the President to enter into reciprocal agreements with governments of other countries.<sup>9</sup> Unfortunately, no agreements were entered into pursuant to Act No. 36 of 1964.

Under the current social security system, portability and transferability of social security benefits is non-existent, save in very limited circumstances as provided for in some legislation. Most of the social security schemes in Tanzania, that is to say, PPF, NSSF, PSPF and LAPF do not facilitate labour mobility or the portability of benefits: Where a member of one of these schemes moves from one job to another, in cases where the employers are under different schemes, such as moving from the public service to the private sector and vice versa, the period of time spent and the contributions made under the previous scheme are not taken into account by the later scheme.<sup>10</sup> Nevertheless, PPF does provide for the preservation of the contributory period and the contributions made to it where a member is transferred from a parastatal organisation, which is under the domain of PPF, to the public service, which is the domain of the PSPF.<sup>11</sup> Correspondingly, PSPF also provides for the aggregation of the periods of contributions of a member who moved from the public service to a parastatal organisation so that the member can qualify for a pension under PSPF.<sup>12</sup> Only GEPF provides for the transferability and portability of benefits in limited circumstances.

Under GEPF, the *Provident Fund (Government Employees) Ordinance* of 1942 provides for the preservation and portability of periods of contribution and the contributions made. Section 18 of Cap 51 provides that where a member of GEPF is transferred to a pensionable office, which automatically puts the member under PSPF, his/her contributory periods and the contributions made may be taken into account by PSPF. When PSPF takes over in the above scenario, the *Provident Fund (Government Employees) Ordinance* of 1942 ceases to apply to this member. Likewise, sections 19 and 20 provide for the transfer of the contributions to the social security fund which

<sup>9</sup> See s. 50 of Act No. 36 of 1964, repealed by s. 93(1) of Act No. 28 of 1997.

<sup>10</sup> As summarised by Rwegoshora, "[t]he existence of withdrawal benefits to some of the social security schemes evidences the fact that social security benefits are neither transferable nor portable." Rwegoshora, *op cit*, at p. 30. See also Bodor, *et al*, *op cit*, at pp. 22 and 24. See further Kruse, A., *Social insurance design and globalisation*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at pp. 9 – 13.

<sup>11</sup> See s. 31 of Act No. 14 of 1978.

<sup>12</sup> See s. 24(1) of Act No. 2 of 1999.

will cover the outgoing member of GEPF. The transferred contributions from GEPF would be deemed to have been contributed to the fund receiving the member.

It is clear that in Tanzania social security legislation does not facilitate the application of the principles of labour mobility and freedom of movement for workers, as it does not provide for portability of benefits. The question therefore remains: Why are there restrictions on transferability and portability of social security benefits? Among other reasons, the incompatibility of social security schemes, legal restrictions, and competition among social security institutions are the major reasons for non-transferability and non-portability of social security benefits.

The incompatibility of social security schemes is vividly shown by the diverse groups of people and risks they cover, the levels and number of benefits they offer, and the rates of contributions.<sup>13</sup> In Tanzania, each social security scheme operates independently. Taking the example of rate of contributions, under GEPF, contributions are 25 per cent of the employee's salary: 10 per cent from the employee's salary matched by 15 per cent from the employer. Under PSPF, the contributory rate is 20 per cent of the employee's salary, where the employer contributes 15 per cent while the employee contributes 5 per cent. PPF requires a contributory rate of 20 percent of the employee's salary and offers two options: the contributions can either be 10 per cent each for both the employee and the employer, or 5 percent for the employee and 15 per cent for the employer. Under NSSF, the contributory rate is 20 percent of the employee's salary: both the employer and the employee contribute 10 percent each. It is argued that where there is fragmentation in social security provisioning and each scheme uses different contribution rates, qualifying conditions and benefits regimes in-country coordination may not be easily achieved.<sup>14</sup>

Under the current state of affairs, coordinating these social security schemes is difficult. It is submitted that some of the differences between the schemes need to be reconciled before in-country coordination can be achieved.<sup>15</sup> Under the current situation, while a member may be advantaged by moving from a public scheme to a

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<sup>13</sup> See chapters three and four of this thesis for more details.

<sup>14</sup> See also Bodor, *et al*, *op cit*, at p. 4.

<sup>15</sup> The drafts of the *Social Security Act* of 2005, by both the international experts and the social security institutions, provide for the harmonisation of benefits packages by the existing schemes through the establishment of minimum benefits packages and fixing rates of benefits. See ss. 90(1) and 94(1) of the international experts' version of draft *Social Security Act* of 2005 and ss. 58(2) and 60(1) of the social security institutions' version of draft *Social Security Act* of 2005.

private scheme, he/she may be disadvantaged by changing from private to public or vice versa. This is because the sending scheme might have a lower contributory rate and more benefits offered at high levels, compared to the receiving scheme which may have fewer benefits, higher contribution rates and low levels of benefits.<sup>16</sup>

Another explanation for the non-transferability of social security benefits in Tanzania is competition between the schemes. As indicated, there cannot be any meaningful in-country coordination where the social security schemes operate in different spheres and view each other as rivals and not as institutions providing services to people. For instance, the current state of affairs in Tanzania shows that a private company that may be under NSSF today may belong to PPF tomorrow or vice versa.<sup>17</sup> When such changes occur, the periods of contributions and the contributions made by the members and their employers to either of the schemes as a sending scheme are literally lost; firstly, because of the non-transferability of social security benefits and, secondly, because these social security schemes operate as rivals and on a competitive basis. As we have seen, since each scheme would want to maintain its members, moving out, and moreover, to a rival, means you will lose your period of contributions and any accumulated benefits. The effects are felt even more if even withdrawal benefits cannot be paid because the conditions cannot be fulfilled.<sup>18</sup> In this case where a member of any social security scheme does not satisfy the conditions for withdrawal benefits when leaving a particular scheme, all the contributions made and the periods spent under the sending/prior scheme will be forfeited.

As indicated in the previous chapters, legislation is one of the main causes of non-transferability. Where social security law does not provide for the portability of social security benefits and periods of contributions, it is very unlikely that the scheme will act in defiance of this fact. Additionally, it is the establishing statute of a particular scheme that will state the qualifying conditions, contributory rates and levels of benefits, to mention a few. Accordingly, where the schemes are established

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<sup>16</sup> For differences in terms of number of benefits available and the levels of benefits offered see chapters three and four of this thesis respectively. It should be noted that while the international experts' draft *Social Security Act* of 2005 advocates harmonisation of contributory rates of the employer and employee between one scheme and another, the social security institutions' draft *Social Security Act* of 2005 does not agree with this suggestion and instead stipulates that the contributory rate of the employee and employer will continue to be guided by the respective social security laws.

<sup>17</sup> See part 3.1 of chapter three of this thesis for more details on coverage.

<sup>18</sup> See part 3.3.8 of chapter three of this thesis for more details.

under different legislation, have different qualifying conditions, contributory rates and levels of benefits, any efforts at coordination are doomed to fail.<sup>19</sup> One question needs to be answered: Why do we need coordination between social security schemes in Tanzania?

It is submitted that there is a need to embrace the principles of freedom of movement of workers and portability of their social security rights, *inter alia*, benefits and periods of contribution. To attain social justice, social security laws need to take into account the principles of totalisation of the number of years of service of an employee, rewarding the employee who has contributed to the socio-economic and political development of the country and ensuring that the employee is not prejudiced by the separate social security schemes that exist in the country.<sup>20</sup>

In furtherance of these principles, firstly, it is important that the government recognises its primary duty to protect its citizenry and “to ensure the preservation and promotion of workers’ overall welfare in the pursuit of social justice. Fundamental to this is the provision of social security, particularly in providing a mechanism to ensure full entitlement to meaningful protection against contingencies, as a matter of state policy.”<sup>21</sup> Where there is no totalisation of the number of years of service of an employee, when he/she moves from one job to another, and he/she is subjected to different social security schemes, social justice cannot be attained. However, under the current arrangement, withdrawal benefits may be offered by the previous scheme, and the latter scheme may offer a lump sum payment where the number of years of contributions is insufficient to entitle one to a pension payment.<sup>22</sup> As indicated in chapter four of this thesis, lump sum payments are inadequate to sustain pensioners in the long run. A worker, after consuming the meagre lump sum, will turn to the state for social assistance. It is believed that the responsibility of the state would be minimised if these beneficiaries were well protected and the periods of contributions totalised, as the beneficiaries would qualify for pension benefits under the receiving social security schemes.<sup>23</sup> It is proposed that Tanzania should make sure that the

<sup>19</sup> See the United Republic of Tanzania, *Workshop on Tripartite Governance of Social Security Institutions*, Held in Zanzibar, from 31 January – 3 February 2006, at p. 3.

<sup>20</sup> See part 2.2.3 of chapter two of this thesis for more details on these principles of coordination.

<sup>21</sup> Cruz, *op cit*, at p. 1.

<sup>22</sup> See part 3.3 of chapter three of this thesis for more details.

<sup>23</sup> The draft *Social Security Act* of 2005 by the international experts proposes portability of periods of contribution and contributions made under the sending schemes to the receiving scheme and that “entitlement to benefits from the new fund shall be on pro-rata basis, with the liability to pay for benefits being shared between the old and new fund on a pro-rata basis.” See s. 347. On the other hand,

working population's social security rights are well protected so that the available limited resources are directed to the majority poor who are not covered by any of the social security schemes. Currently, the limited resources are being shared between the poor and the "neglected or not well protected" working population.

Rewarding the employee who has contributed to the socio-economic and political development of the country is a second reason why in-country coordination is important. Workers, in whatever category, have in some ways contributed to the development of the nation they work in, regardless of whether they changed jobs from public to private and vice versa. Thus it is argued that the social security rights of those who changed jobs in their working life should be protected and their contributions honoured.<sup>24</sup> It is this principle which advocates that there should be equality between workers who have changed jobs in the country and those who have never changed jobs. There is a common practice of awarding withdrawal and lump sum payments to the people who change/changed jobs in Tanzania; special reference is made to those who never qualify for long-term benefits under the receiving scheme because the number of years of contributions is insufficient. It is submitted that all workers contribute to the development of the country and there is no justification for protecting those who do not exercise their right to freedom of movement and penalising those who have exercised this right. Once again, the beneficiaries who are not well protected under their social security schemes become a burden to the state at some point. It is better, therefore, to ensure that the working population is well protected and that their protection is guaranteed by the social security schemes which cover them, rather than let the schemes deny them their rights and later they become a burden to the state and the community at large.

Thirdly, it is argued that employees should not be prejudiced by the separate social security schemes that exist in the country. Tanzanian social security is fragmented, encompassing different social security schemes for different and sometimes the same, groups of contributors. As indicated above, the employees who decide to change jobs either lose their contributions made under the previous social security scheme or receive them as withdrawal benefits. This means that their periods

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the social security institutions' draft *Social Security Act* of 2005 restricts movement of persons from one scheme to another, as section 46(c) provides that "...a member who has already been registered should not be allowed to shift and that there should be no shifting from mandatory scheme to a private scheme and vice versa, otherwise there would be no movement from one mandatory scheme to another."

<sup>24</sup> See Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 22 and Cruz, *op cit*, at p. 6.

of contributions are lost or both the periods of contributions and the contributions made are lost.<sup>25</sup>

There are so many reasons why people change jobs; for instance, it could be for the “proverbial greener pastures” or for the diversification of one’s career.<sup>26</sup> Where the law does not expressly prohibit changing jobs, it is submitted that it is unfair to forfeit employees’ social security rights because of the change of jobs. In essence, where membership of social security schemes is compulsory and there are many schemes, and the employee has no choice about which scheme should cover him/her, it is for the government to protect its working population.<sup>27</sup> This argument is premised on the fact that had there been only one social security scheme, the employees would never be subjected to different treatment under different schemes. Therefore, when employees change jobs and are subjected to different social security schemes, the change of jobs operates to their detriment as they cannot recover their social security rights under the previous social security scheme. It is on this basis that this study submits that the fragmented Tanzanian social security system should not prejudice the social security rights of the workers who change jobs and that social security law should provide for the transferability of social security benefits.

Lessons can be drawn from the South African *Pension Funds Act* of 1956 which requires all registered pension funds to transfer benefits to the receiving fund within 60 days.<sup>28</sup> Section 13A(5) of the South African Act No. 24 states that:

When a person who, for any reason [except a reason of amalgamations and transfers, or voluntary dissolution of fund, winding-up by the court] has ceased to be a member of a fund (in this subsection called the first fund), is in terms of the rules of another fund admitted as a member of the other fund and allowed to transfer to that other fund any benefit or any right to any benefit to which such person had become entitled in terms of the rules of the first fund, the first fund shall, within 60 days of the date of such person's written request to it, or, if applicable, within any longer period determined by the registrar on application by the first fund, transfer that benefit or right to the other fund in full.

Consequently, it is submitted that Tanzanian social security law should also provide for the transferability of social security benefits from one scheme to another.

<sup>25</sup> See Pieters, *op cit*, at p. 25.

<sup>26</sup> See Cruz, *op cit*, at p. 2.

<sup>27</sup> Marshall, *op cit*, at p. 48-49.

<sup>28</sup> See N. Jeram, *Introduction to Pensions Law*, South Africa, January 2005, at pp. 56, 68, 72 and 77.

Transferability will ensure protection of social security benefits obtained under the sending fund including the periods of contributions and the contributions made. Preservation of these acquired social security rights will automatically help in the fight against poverty as the beneficiaries who change jobs will be entitled to the same benefits as those who never changed employment and schemes. This is the case for most of the long-term benefits like invalidity/disability, retirement and survivors' benefits which require contributions to have been made for a longer period before one can be entitled to these benefits.<sup>29</sup>

Additionally, the Philippines' social security system offers good lessons to Tanzania's fragmented social security system. In recognition of its role to provide meaningful social protection to retiring workers and their families, the Philippine government enacted the *Republic Act* No. 7699 for "instituting limited portability scheme in the social security insurance systems by totalising the workers' creditable services or contributions in each of the systems."<sup>30</sup> The Act sets out five major conditions for the portability of social security benefits in the Philippines.

Firstly, portability is limited and is applicable to only long-term benefits, namely, old age, disability and death benefits (survivors' benefits) and is only available to members who do not qualify for a pension benefit under any of the schemes.<sup>31</sup> This means that where a member qualifies for a pension under one of the schemes, benefits will only be available from the scheme under which he/she qualifies and there will be no totalisation of social security benefits from other schemes to which he/she might have contributed.

Secondly, each social security scheme has to maintain the member's records so that when the benefits are due, each scheme is able to determine how much it owes the beneficiary.<sup>32</sup> Thirdly, where a member has overlapping periods, such that the member's contributions are credited to two schemes concurrently, that period will be credited to only one scheme.<sup>33</sup> Fourthly, the *Republic Act* No. 7699 provides for the totalisation of periods of contributions regardless of whether a member has changed

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<sup>29</sup> See part 3.3 of chapter three of this thesis for more details.

<sup>30</sup> See *Republic Act* No. 7699 as appendix A to Cruz, *op cit*, at pp. 10-11.

<sup>31</sup> See Cruz, *op cit*, at p. 6. See also SSS Economic Research Department, *Social Security Rights: Acquisition, Maintenance and Enforcement - The Philippine Social Security System Experience*, ISSA Initiative, Strengthening the security in social security - National reports, available at <http://www.issa.int/engl/homef.htm>, accessed on 20 February 2007.

<sup>32</sup> *Ibid.*

<sup>33</sup> *Ibid.*

However, as earlier noted, there are challenges related to incorporating the main principles of in-country coordination. The major challenge is incompatibility of the schemes in terms of the different contribution rates, the inconsistencies in the number of benefits offered and the levels of benefits, to mention a few. As indicated earlier on, the social security schemes in Tanzania have different contribution rates which have a direct impact on the formulae used to determine the levels of benefits.<sup>39</sup> Additionally, the numbers of benefits are different from one social security scheme to another. For instance, if a member moves from PPF to NSSF, he/she moves from a scheme with less benefits to a scheme which offers more benefits; from disability, old age and survivor's benefits being regarded as privileges to invalidity, old age, survivor's, maternity, employment injury and medical care benefits being regarded as rights. The transfer of benefits between these schemes would mean losing your rights for privileges or vice versa. Hence while the one moving from a privilege-centred scheme to a rights-based scheme is placed in an advantageous position, the reverse will be disadvantageous to the moving member.<sup>40</sup> Under these conditions, it is doubtful that transferability of social security benefits will be achieved, because while the latter scheme may be able to provide the benefits to incoming members, the former scheme will only provide benefits available under it and not the full package that the incoming member was entitled to under the previous scheme.

Similarly, differences in qualifying conditions have an adverse impact on the member who is moving from one scheme to another. For instance, where a member is moving from PPF to NSSF or PSPF, the retirement benefits will be delayed because, while the latter schemes require 15 years of contributions prior to entitlement to the benefit, the former requires only 10 years of contributions. This shows that in the absence of the harmonisation of the conditions of social security schemes in Tanzania, many more difficulties will be encountered under the cross-border coordination which involves different social security systems.

The second challenge to effecting the transferability of social security benefits is the economic disincentive. There is a feeling that where schemes cover the same categories of workers, say two schemes covering the private sector, such as the NSSF and PPF, members will keep moving to more generous schemes leaving the less generous schemes with fewer members. This is evidenced by the fact that most of the

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<sup>39</sup> See part 3.3 of chapter three and part 4.1.2 of chapter four of this thesis for more details.

<sup>40</sup> See part 3.3.8 of chapter three of this thesis for more details.

beneficiaries indicated that they wished they had known and were allowed to move between one scheme and another so that they could retire or receive benefits from a scheme other than the one of which they had been members.<sup>41</sup> In this way, portability of social security benefits may work to the detriment of the schemes which offer fewer and lower levels of benefits.

Portability of social security benefits attracts administrative work for both the sending and receiving social security schemes. Yet any problem associated with administrative procedure may attract penalties on the part of the social security schemes, as in a situation where the benefits are delayed because a social security scheme did not transfer the benefits timeously. This can be exemplified by the ruling handed down by the South African Pension Funds Adjudicator in the case of *J ABT v Nedcor Defined Contribution Provident Fund/NEDBANK Group Limited/Old Mutual* where he ordered that the Nedcor Defined Contribution Provident Fund should “pay a former member the highest interest rates permitted for delaying the transfer of his retirement savings to a new fund.”<sup>42</sup> The facts of this case were that the Nedcor Fund delayed transferring the former member’s contributions to the Barclays Provident Fund to which he had moved. The delay caused the Nedcor Fund to “disinvest” his benefits with the Barclays Provident Fund.

A similar scenario could be expected in Tanzania where even the normal disbursement of benefits under one scheme is usually delayed.<sup>43</sup> A worse situation may develop with processing the totalisation of periods of contributions and the transfer of members’ social security benefits between different social security schemes. The delay of benefits, therefore, constitutes the third challenge to achieving the transferability of social security benefits in the current fragmented Tanzanian social security system.

Therefore, despite the urgent need for the transferability and portability of social security benefits in Tanzania, there are challenges involved in incorporating the main principles of in-country coordination. Although these challenges have to be the

<sup>41</sup> About 76 per cent of the 37 interviewees in the category of beneficiaries indicated that they would have wanted to contribute to different schemes than the ones covering them now so as to receive “handsome” benefits.

<sup>42</sup> Determination of May 2006, Ref. No. PFA/GA/1016/2005/LCM. See also “*Landmark ruling sets precedent for duns failing to transfer benefits on time*,” *South African Business Day*, 12 May 2006. Accessed through <http://www.businessday.co.za/Articles/Tarkrticle.aspx?ID=2042386>, on 12 May 2006.

<sup>43</sup> See chapter six of this thesis for more information on the delay of benefits.

focus of the government's social security reform agenda, Tanzania needs to balance in-country coordination with social security coordination at regional and international levels.

## 5.2. COORDINATION OF SOCIAL SECURITY ACROSS BORDERS

Cross-border social security coordination involves cooperation between different social security systems to protect the social security rights of migrant workers who move between the coordinating countries. As the focus of cross-border social security coordination is the protection of migrant workers, it refers to a "migrant's ability to preserve, maintain and transfer acquired social security rights independent of nationality and country of residence."<sup>44</sup> Coordination at this level involves application of bilateral and multilateral agreements to different social security systems.

Tanzania is not a party to the main ILO Conventions on the protection of the social security rights of migrant workers, stateless persons and refugees. These include ILO Convention Nos. 102, 118 and 157. ILO Convention No. 102 provides that non-national residents have the same social security rights as national residents provided there are bilateral or multilateral agreements between the sending and receiving countries.<sup>45</sup> Nonetheless, Tanzania is a party to the *Migration for Employment Convention* of 1949.<sup>46</sup> Article 6 (1)(b) provides that:

Each Member for which this Convention is in force undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, treatment no less favourable than that which it applies to its own nationals in respect of the following matters:

(b) social security (that is to say, legal provision in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities, and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

- (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;
- (ii) national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or

<sup>44</sup> [http://en.wikipedia.org/wiki/portability\\_\(social\\_security\)](http://en.wikipedia.org/wiki/portability_(social_security)), last accessed on 16 May 2006.

<sup>45</sup> See part 2.2.3.2 of chapter two of this thesis for more details on these Conventions.

<sup>46</sup> ILO Convention No. 97. Tanzania ratified this Convention on 22 June 1964.

portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

By virtue of this Convention, Tanzania is obliged to provide some kind of social security protection to migrant workers, irrespective of the reciprocity of treatment of the Tanzanians who migrate to the country the nationals of which are in Tanzania as migrants. Thus, migrant workers are entitled to social protection subject to the host country's national laws. Therefore, the NSSF allows migrant workers to become members,<sup>47</sup> and the employers of foreign nationals remit contributions to the NSSF as they do for Tanzanian nationals.<sup>48</sup> Similarly, as refugees are allowed to work in Tanzania, it is assumed that they are also well covered by the social security schemes, depending on the area in which they work.<sup>49</sup> The questions remain: Are migrants and refugees allowed to take their benefits with them upon their return to their home countries? What arrangements are in place?

There are two pertinent issues that arise from this state of affairs. Firstly, as long as there are no bilateral or multilateral agreements in place between Tanzania and any receiving country, the returning migrant worker or refugee will be entitled only to a lump sum payment.<sup>50</sup> The question whether the lump sum benefits will help the beneficiary in his/her home country will not be dealt with at length here as it falls

<sup>47</sup> See s. 6 of Act No. 28 of 1997 which defines an insured person as "[e]very person ...who is employed in the private sector..." Most of the migrant workers are employed in the private sector, and they are therefore covered by the NSSF. PSPF indicated that they do not cover migrant workers because if they do work in the public service, they do so on a contractual basis and therefore are automatically excluded. However, migrant workers can contribute to the GEPF which covers non-pensionable public servants. Information based on a personal interview with one of the managerial officers of PSPF, *op cit*.

<sup>48</sup> See s. 16 of the *Immigration Act* of 1995, Act No. 7 which provides for the employability of foreign nationals in Tanzania. Also based on a personal interview with foreign nationals working with KPMG-Tanzania on 3 March 2006 in Dar es Salaam (See Appendix A of this thesis). Additional information is based on a personal interview with Mr. Shemliwa, on 9 January 2006, *ante*. (See footnote no. 211 of chapter three).

<sup>49</sup> See s. 32 of the *Refugees Act* of 1998, Act No. 9. This section provides that a refugee may be granted a work permit for his/her qualification. Since it does not state which categories of work are available to a refugee, it may be concluded that he/she can be employed in any sector. See also Article 24 of the *United Nations Convention Relating to the Status of Refugees* of 1951, of which Tanzania is a State Party through ratification effected on 12 May 1964 for the Convention and 4 September 1968 for the 1967 Protocol Relating to the Status of Refugees.

<sup>50</sup> A similar position is envisaged by Article 27(2) of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* of 1990 which provides for the reimbursement of a migrant worker's contributions if he/she does not qualify for benefits in a host country. See also Article 6(1)(b) of the *ILO Convention on Migration for Employment (Revised)* No. 97 of 1949.

outside the scope of this study.<sup>51</sup> Nonetheless, one thing is worth mentioning, which is that the adequacy of the payment will depend largely on which countries are the sending and receiving countries. For instance, while a worker from Tanzania who is heading to Malawi may find the benefits sufficient, a worker heading to South Africa from the same destination may find that the benefits are very low as the cost of living is much higher and the economy of the latter is stronger than those of the two former countries.<sup>52</sup>

From a different perspective, the fate of migrant workers returning to Tanzania is unknown as Tanzania has not signed any bilateral agreement regarding the portability and transferability of social security benefits. Most likely, they will also be entitled to lump sum payments which are depleted quickly as the benefits are used to build houses and to make a new beginning rather than serving their purpose of sustaining the life of the beneficiary and his/her family.<sup>53</sup> Likewise, the adequacy of the social security benefits would depend on which country the Tanzanian is returning from. To use the previous example, while a returning Tanzanian may find the benefits awarded in South Africa sufficient, a Tanzanian returning from Malawi may find that the benefits are grossly inadequate. This dilemma constitutes the second problem posed by the non-existence of bilateral or multilateral social security agreements.

However, despite the fact that Tanzania is not a party to any of the main ILO conventions on cross-border coordination, there are obligations which Tanzania owes to other nations with which she has entered into multilateral agreements, including countries belonging to the East African Community and the Southern African Development Community. There are efforts, however, to enter into bilateral agreements with other countries.<sup>54</sup>

### 5.2.1. Bilateral agreements

Most of the statutes establishing the existing social security schemes in Tanzania do not provide for the possibility of entering into bilateral agreements. The

<sup>51</sup> For adequacy of social security benefits in Tanzania, see the previous chapter of this thesis.

<sup>52</sup> The Gross Domestic Product (GDP - purchasing power parity) is \$534.6 billion, \$26.85 billion, and \$7.645 billion for South Africa, Tanzania, and Malawi respectively. See <http://www.indexmundi.com>, last accessed on 1 June 2006.

<sup>53</sup> Personal interviews with the social security administrators, *op cit.* (See footnote 22 of chapter four of this thesis).

<sup>54</sup> For more information on bilateral agreements, see part 2.2.3.2.1 of chapter two of this thesis. See also the *Agreement between the United Republic of Tanzania and the Kingdom of Netherlands on the Export and Enforcement of Social Security Benefits*. (By February 2006, it was not yet into force.)

only exception is the *National Social Security Fund Act* of 1997 which provides that “[t]he Government of Tanzania may enter into a reciprocal agreement with the Government of any other territory in which a scheme similar to the scheme has been established...”<sup>55</sup> At present, Tanzania has no bilateral agreement in force with any country. Nevertheless, there are efforts to enter into bilateral agreements with some countries, including the Netherlands, Kenya, Uganda, South Africa, India, the United Kingdom and Zanzibar.<sup>56</sup> Why are there no bilateral agreements in Tanzania?

Firstly, as was pointed out in chapter three, social security coverage in Tanzania is still minimal and is at times shrinking. Only a few people are covered by the existing social security schemes, and thus it is unjust for Tanzania to enter into bilateral agreements to protect only a small fraction of employees in the formal sector. Since bilateral agreements require reciprocity in terms of the treatment of the nationals of the parties to the agreement, it would be disadvantageous to Tanzania to provide protection for migrant workers from other countries while coverage of Tanzanian nationals is still very low.<sup>57</sup>

Secondly, the compatibility of the two contracting social security systems as a requirement for bilateral agreements is another challenge for the Tanzanian social security system. The Tanzanian social security system is very fragmented and apparently the social security schemes scramble for customers and contributors.<sup>58</sup> The schemes have different operational rules, contributory rates, qualifying conditions, and numbers and levels of benefits. It is doubtful that bilateral agreements can work in Tanzania where there are inconsistencies even between the schemes within the country. This is the third reason why there are no bilateral agreements in Tanzania.

However, it is submitted that bilateral agreements in respect of social security are possible and could be entered into by Tanzania. Tanzania is not the only country which has a fragmented social security system, at least in sub-Saharan Africa. The same problems are experienced by Kenya, Uganda and South Africa, to give a few examples.<sup>59</sup> As indicated earlier on, the main problem with the Tanzanian social

<sup>55</sup> See s. 92(1) of Act No. 28 of 1997.

<sup>56</sup> See National Social Security Fund, *Brief Report of the Reciprocal Agreement Between the United Republic of Tanzania and the Kingdom of Netherlands on the Export and Enforcement of Social Security Benefits*, (undated), at p. 5.

<sup>57</sup> See part 2.2.3.2.1 of chapter two of this thesis for more details.

<sup>58</sup> See chapter six of this thesis for more details on fragmentation.

<sup>59</sup> See Dau, R. K., “Trends in social security in East Africa: Tanzania, Kenya and Uganda,” *International Social Security Review*, Vol. 56, Nos. 3-4, 2003, pp. 25 – 37 and Olivier and Kalula, “Scope of Coverage” in Olivier, Smit and Kalula, 2003, *op cit*, pp123-147 at p. 138, where it is stated

security system is that there are no portability measures, neither within the country nor across its borders. Malawi and Zambia have entered into a bilateral agreement on the maintenance and portability of social security benefits, so it is believed that Tanzania can also enter into bilateral agreements with other SADC countries, the EAC and other countries.<sup>60</sup> South Africa has entered into bilateral agreements with Lesotho, Malawi, Botswana, Swaziland and Portugal.<sup>61</sup> The commitment of the South African government towards coordination in general is manifested by Article 231 of the Constitution,<sup>62</sup> which provides that an international agreement binds the Republic of South Africa provided it has been approved by the competent bodies.

It is submitted that Tanzania should enter into social security bilateral agreements with other countries as South Africa has done, because Tanzania's commitment to international law is not radically different from the South African example. Article 63(3)(e) of the URT Constitution of 1977 gives a mandate to Parliament to ratify all treaties and agreements to which the United Republic of Tanzania is a party, and thereafter to enact an Implementation Act or enact legislation incorporating international treaties without using the title Implementation Act.<sup>63</sup> However, the Court of Appeal of Tanzania has indicated that even where an Implementation Act is not enacted by Parliament for a ratified international treaty, ratification is sufficient to bind the Tanzanian government. This was the position in the case of *Transport Equipment Limited and Reginald John Nolan v. Devram P. Valambhia*<sup>64</sup> where it was held that the fact that an international agreement to which Tanzania is a party is not incorporated into the Tanzanian law does not absolve the government of the duty to adhere to its undertakings in that agreement.

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that in South Africa there are about 16000 retirement funds in operation and they cover different groups of people, with different types of rules, some of them being pension funds and some provident funds.

<sup>60</sup> For more details about the Zambia/Malawi bilateral agreement, see chapter two of this thesis.

<sup>61</sup> Republic of South Africa, Treaty Series No.1/1973, Treaty Series No. 10/1967, Treaty Series No. 3/1973, Treaty Series No. 3/1986, Treaty Series No. 11/1964, respectively. See also Malherbe, K., "The Co-ordination of Social Security Rights in Southern Africa: Comparisons with (and possible lessons to be learnt from) the European Experience," *Law, Democracy & Development*, Vol. 8 No. 1, 2004, pp. 59 – 84, at p. 68.

<sup>62</sup> Act No. 108 of 1996.

<sup>63</sup> P. J. Kabudi, *The Role of the Judiciary in the Protection of the Environment in Tanzania*, A Paper presented to the Judges' course on Constitutionalism and Human Rights at Dar es Salaam, 21 September – 2 October 1998, at p. 11. See also Peter, C.M., *Human Rights in Tanzania: Selected Cases and Materials*, Koeln, Ruediger Koeppel Verlag, 1997, at p. 155 where it is stated that international agreements are not self-executing and there has to be an Act of Parliament to make them operative.

<sup>64</sup> Court of Appeal of Tanzania at Dar es Salaam, Civil Application No. 19 of 1993 (Unreported).

As such, consistent with the view of constitutionalising the right to social security, through reflecting on the South African experience, it is recommended that coordination should also be prioritised and constitutionalised through the recognition of the need to make signed and ratified international agreements binding. The two provisions are analogous because there can be no meaningful social security provisioning where people keep losing their periods of contributions and accumulated contributions as they move from one job to another or from one country to another. Therefore, protection of people's acquired benefits and periods of contributions will ensure that every worker in the SADC and EAC has, at the time of retirement, adequate benefits enabling him/her to live a decent life.<sup>65</sup>

It should be noted, nonetheless, that bilateral agreements involve several risks including administrative problems, discrimination against migrants and the marginalisation of immigrants in the host country. These problems are a result of the fact that each bilateral agreement may require different standards of treatment for the nationals of the countries with which one country has entered into bilateral agreements. Also, multiple agreements will require different and specialised enforcement mechanisms for different nationals within a host country. The host country by and large will be affected by the existence of many bilateral agreements as they will all require special attention and different enforcement and treatment of the nationals covered.<sup>66</sup> Bilateral agreements can therefore lead to discrimination against nationals of different countries as they will receive different treatment according to the agreements concluded by their respective countries based on the principle of reciprocity. As Paparella summarises:

The principle of reciprocity has proved insufficient to guarantee adequate protection for immigrant workers in host countries. The social security systems of most countries of provenance are underdeveloped and not comparable with those of the immigrant countries. Moreover, the reciprocity principle effectively hampers the application to immigrant workers of many of the social security provisions that have evolved in host countries in the course of the past century. The application of this principle not only gives rise to inequalities between immigrant workers and native workers

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<sup>65</sup> For SADC, see Article 8(a) of the *Social Charter of Fundamental Social Rights* in the SADC of 2003.

<sup>66</sup> See Paparella, *op cit*, at p. 13 where it is stated that "[t]he documentation required for access to pension and welfare benefits differs greatly from country to country, which renders co-operation among social security institutes problematic."

but also produces further inequalities among the immigrant workers themselves. The first of them is the disparity between immigrants from countries which have stipulated conventions with the host country and immigrants workers from countries which have not. Inequalities may, moreover, arise among immigrant workers from countries which have stipulated conventions. This is because some emigrant countries have well-developed social security systems, so that the reciprocity principle works efficaciously, whilst others have less developed systems, with the result that workers from those countries are ineligible to important benefits provided by the host country.<sup>67</sup>

Similarly, immigrant workers may not be able to benefit from the developments in a social security system that may occur over time, because “[t]he evolution of social security policies in immigrant countries does not usually involve the revision and adjustment of bilateral agreements, with the consequent risk that the disparities in access to benefits between immigrants and native workers will increase even further.”<sup>68</sup> In response to these problems of bilateral agreements, Paparella suggests that:

“[h]ost countries should...enact legislation even on a unilateral basis, whereby immigrant workers are made eligible for the pensions and welfare benefits provided by law for national solely on the basis of the existence of an insurance relationship and their legal stay in the host country.”<sup>69</sup>

It is submitted that Tanzania should consider the primary aim of bilateral agreements, which is the protection of migrant workers from the loss of social security rights. Therefore, where bilateral agreements do not serve this purpose, unilateral measures should be adopted as suggested by Paparella.

Therefore, despite the problems associated with bilateral agreements, it is proposed that the Tanzania should consider entering into bilateral agreements with other countries, especially countries that employ or host most of the emigrants from Tanzania, like South Africa, Kenya, Uganda, India, the United Kingdom and

<sup>67</sup> Paparella, *op cit*, at p. 10.

<sup>68</sup> *Ibid*, at p. 13.

<sup>69</sup> Paparella, *op cit*, at p. 15. See also Malherbe, *op cit*, at p. 81 who disputes the effectiveness of unilateral measures to cover migrant workers; instead, she argues that bilateral agreements should be preferred.

Zanzibar.<sup>70</sup> As was argued in chapter two, the problems related to bilateral agreements can be minimised by the adoption of multilateral agreements instead.<sup>71</sup>

### 5.2.2. Multilateral agreements

Multilateral agreements in as far as social security is concerned are primarily concluded to deal with the *mischief* associated with the principle of territoriality and nationality. The principle of territoriality states that social security legislation applies only to the country which made it.<sup>72</sup> The main problem involved with this principle is that social security legislation will not cover people leaving the territory in which the legislation applies which means that they will lose the social security benefits to which they would otherwise be entitled had they remained in the same territory.<sup>73</sup>

The effects of this principle in Tanzania can be exemplified by PSPF which provides for withdrawal benefits for Tanzanian emigrants who are able to prove that they are leaving Tanzania permanently.<sup>74</sup> The withdrawal benefits awarded to the emigrating Tanzanian consist of only his/her contributions, thus excluding the contributions made by the employer and the periods of contributions, let alone other benefits that he/she would be entitled to under the same scheme.<sup>75</sup> It is submitted that although the problems associated with withdrawal benefits are numerous, forfeiture of the employer's contributions upon awarding emigration-based withdrawal benefits is unjustifiable, and contributes to inadequacy of benefits. The adoption of multilateral agreements in social security could solve the problems of loss of benefits and periods of contributions.

<sup>70</sup> See National Social Security Fund, *Brief Report of the Reciprocal Agreement Between the United Republic of Tanzania and the Kingdom of Netherlands on the Export and Enforcement of Social Security Benefits*, (undated), at p. 5.

<sup>71</sup> Surprisingly, while part 3.7 of the *National Social Security Policy* of 2003 provides that "[l]egal mechanisms shall be developed to provide for reciprocal agreements with other countries for transfer of social security benefits," the draft *Social Security Act* of 2005 by the social security institutions provides for the portability of social security benefits between the Tanzania mainland and Zanzibar, and between the Tanzania mainland and other countries, but it does not provide for coordination as such. The draft *Social Security Act* of 2005 by the international experts, however, provides for coordination between Tanzania and other countries in terms of bilateral and multilateral agreements. See ss. 47 and 347 respectively.

<sup>72</sup> See Malherbe, *op cit*, at p. 60.

<sup>73</sup> Malherbe, *op cit*, at p. 60.

<sup>74</sup> See ss. 15(1)(a) and 49(1)(d) of Act No. 2 of 1999. Similarly, section 23 of the South African *Compensation of Occupational Injuries and Diseases Act* of 1993, Act No. 130 provides that only accidents which occur to South African employees who are temporarily outside the country are covered and the section excludes employees who are outside the country for more than twelve months.

<sup>75</sup> See part 3.3 of chapter three of this thesis for more details on other benefits offered by PSPF.

The principle of nationality states that priority should be given to nationals of a particular state excluding those who do not belong to it.<sup>76</sup> In social security, the effect of this principle includes “less favourable benefits to non-nationals or even outright exclusion of foreigners from social security benefits.”<sup>77</sup> It should be noted, on the one hand, that the Tanzanian social security system does not expressly exclude the application of social security law to migrant workers.<sup>78</sup> On the other hand, there are no express provisions in social security law to provide for the protection of migrant rights. It is submitted that Tanzania has some obligations to protect migrant workers since it is a party to the *ILO Migration for Employment Convention (Revised)* of 1949 and the *International Covenant on Economic, Social and Cultural Rights* of 1966 which provide for protection against discrimination on the basis of, among other things, nationality, and the latter gives leeway to developing countries to determine how they can extend socio-economic rights, which include social security, to non-nationals.<sup>79</sup>

These two principles are the causes of the problems experienced in social security systems in Tanzania where migrant workers are more or less left without any social protection. This shows that in the absence of bilateral or multilateral agreements, migrant workers are left at the mercy of the host countries and the employers to determine their entitlement to social security benefits. Writing in the Southern African Development Community context, Olivier and Kalula note that:

The social security law position of SADC citizens, migrating within the SADC region, is poorly regulated. It would also appear, barring a limited number of exceptions, that SADC member states are not yet linked to the network of bilateral and multilateral Conventions on the co-ordination of social security. This may operate to the disadvantage of SADC citizens, both when they take up temporary or permanent employment or residence in other SADC countries, as well as when they return home after working as migrants elsewhere in the region. The situation leaves migrating SADC citizens marginalised, owing to their exposure to the largely nationality-based social security systems of most of the SADC member states.<sup>80</sup>

<sup>76</sup> See Malherbe, *op cit*, at p. 60.

<sup>77</sup> Malherbe, *op cit*, at p. 60.

<sup>78</sup> See part 5.2 of this chapter.

<sup>79</sup> See Article 6(1)(b) of Convention No. 97, and Articles 2(2) and 2(3) of the *International Covenant on Economic, Social and Cultural Rights* of 1966.

<sup>80</sup> Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at p. 669.

Multilateral agreements protect migrant workers through imposing obligations on the state parties to the agreements to observe principles of cross-border coordination, which include equality of treatment, export of benefits, totalisation of periods of coverage, data on availment and mutual administrative assistance.<sup>81</sup> The principle of mutual administrative assistance embraces the determination of the applicable legislation, maintenance of rights in the course of acquisition, and maintenance of acquired rights. One question still remains: Why does Tanzania need to observe these coordination principles?

Tanzania is a member of two regional cooperation initiatives: SADC and the East African Community. Under SADC, Tanzania is duty-bound to create a good environment for the realisation of the obligations under the *Social Charter of Fundamental Social Rights* adopted in 2003, which include the promotion of the establishment and harmonisation of social security schemes.<sup>82</sup> The need for coordination between the SADC member states is further emphasised by the adoption of the *SADC Protocol on the Facilitation of Movement of Persons* of 2005.<sup>83</sup> This Protocol provides that “[a] citizen of a State Party who acquires residence or establishment in the territory of another State Party shall enjoy those rights and privileges as determined by the laws of a host State and shall also fulfil his or her obligations, accordingly.”<sup>84</sup> This means that Tanzania is required to observe and guarantee social security rights, among other rights, to the migrant workers from other SADC countries just as other SADC member countries would do to the emigrating Tanzanians. In the absence of “two way traffic” coordination in social security, host countries may be reluctant to provide protection to migrant workers from sending countries which do not treat their emigrants in the same way.<sup>85</sup>

The EAC Treaty requires Tanzania to adhere to the principles of social justice as one of the main commitments for ensuring social welfare for the citizens of the Partner States.<sup>86</sup> Article 104 provides that “[t]he Partner States agree to adopt measures to achieve the free movement of persons, labour and services and to ensure

<sup>81</sup> See chapter two of this thesis for more details on these principles.

<sup>82</sup> See Article 2 of the *Social Charter of Fundamental Social Rights* of 2003.

<sup>83</sup> [http://www.sadc.int/english/documents/legal/protocols/facilitation\\_of\\_movement.php#contents](http://www.sadc.int/english/documents/legal/protocols/facilitation_of_movement.php#contents), last accessed on 4 June 2006. See also Articles 5(1)(a) and 5(2)(a) of the SADC Treaty of 1992 and Olivier, 2001, *op cit*, at p. 10.

<sup>84</sup> See Article 20 of the *SADC Protocol on the Facilitation of Movement of Persons* of 2005. By 2007, only one country had ratified the Protocol.

<sup>85</sup> See Fultz and Pieris, 1997, *op cit*, at p. 14.

<sup>86</sup> See Articles 3(3)(b) and 7(2) and 120 of the EAC Treaty of 1999.

either bilateral or multilateral agreements between countries. Social protection and adequacy of social security benefits can be guaranteed only where there is coordination, because immigrant workers will then have similar rights to those of workers in their host country on the basis of the agreements in place. The principles of totalisation of periods of contribution, exportability of contributions and benefits, maintenance of acquired rights and rights in acquisition will ensure adequate benefits if the workers are resident in the member states to the agreement. Olivier and Kaseke note that:

...not being linked to the network of bilateral and multilateral conventions on the coordination of social security may operate to the disadvantage of both SADC and EAC citizens, when they take up temporary employment or residence in other SADC or EAC countries and also when they return home after working as migrants elsewhere in the region. This leaves migrant citizens marginalised owing to their exposure to the largely nationality-based social security system of most of the SADC and EAC member states.<sup>91</sup>

Therefore, when Tanzania enters into coordination agreements with other countries, the emigrating Tanzanians will be protected against loss of their social security benefits either upon their return to Tanzania or even when they leave the country, as is currently the case.<sup>92</sup> In relation to SADC, Olivier states that the need for coordination:

flows from the extreme poverty in certain SADC countries, the vast number of those who are presently excluded from protection, the emphasis in the SADC Treaty on poverty alleviation and social welfare, and the focus in the Social Charter of Fundamental Rights on a decent standard of living for (ex) employees and adequate social assistance to (at least) those who retire.<sup>93</sup>

In the absence of coordination, the end of poverty for returning and emigrating Tanzanians cannot be achieved as their periods of contributions and accumulated benefits will be lost. Thus their protected right of freedom of movement within both SADC and EAC countries will be curtailed. Loss of social security benefits because

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Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 3.

<sup>91</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 69.

<sup>92</sup> See part 3.3 of chapter three of this thesis where it is noted that withdrawal benefits are offered to Tanzanians who are emigrating to other countries.

<sup>93</sup> Olivier, 2001, *op cit*, at p. 21.

of migration, on the face of it, is contrary to one of the SADC Treaty objectives which is to “achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the people of Southern Africa and support the socially disadvantaged through regional integration.”<sup>94</sup> Thus the “potential loss of social security benefits represents a major impediment to the supposedly free movement of persons.”<sup>95</sup>

Apart from the fact that Tanzania can enter into bilateral and multilateral agreements, it is submitted that the greatest priority for ensuring effective social security coordination should be to ratify the ILO core social security instruments.<sup>96</sup> These instruments include the ILO *Convention on Social Security (Minimum Standards)* of 1952, the *Equality of Treatment (Social Security) Convention* of 1962,<sup>97</sup> the *Equality of Treatment (Accident Compensation) Convention* of 1925,<sup>98</sup> and *Maintenance of Social Security Rights Convention* of 1982.<sup>99</sup> In the view of this study, the ratification and signing of the mentioned treaties will keep pace with the growing “interdependence in the [SADC and EAC] region[s], and the more extensive migration of the region’s workers and residents” as an indicator of the urgent need to act on social security coordination.<sup>100</sup> Therefore, member states of both SADC and EAC should ratify these important conventions.

However, there are challenges associated with the need for coordination. The major challenge for coordination of social security is the incompatibility of social security systems as “social security arrangements in most of the countries either in SADC or the East African Community (EAC) are dissimilar and often nationality- or citizenship-based, implying that there is loss of entitlement when crossing borders.”<sup>101</sup> The incongruity between the systems is vividly shown by the diverse designs of social security schemes in different countries, differences in quality of benefits, differences

<sup>94</sup> See Article 5(1)(a) of the SADC Treaty of 1992.

<sup>95</sup> See C. Reyes, *European Portability Rules for Social Security Benefits and their Effects on the National Social Security Systems*, International Tax Coordination, Discussion Paper No. 1, at p. 2. Accessed through [http://www2.wu-wien.ac.at/taxlaw/working\\_paper1.pdf](http://www2.wu-wien.ac.at/taxlaw/working_paper1.pdf), on 16 May 2006.

<sup>96</sup> See Article 5 of the *Social Charter of Fundamental Social Rights* in the SADC of 2003 which requires SADC member states to ratify ILO Conventions. See also Gillion, *op cit*, at p. 36 where it is noted that “[t]he standards are not immutable, having been changed a number of times in the history of the ILO, nor have they been ratified by all countries, but they nevertheless provide a comprehensive view of what the world community regards as an acceptable basis.” (Emphasis added).

<sup>97</sup> Convention No. 118.

<sup>98</sup> Convention No. 19.

<sup>99</sup> Convention No. 157.

<sup>100</sup> Malherbe, *op cit*, at p. 59.

<sup>101</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 69.

in the funding and eligibility criteria, to mention a few. These differences between social security systems, in some instances, have led to inefficiency and counter-intuitiveness of portability of social security benefits.<sup>102</sup>

The diversity of designs of social security systems in EAC and SADC countries poses another challenge for coordination. The diverse nature "makes it difficult to develop baseline standards for the region and to adopt measures to coordinate the various country social security systems."<sup>103</sup> Social security designs in EAC and SADC range from defined contributions, defined benefits, mandatory, voluntary, contributory to non-contributory social security systems or a combination of these designs in a single jurisdiction.<sup>104</sup>

Coordination can be administered easily among the contributory social security systems as it will depend on one's contributions and the periods of contributions spent under different schemes.<sup>105</sup> On the other hand, coordination may not be easy for state-funded social security benefits like those under social assistance programmes.<sup>106</sup> Therefore, the different designs that exist in countries of the EAC and SADC make the achievement of coordination difficult. The difficulties are a result of the fact that harmonisation of social security laws in both regional initiatives is not an easy task "because of very diverse living standards and long traditions and acceptance of the national social security systems."<sup>107</sup> Each country has its own unique history that has shaped social security provisioning and countries are at different levels of development.<sup>108</sup> As Olivier and Kalula state:

...some countries, such as Mauritius, have fairly well-developed social security systems, whereas other countries have largely underdeveloped systems of social protection. There is a need, therefore, to develop approaches in order to adequately regulate social protection on a regional level.

<sup>102</sup> See Reyes, *op cit*, at p. 6. The example given here is "[to] draw benefits according to German rules (eligibility criteria, extent of benefits) and to have the costs covered by the Spanish system while contributing to the German system."

<sup>103</sup> Olivier, 2001, *op cit*, at p. 10. See also Olivier and Kalula, "Regional Social Security," in Olivier and Kalula, 2003, *op cit*, at pp. 663 and 673.

<sup>104</sup> See the Social Security Administration, *Social Security Programmes throughout the World – 1997*, Office of Research, Evaluation and Statistics, Research Report No. 65, SSA Publication No. 13-11805, August 1997. See also the 2004-2005 Research Report available at <http://www.ssa.gov/policy/docs/progdesc/ssptw>, accessed on 21 May 2006.

<sup>105</sup> See Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at pp. 54-55.

<sup>106</sup> See Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 55, Olivier, 2001, *op cit*, at p. 19, Malherbe, *op cit*, at p. 73, and Olivier and Kalula, "Regional Social Security," in Olivier and Kalula, 2003, *op cit*, at p. 669.

<sup>107</sup> Reyes, *op cit*, at p. 8. See also Malherbe, *op cit*, at p. 70.

<sup>108</sup> Olivier, 2001, *op cit*, at p. 22.

Such regional regulation must, however, take cognisance of inter-country differences, such as differences in levels of development or resources and social and cultural differences.<sup>109</sup>

Following from this, it is submitted that SADC and EAC should concentrate on developing baseline minimum standards for adoption by the regions, rather than harmonisation. Nevertheless, it is submitted that "one should leave some room for adopting different (national) yardsticks, at least initially, to measure compliance with the said standards. Practically this would mean that a particular member state's socio-economic situation has to be considered when compliance is measured."<sup>110</sup> It is also proposed that there should be a body established to oversee the enforcement of bilateral and multilateral agreements within the state parties to the agreements,<sup>111</sup> because each country will have to take responsibility for providing social security protection to migrant workers from other member states that protect its own emigrants. In this way, Tanzanians emigrating within SADC and EAC will be protected against loss of their social security rights and, at the same time, migrant workers in Tanzania will also be protected on the basis of the established standards. The minimum standards will minimise the impact of differences that exist between one system and another to the detriment of the migrant workers in the region. Without this, some host countries may avoid their responsibilities while placing a huge burden on other host countries that treat their migrant workers well while their emigrants are not protected. Fultz and Pieris succinctly state that:

A major barrier to the realisation of these benefits is an economic disincentive that confronts governments in the region, discouraging them from extending protection to migrants in the absence of parallel action by other governments. Known as a Prisoner's Dilemma, this disincentive exists because each government can realise the maximum benefit for itself and its citizens (including those who migrate) if it declines to extend social protection to migrants while neighbouring governments do so. This outcome is optimal from each individual government's perspective because it minimises its own social protection expenditures while enabling it to benefit from others' expenditure for its migrant workers. Yet if every government withholds social protection on the expectation that others will

<sup>109</sup> Olivier and Kalula, "Regional Social Security," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at pp. 662 and 668.

<sup>110</sup> Olivier, 2001, *op cit*, at p. 22.

<sup>111</sup> See Article 21 of the Draft Text of the *Code on Social Security in the SADC* of 2004.

provide it, migrants will be essentially unprotected, disadvantaging all parties. In this situation, the most promising approach to extending benefits is government-to-government agreements which bind all parties to coordinated action.<sup>112</sup>

Differences in the quality of benefits is another area where there are inconsistencies between member states of SADC and EAC. It is argued that with the adoption of the principle of freedom of movement for the workers within the member states, the member states that have better social security provisioning are more likely to attract an influx of migrant workers than those with poor social security systems.<sup>113</sup> Therefore, it is advised that there should be control mechanisms within the member states to ensure that each member state takes the responsibility to provide adequate benefits to both its nationals and migrant workers. This is in line with Article 10 of the SADC *Social Charter of Fundamental Social Rights* of 2003 which states that:

SADC Member States shall create an enabling environment such that every worker in the SADC Region shall have a right to adequate social protection and shall, regardless of status and the type of employment, enjoy adequate social security benefits. Persons who have been unable to either enter or re-enter the labour market and have no means of subsistence shall be able to receive sufficient resources and social assistance.

Following from the diversity of designs, it is suggested that the body established to oversee compliance with the baseline standards should also monitor adequacy of benefits within the member states to the agreements.<sup>114</sup> Taking into account the coordination principles of totalisation of periods of contributions and maintenance of acquired rights, it is believed that the provision of adequate protection is possible where all member states commit themselves to honouring their bilateral and multilateral agreements. To begin with, Olivier and Kalula, again writing in the SADC context, suggest that:

Given the diversity of schemes in the region, as a starting point one would have to identify those areas where common elements are present. Employment injury schemes could be

<sup>112</sup> Fultz and Pieris, 1997, *op cit*, at p. 14.

<sup>113</sup> See Olivier and Kalula, "Regional Social Security," in Olivier and Kalula, 2003, *op cit*, at pp. 655, 660 and 676. In SADC, the general trend has been for people coming from different countries within the region to look for better-paying jobs in Botswana, Namibia and South Africa. It is feared by some that a similar trend will occur if/when SADC is "immigration barrier-free."

<sup>114</sup> See Reyes, *op cit*, at p. 5.

the ideal first candidate. These schemes are present in all the member states, sometimes as a public system, sometimes outsourced to private insurers, and sometimes treated as an individual employer liability.<sup>115</sup>

Likewise, it is argued that differences in the quality of benefits can negatively affect migrant workers who would have wanted to return to their home countries as “the benefit levels reflect the specific cost of care in the country in which a scheme operates. If the person received benefits reflecting the cost of care in the country of origin, prices in the destination country ... might be lower or higher.”<sup>116</sup> As such, “[c]ountries may end up systematically ‘overpaying’ or ‘underpaying’ for individuals joining or leaving their social security systems.”<sup>117</sup> It is submitted that while the benefits obtained in one country may be sufficient in that same country, the benefits may be grossly inadequate when compared to the country of origin.<sup>118</sup> In view of this, Reyes suggests that “[i]f the individual might return to his or her home country it might make sense to go on paying contributions to the [home social security] system.”<sup>119</sup> However, this suggestion assumes that the home country is better placed economically than the host country, which is untrue of most of the developing countries in the SADC and EAC. In addition, the suggestion is feasible only where there are unilateral measures in place, allowing the emigrants to contribute to home social security institutions.<sup>120</sup>

Differences in the funding and eligibility criteria between social security systems also form part of the incompatibility challenge.<sup>121</sup> As noted earlier, in some countries social security is non-contributory while in others it is contributory. Similarly, qualifying conditions for one to receive social security benefits are different from one country to another. The applicability of the coordination principles thus becomes difficult: let us take the example of totalisation of periods of contributions:

[i]f each member state has a different pensionable age payment of benefits shall only be conducted when the person reaches the relevant pensionable age. This leads to situation in which a person already receives his/her pension from one

<sup>115</sup> Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at p. 672.

<sup>116</sup> Reyes, *op cit*, at p. 5.

<sup>117</sup> Reyes, *op cit*, at p. 8.

<sup>118</sup> See footnote no. 52 of this chapter. See also Reyes, *op cit*, at p. 5.

<sup>119</sup> Reyes, *op cit*, at p. 5.

<sup>120</sup> For instance, in the Gulf Region, emigrating nationals are allowed and/or required to contribute to their home institutions. At the same time, migrant workers in the Gulf Region are not allowed to join the national social security schemes. See Holzmann, Koettl and Chernetsky, 2005, *op cit*, at p. 10.

<sup>121</sup> See Reyes, *op cit*, at p. 5.

member state while waiting to reach the pensionable age of another member state in order to receive his/her corresponding pension.<sup>122</sup>

These differences are also evident between social security systems in both SADC and EAC. To use the example of provision of social assistance in SADC members; in South Africa, the old age grant is means-tested, in Botswana, the old age grant is universal, while in Tanzania there are no old age grants at all.<sup>123</sup> Also, there are differences in retirement ages and the ages at which one can receive these benefits, ranging from 60 to 65 years.<sup>124</sup>

The second challenge is that of social exclusion of the majority of the population and concentration of almost all social security attention on formal sector employees in both the SADC and EAC regions.<sup>125</sup> It is evident that since the formal sector in the SADC region accommodates only “a very small proportion of employment,” social security coordination measures will equally be directed towards the same small group of people.<sup>126</sup> Thus it is submitted that extension of coverage should be regarded as a priority in order to coordinate effectively on social security matters, otherwise the rest of the population will be left outside the scope of regional social security coordination and its intended benefits.

The last challenge is that some countries with relatively and comparatively stronger economies will attract more immigrants while those with weaker economies will mainly continue to be sending countries.<sup>127</sup> The receiving country may be overburdened and, in the end, decide to withdraw from the coordinated system. For instance, the *SADC Protocol for Facilitation of Movement of Persons* of 2005 allows the member states to suspend the application of the protocol for various reasons, including “breakdown of or serious threat to national security, public order or public

<sup>122</sup> Reyes, *op cit*, at p. 11.

<sup>123</sup> See Olivier, 2001, *op cit*, at pp. 55.

<sup>124</sup> In South Africa, the old age grant is awarded at the age of 60 and 65 for female and male elderly persons respectively, while in Botswana, a grant is awarded at the age of 65 for all elderly persons. See Olivier, 2001, *op cit*, at p. 55. See also Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at p. 662.

<sup>125</sup> See chapter three of this thesis for more details about social security coverage in Tanzania.

<sup>126</sup> See Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at p. 661. See also Olivier, 2001, *op cit*, at p. 9.

<sup>127</sup> Massive influx is envisaged mainly in Botswana, Namibia, and South Africa. See Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at pp. 668-9. See also Malherbe, *op cit*, at p. 83.

health.”<sup>128</sup> A large influx of migrant workers may be regarded as “a threat to public order” which may entitle a member to suspend the application of the protocol, and coordination efforts will be brought to a standstill. With reference to Southern Africa, Fultz and Pieris summarise the challenges in the following words:

...in Southern Africa ...[l]arge segments of the population live and work on the edge of poverty; formal sector employment is limited and declining; inflation erodes incomes and savings; and the AIDS epidemic is reducing national productivity and leaving a generation of children without parental care. At the same time, low productivity means that social security is difficult for finance; and weak and undeveloped systems of governance pose major structural barriers to efficient administration. These constraints pose enormous challenges to those charged with delivering social security to the region's people, particularly to the groups which are most in need.<sup>129</sup>

With the existence of these challenges to the efforts at coordination of social security systems in SADC and EAC, it is submitted that the minimum baseline standards should stipulate the kinds of benefits that should, on a mandatory basis, be offered by each member state. In this way, coordination could be achieved by starting small and growing, as circumstances and resources allow, at individual country level and at regional level. For instance, the efforts could begin with the long-term benefits of retirement, invalidity and survivors' pensions.

What are the options for coordination of social security in SADC and EAC member states? One answer is the adoption of unilateral, bilateral and multilateral measures for the preservation of workers' social security rights to protect those who exercise their right to freedom of movement within the two regions. Examples of other options may be learnt from regions which have succeeded in ensuring coordination of social security between their member states: the European Union and the Caribbean Community (CARICOM) exemplify the success stories on coordination.

<sup>128</sup> See article 8 of the *SADC Protocol on the Facilitation of Movement of Persons* of 2005.

<sup>129</sup> E. Fultz and Pieris, B., *Social Security Schemes in Southern Africa: An Overview and Proposals for Future Development*, ILO/SAMAT Policy Paper No. 11, Harare, Zimbabwe, 1999, at p. 7.

### 5.3 COORDINATION: Lessons from the European Union and the CARICOM

The European Union and CARICOM have made good progress in coordinating social security matters. The two regions were chosen because they have succeeded relatively well in providing social security to migrant workers within their regions.<sup>130</sup> In essence, they have also preceded the efforts of SADC and EAC coordination on social security in general terms. The lessons of the EU and CARICOM are organised in terms of how the ILO principles of coordination are applied and what SADC and EAC can learn from the two regions. Noteworthy lessons for Tanzania as a member of SADC and EAC are also highlighted.

The European Union mandates the European Council to adopt necessary measures in the field of social security in pursuance of the right of workers to freedom of movement within the member states.<sup>131</sup> On the basis on this mandate, the European Council has adopted several measures for the protection of social security rights, including the Council *Regulation* 1408/71.<sup>132</sup> In as far as coordination of social security in the EU is concerned, the Regulation, following closely the ILO coordination principles, operate on the basis of four principles, *inter alia*, equality of treatment, determination of the applicable legislation, the aggregation of periods of insurance, and the export of benefits.<sup>133</sup>

The Caribbean Community Treaty of 1973 establishes CARICOM which, among other things, aims at the “fostering of unity among its members by functional cooperation in the area of social security.”<sup>134</sup> In pursuance of this aim, members signed the CARICOM Agreement on Social Security in 1996 which, similar to the EU Regulation 1408/71, protects “the entitlement to benefits of CARICOM nationals and ... gives them equality of treatment when they move from one member state to

<sup>130</sup> See Krause and Scheinin, “The Right not to be Discriminated Against: The Case of Social Security,” in Orlin, Rosas, and Scheinin, (eds), 2000, *op cit*, pp. 253 – 286; Jorens, Y. and Schulte, B., (eds), *Coordination of Social Security Schemes in Connection with the Accession of Central and Eastern European States*, Brussels, Belgium, La Chartre, 1999; Malherbe, *op cit*, at p. 71.; and Mac Andrew, *op cit*.

<sup>131</sup> See the European Union Consolidated Versions of the Treaty on European Union and of the Treaty Establishing the European Community (2002) (2002/C 325/01). Accessed through [http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c\\_325/c\\_32520021224en00010184.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/c_325/c_32520021224en00010184.pdf) on 13 June 2006.

<sup>132</sup> OJ No. L 149, 5.7.1971, at [http://www.dwp.gov.uk/advisers/docs/lawvols/hluevol/pdf/a9\\_2001.pdf](http://www.dwp.gov.uk/advisers/docs/lawvols/hluevol/pdf/a9_2001.pdf), last accessed on 13 June 2006. See also the *Council Regulation* 883/2004 which modifies some of the fundamental principles of coordination in the EU, this law is not yet in force.

<sup>133</sup> See Chardon, “Principles of Coordination” in Jorens and Schulte, (eds), *op cit*, at p. 45.

<sup>134</sup> <http://www.itcilo.it/english/actrav/telearn/global/ilo/blokit/caritrea.htm>, last accessed on 7 June 2006.

another.”<sup>135</sup> The CARICOM Agreement on Social Security of 1996 takes cognisance of other coordination principles, namely, determination of the applicable legislation, the aggregation of periods of insurance and the export of benefits.

These principles, in clear terms, barely exist in the context of SADC or EAC.<sup>136</sup> They are however, impliedly found in the whole aim of coordination in social security matters which mandatorily requires observance of equality of treatment between nationals and non-nationals, determination of applicable legislation, aggregation of periods of insurance and export of benefits. In this respect, Article 20 of the *SADC Protocol on the Facilitation of Movement of Persons* of 2005 provides for the equality of treatment principle although it qualifies the principle by subjecting the migrant workers’ social security rights to the domain of national laws of the host country.<sup>137</sup> Article 104 of the EAC Treaty of 1999 also embraces these principles in similar terms as SADC.

The major question to be answered in the coordination of social security is whether coordination should be harmonised throughout a particular region, or whether there should be coordination between “different” designs of social security systems of members. While the European Union does not envisage harmonisation of social security systems, CARICOM recognises the need for harmonisation of the social security legislation of the member states.<sup>138</sup> So, while CARICOM views coordination in social security matters as requiring harmonisation between the member states, the European Union considers that coordination should “be restricted to establishing ‘bridges’ between the social security systems of Member States, which would remain entirely autonomous.”<sup>139</sup> Therefore, the European Union social security coordination rests on “preserving the competence of Member States.”<sup>140</sup>

Based on the challenge of diversity of social security systems in both SADC and EAC, it is submitted that the European Union model of social security

<sup>135</sup> Mac Andrew, *op cit*, at p. 7.

<sup>136</sup> See Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at p. 671. Article 17 of the Draft Text of the *Code on Social Security in the SADC* (not yet in force) provides for the observance and application of the four principles in any bilateral or multilateral agreements between SADC member states.

<sup>137</sup> See also Olivier and Kalula, “Regional Social Security,” in Olivier and Kalula, 2003, *op cit*, at p. 675.

<sup>138</sup> See preamble to the CARICOM Agreement on Social Security of 1996. See also Article 46(2)(b)(iv) of the CARICOM Revised Treaty which provides for “harmonisation and transferability of social security benefits.” See further Mac Andrew, *op cit*, at p. 7.

<sup>139</sup> Chardon, “Principles of Coordination” in Jorens and Schulte, (eds), *op cit*, at p. 47.

<sup>140</sup> *Ibid*, at p. 48.

coordination is preferable and should therefore be adopted by the SADC and EAC coordination efforts. It should be noted, however, that it is indisputable that social security systems in the European Union are quite developed compared to many social security systems in both SADC and EAC. As earlier noted, the efforts to develop a baseline approach for adoption by SADC and EAC member states should still be considered over and above leaving the social security systems autonomous. It is submitted that it is within the framework of the established baseline standards that the compliance of member states should be tested.

Secondly, the EAC and SADC coordination efforts should start with a few risks and benefits before embarking on the whole range of benefits as outlined by ILO Convention No. 102.<sup>141</sup> Article 4 of EU Regulation 1408/71 covers sickness and maternity, invalidity, old age, survivors, accidents at work and occupational diseases, death grants, unemployment, and family benefits. This comprehensive list provides for all the social security benefits envisaged by the ILO Convention No. 102, save for medical care. Article 2 of the CARICOM Agreement on Social Security of 1996 provides for invalidity pensions, disablement pensions, old age pensions, survivors' pensions and death benefits in the form of pensions. Thus, CARICOM makes fewer benefits available compared to the European Union. It is recommended that the SADC and EAC should also consider providing portability measures for a few benefits at the start. Accordingly, CARICOM offers a good example on what benefits the SADC can begin with.

Similarly, when SADC and EAC member states consider entering into bilateral and/or multilateral agreements, they could start with what is currently available at the unilateral level and extend it to the migrant workers from the countries with which the members would have signed bilateral agreements. In this case, Tanzania, as a member state of both the SADC and EAC, should consider entering into bilateral agreements with other countries within the region to protect emigrating Tanzanians. Choice of what benefits should be available for portability, it is submitted, should depend on the "legally defined position, regardless of any individual assessment of personal need."<sup>142</sup> This means that, for a start, portability of social security benefits should mainly be based on social insurance, rather than social assistance. As Malherbe concisely puts it,

<sup>141</sup> See part 2.2.1.3 of chapter two of this thesis.

<sup>142</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 55.

A workable approach to co-ordination of social security in the region is to focus legal and institutional reforms on one branch of social security at a time, for example, ensuring that all countries in the region have some form of compensation for occupational injuries and diseases. The focus of such co-ordination efforts should initially be on the exportability of benefits and determination of applicable law...once satisfactory progress is made on the co-ordination of one branch of social security, the coordination efforts can be extended to cover the remaining branches.<sup>143</sup>

Thirdly, as it is suggested that every aspect of coordination should start small, determination of who should initially be protected should follow a similar trend. By virtue of Regulation 1408/71 the European Union began with the protection of the "employed Community nationals" including "former migrant workers who are entitled to pensions."<sup>144</sup> In 1999 in terms of Regulation 307/99, coverage of persons was extended to employed or self-employed persons, students, stateless persons or refugees, and the members of their families and their survivors, provided that they "are or have been subject to the legislation of one or more Member States."<sup>145</sup> CARICOM covers "insured persons who are or have been subject to the applicable legislation of one or more Contracting Parties as well as to their dependants or survivors..."<sup>146</sup> An insured person is defined as "an employed or a self-employed person, or any other person recognised as such by or under the applicable legislation."<sup>147</sup> It seems then, that CARICOM does not specifically or categorically include or exclude migrant workers, provided they have been subjected to the social security legislation of one of the member states.

In view of this, it is submitted that the European Union approach of providing for piecemeal coordination and portability of benefits should be adopted by SADC and EAC. In this way, SADC and EAC may start with those who are covered under the current social security schemes within the member states and then move slowly towards including other categories of persons. For instance, portability of social security benefits could start with those employed in the formal sector that are covered by the existing schemes, and then proceed to cover the self-employed and the rest of

<sup>143</sup> Malherbe, *op cit*, at p. 82.

<sup>144</sup> Chardon, "Principles of Coordination" in Jorens and Schulte, (eds), *op cit*, at p. 50.

<sup>145</sup> See Article 2(1) and (2) of Regulation 307/99.

<sup>146</sup> See Article 3 of the CARICOM Agreement on Social Security of 1996.

<sup>147</sup> See Article 1(i) of the CARICOM Agreement on Social Security of 1996.

the groups. In the same way, Tanzania should take into account the need to limit the groups of persons who will be covered by bilateral agreements, so as to minimise the responsibilities that may flow from these agreements.

To sum up, coordination should take cognisance of the principle of subsidiarity as adhered to by the European Union where the competence of member states in as far as social security is concerned is preserved.<sup>148</sup> At the same time, coordination should begin with the portability of few benefits and should also limit coverage to a few groups of people, and then the number of benefits and groups of people that will be covered should be gradually increased.

#### 5.4. CONCLUSION

While in-country coordination is primarily for protecting workers in a particular social security system, coordination across borders is for protecting migrant workers who move from one social security system to another. Where there are neither bilateral nor multilateral agreements, migrant workers will lose their social security rights acquired in either their home countries when emigrating, or in the host countries when they return home. Recognising the need to protect Tanzanian emigrants and other migrant workers working in Tanzania, the government is committed to entering into reciprocal agreements with other countries both within and outside SADC and EAC. This commitment is manifested by the recent *National Social Security Policy* of 2003, which commits the Government of Tanzania to developing legal mechanisms for reciprocal agreements and the transfer of benefits.<sup>149</sup> Also, section 92 of the *National Social Security Fund Act* of 1997 provides that the Government of Tanzania can enter into reciprocal agreements with other Governments in respect of totalisation of insurance periods and portability of the social security benefits.

It was noted that other coordination problems are caused by the fact that Tanzania and most of the SADC and EAC member states have not signed the ILO *Convention on Social Security (Minimum Standards)* of 1952, among other important social security conventions. This Convention, together with other Conventions like the *Equality of Treatment (Social Security) Convention* of 1962,<sup>150</sup> the *Equality of*

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<sup>148</sup> See Olivier and Kalula, "Regional Social Security," in Olivier and Kalula, 2003, *op cit*, at p. 659.

<sup>149</sup> See para 3.7 of the *National Social Security Policy* of 2003.

<sup>150</sup> Convention No. 118.

*Treatment (Accident Compensation) Convention* of 1925,<sup>151</sup> and the *Maintenance of Social Security Rights Convention* of 1982<sup>152</sup> provide for the coordination principles of maintenance of acquired rights, equality of treatment, determination of the applicable legislation and maintenance of rights in the course of acquisition. It was submitted that although the SADC and EAC Treaties do not compel members to ratify these treaties, it is imperative that the SADC and EAC member states ratify the treaties if they are to achieve any successful social security coordination.

It was further indicated that there is a need for Tanzania and other SADC and EAC member states to embark on unilateral, bilateral and multilateral measures in order to achieve the envisaged life standards of people.<sup>153</sup> A government, in the absence of bilateral and multilateral arrangements, should be able to protect people unilaterally from the current problems of loss of social security benefits upon exercising the right to freedom of movement. Bilateral agreements work better since they take into account the peculiarities of each of the parties and how social security issues would be dealt with between the two state parties. However, bilateral agreements tend to proliferate and cause administrative stress as each bilateral agreement is administered in accordance with its provisions, and there is no guarantee that all the bilateral agreements a country would enter into would contain similar provisions and obligations. Bilateral agreements can also lead to discrimination between workers from different countries who are in one country which has different bilateral agreements with their home countries.

It was emphasised that any successful cross-border coordination has to start with individual countries establishing measures for social security provision, and that multilateral agreements should be preferred over bilateral agreements except where multilateral agreements are not possible. For instance, multilateral agreements are possible regionally but practically impossible for countries outside the region unless the whole region agrees to enter into an agreement with a country outside the region.<sup>154</sup> Tanzania and South Africa, for example, belong to SADC, and they fall under the SADC multilateral and regional arrangements. The problem arises where either of the two countries wants to protect its workers in Western African or

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<sup>151</sup> Convention No. 19.

<sup>152</sup> Convention No. 157.

<sup>153</sup> See Olivier, 2001, *op cit*, at p. 41.

<sup>154</sup> See part 2.2.3.2.2 of chapter two which shows that the EU has entered into agreements with other countries.

European countries. In the latter situation, this is where unilateral and bilateral arrangements would be a better option.

It was also argued that the SADC Treaty of 1992 should prioritise social security issues, among others, to achieve meaningful coordination, which depends to a great extent on the growth of the economies of the countries. This in turn depends on the working population; therefore the protection of this population is of utmost importance.<sup>155</sup> The EAC should also follow a similar approach.

It was noted further that the European Union has succeeded in social security coordination as each member state is able to offer equal treatment under its legislation to migrant workers from other countries within the EU. This may not occur in the case of SADC, where most of the countries are poor and may not have the capacity to protect migrant workers in their jurisdictions.

Having looked at coordination measures at the unilateral, bilateral and multilateral level in Tanzania, the next chapter looks at the fragmentation of social security schemes in Tanzania and its impact on good governance.

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<sup>155</sup> See Olivier, 2001, *op cit*, at p. 45. See also Fultz and Pieris, 1999, *op cit*, at p. 11.

## CHAPTER SIX

### FRAGMENTATION OF SOCIAL SECURITY SCHEMES IN TANZANIA: THE CHALLENGE FOR GOOD GOVERNANCE

*The governance of social security has received increasing attention in recent years as part of a growing awareness that schemes are only as effective as their administration. There has been a tendency in the debate on the reform of social security, however, to fail to distinguish governance issues from conceptual ones. This has led to criticism of social insurance principles when, often, the focus should have been on weaknesses in the ways such schemes were administered.<sup>1</sup>*

#### 6.0. INTRODUCTION

The previous chapter discussed in detail the state of coordination of social security in Tanzania. It was indicated that the Tanzanian social security system is fragmented and that transferability and portability of social security benefits is of paramount importance. Further, chapter five highlighted the need for cross-border coordination between Tanzania and other countries in the EAC, SADC and the world at large. It was submitted that “charity begins at home” and that Tanzania should begin by removing the existing obstacles to portability of social security benefits in the country, and then consider how to protect migrant workers.

This chapter reports on the governance of social security in Tanzania. This is done by looking at the general principles of good governance in social security and how they are applied in Tanzania. The major challenge for good governance is the fragmentation of social security schemes. Although bad governance can also occur in a unified social security system, it is argued in this chapter that a fragmented system is more prone to bad governance on account of differences in performance yardsticks, among other reasons. It is further argued in this chapter that good governance may be impossible if there are no measures in place to ensure harmonisation and coordination between the existing social security schemes. It is also argued that there are strong connections between extension of coverage, adequacy of social security benefits and good governance. The latter, therefore, is the determining factor for any move towards extension of coverage and the commitment of social security schemes to providing adequate social security benefits.

In this chapter, the term “governance” refers to the relationship between the leadership and the led in terms of practical commitment and technical competence,

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<sup>1</sup> Gillion, *op cit*, at p. 42.

fairness, efficiency and effectiveness of the social security institutions, service delivery, accountability and transparency.<sup>2</sup> Good governance then refers to adherence to this definition, while bad governance will mean the absence of the factors mentioned in the above definition.

“Accountability” means the holding of a member in a reciprocal relationship answerable for actions related to his/her obligations, while “transparency” refers to an administrative style that assumes the sharing of information between parties in the reciprocal relationship.<sup>3</sup>

“Fragmentation” refers to the existence of many social security schemes covering the same or different groups of people, covering the same contingencies, operating under different laws and regulations, and a lack of coordination between these schemes.

#### 6.1 FRAGMENTATION OF SOCIAL SECURITY SCHEMES

In traditional African societies, social security institutions were diverse, depending on the social set-up in a specific area. Although one hesitates to state that the diversity of institutions was hierarchical, it may be observed that for most institutions this was the case though the hierarchy was not always very clear. This finding is based on the fact that social security problems were dealt with at the levels of domestic group, kinship organisation, neighbourhood and the chief.<sup>4</sup> While the domestic group consisted of family members, the kinship organisation was comprised of “different domestic groups connected by kinship ties”.<sup>5</sup> The neighbourhood was a “community of households inhabiting the same village or settlement, co-operating economically, and practising certain forms of mutual assistance” while the chief was required to oversee and ensure the welfare of all his subjects.<sup>6</sup>

It is evident that the first instance institution was the domestic group, followed by the kinship organisations, the neighbourhood and finally the chief who was a social security institution of the last resort. This argument is founded on the structure and the composition of each of these institutions and the responsibilities that they performed.<sup>7</sup>

<sup>2</sup> Rwegoshora, *op cit*, at p. 40.

<sup>3</sup> *Ibid.*

<sup>4</sup> Bossert, *op cit*, at pp. 27-40.

<sup>5</sup> *Ibid.* at p. 27.

<sup>6</sup> *Ibid.*

<sup>7</sup> See parts 1.1 and 1.2 of chapter one of this thesis for more discussion on pre-colonial social security institutions.

It was not until other social security institutions failed that the chief would be approached, and the social contingencies which could be dealt with at domestic level would not involve the kinship or the neighbourhood. It may be argued therefore, that in pre-colonial times there was no fragmentation as it is known today.

Modern social security institutions were introduced during the colonial period to cater for different groups of employees who worked for the colonial government. Fragmentation of social security schemes then emerged as the established schemes did not operate in a hierarchical manner but were based on the differences that existed in employment relations: pensionable and non-pensionable terms of employment. This is exemplified by the enactment of different statutes which established different schemes for different categories of workers. For instance the *Pensions Ordinance* of 1954 established the Pensions Fund which catered for the pensionable government employees, the *Provident Fund (Government Employees) Ordinance* of 1942<sup>8</sup> established GEPP to cater for the non-pensionable government employees, and the *Provident Fund (Local Authorities) Ordinance* of 1944 established LAPF for servicing local government employees.<sup>9</sup> It suffices here to state that the current fragmentation of social security schemes has its roots in the differences that were established by the colonial regime.

There are numerous social security schemes existing in Tanzania including the NSSF, PPF, PSPF, PSRB, NHIF, CHFs, GEPP, and LAPF. Each and every scheme covers the same or different groups of workers, similar social risks and offers the same or different social security benefits.<sup>10</sup> Each scheme is a creature of statute and is established by different legislation, each scheme operates under different rules and regulations, and is placed under different ministries and departments within the government.<sup>11</sup> NSSF falls under the ministry responsible for labour matters;<sup>12</sup> PPF, PSPF and GEPP are administered by the Ministry of Finance;<sup>13</sup> PSRB is administered by the Ministry of Finance and the ministry responsible for the civil service;<sup>14</sup> LAPF

<sup>8</sup> This law is still in force to date.

<sup>9</sup> See part 3.1 of chapter three of this thesis for more details about who was covered under these laws.

<sup>10</sup> For more details on coverage of groups of people, social risks and benefits of the existing schemes, see chapter three of this thesis.

<sup>11</sup> See Rwegoshora, *op cit*, at p. 18.

<sup>12</sup> See s. 2 of Act No. 28 of 1997.

<sup>13</sup> See s. 2 of Act No. 14 of 1978, s. 3 of Act no. 2 of 1999, and s. 3 of Cap 51 of the Revised Laws of Tanganyika, respectively.

<sup>14</sup> See s. 6(3) of Act No. 3 of 1999.

is under the ministry responsible for local government authorities;<sup>15</sup> and the CHF and NHIF are under the Ministry of Health.<sup>16</sup>

The fragmented nature of the Tanzanian social security system causes the working population to suffer discrimination and the loss of their periods of contributions and accumulated contributions whenever they move from one social security scheme to another.<sup>17</sup> Discrimination occurs where employees, who would otherwise be treated equally if they were under the same scheme, are discriminated against on the basis of the schemes to which they belong. For instance, the fact that workers are covered by different schemes means that workers who have similar working conditions will receive different levels of retirement benefits, in the form of either pensions or lump sum payments, depending on whether they belong to a pension scheme or a provident fund.<sup>18</sup> Another example is summarised thus by Olivier and Kaseke:

...the qualifying criteria tend to vary from fund to fund and from benefit to benefit. The old age/retirement benefit under NSSF and PSPF is payable when a member has contributed for a cumulative period of 15 years and has reached the voluntary retirement age of 55 years or the mandatory retirement age of 60 years. The same qualifying criteria apply to the payment of survivors' benefits under the two funds. The invalidity benefit provided by PSPF also enjoys the same qualifying criteria. The qualifying criteria for old age/retirement benefit provided by the PPF are that a member must have contributed for 10 years and has reached the voluntary retirement age of 55 years or the mandatory retirement age of 60 years.<sup>19</sup>

As noted earlier in part 3.3.8 of chapter three, this state of affairs, at least on the part of the beneficiary of a provident fund, exacerbates poverty and places a heavy burden on the government because the elderly, who are not adequately protected, will in turn

<sup>15</sup> See s. 3 of Act No. 6 of 2000.

<sup>16</sup> See s. 3 of Act No. 1 of 2001 and s. 3 of Act No. 8 of 1999 respectively.

<sup>17</sup> See chapters four and five of this thesis for more details on discrimination between the workers and lack of portability measures respectively. See also Bodor, *et al*, *op cit*, at p. 4.

<sup>18</sup> See chapter four of this thesis for more details on lump sum or pension payments.

<sup>19</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at p. 11. See part 3.3 of chapter three of this thesis for other benefits and the differences that exist in the qualifying conditions of different schemes.

become dependent on social assistance measures.<sup>20</sup> In view of this, the President of Tanzania has remarked:

...I know that things are not going well. The Government understands the existence of various differences in payments of social security benefits to the pensioners because of the existence of different pension schemes which have different qualifying conditions. The Government accepts your request for the elimination of these differences so that there will be equality of treatment. I would like to assure you that we have heard your concerns and we will deal with them accordingly...<sup>21</sup> (Translation is mine).

Additionally, the fragmentation of social security schemes discriminates against workers in the sense that workers are subjected to different eligibility conditions and different assessment mechanisms. The lack of a uniform mechanism for assessing invalidity/disability risks exemplifies this state of affairs.<sup>22</sup> There are different medical bodies constituted for different social security schemes *and* for different members by the fragmented schemes, to assess and determine whether a member is permanently or temporarily incapacitated. As noted in chapter three, it is the permanent or temporary nature of the disability that determines whether an affected member is entitled to invalidity/disability benefits. The diversity of medical bodies means that members having the same working conditions will be subjected to different assessments in accordance with the laws and regulations governing the scheme to which he/she contributes. One of the donor reports summarises this problem as follows:

...each of the Funds offer[s] some form of disability pension, or ability to withdraw funds due to disability, either temporary or permanent. However, *within and across the Funds there is no standard assessment mechanism*. This means that a person performing the same job in a different place may be examined in a different manner and provided with a different benefit. In addition there does not appear to be a clear monitoring mechanism for the doctors conducting the assessment...<sup>23</sup> (Emphasis is mine)

<sup>20</sup> See chapter four of this thesis for more details. See also Kanywanyi *op cit*, at p. 27 and footnote 224 of chapter three of this thesis.

<sup>21</sup> Speech by President J. M. Kikwete of the United Republic of Tanzania, delivered on the World Workers' day in Shinyanga Tanzania, on 1 May 2006.

<sup>22</sup> See part 3.3.3 of chapter three of this thesis for more details on these benefits.

<sup>23</sup> Donor Report, *Social Protection: Assuring a minimum income for the poorest*, Final Draft, 2004, pp. 52-53, as quoted in Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force*, 2005, *op cit*, at pp. 36-37.

The problem extends to the administration of these schemes; even members of the same scheme will be subjected to different medical bodies, which means that there cannot be uniformity even within the scheme itself. The following question then arises: How can the excluded be encouraged to join the existing schemes? It is submitted that discrimination against workers may have a glaring impact on the quest for extension of coverage to the excluded; since they see that there is discrimination in the way the supposedly covered workers are treated, they will feel insecure about their protection in the event of the occurrence of the social risks against which they should be protected.

Fragmentation also fosters competition between the existing social security schemes which causes havoc and hostility between the schemes as they all struggle to get more customers from the shrinking formal sector, the same customers who, at some point, were/are registered by other schemes.<sup>24</sup> To make matters worse, the *National Social Security Policy* of 2003 encourages competition between the schemes.<sup>25</sup> Part 3.15 of the *National Social Security Policy* of 2003 provides that:

While the existing mandatory social security institutions shall operate and compete among themselves social security services under supplementary schemes shall be fully liberalised.

These problems also affect compliance, as employers may say that they have registered or are planning to register with a different scheme, while in actual fact they are avoiding their responsibilities to contribute.<sup>26</sup> And, because of the hostility and competition between the social security schemes, the administrators are unable to establish the truth from other schemes. This is partly based on the fact that the scheme that is requested to provide information may not be willing to “divulge” the information to a rival scheme, and partly because if the schemes are competing, asking a rival scheme whether they have registered a certain employer may mean that the scheme requested can also try register the same employer and the scheme which

<sup>24</sup> Personal interviews with the social security administrators between December 2005 and mid-March 2006, *op cit.* (See footnote 22 of chapter four of this thesis).

<sup>25</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit.*, at p. 26 state that “while the policy framework is useful as a basis for harmonisation of the different schemes, it is nevertheless deficient in some respects, notably its thrust towards promoting competition among Funds.” See also “*Social Security Funds regulatory board in pipeline*” *Tanzanian Guardian*, Thursday, 16 November 2006 where the Deputy Minister for Finance, Mr. Mustafa Mkullo is reported to have said that “[t]he main objective of the regulatory Board is to ensure fair competition for all social security funds in the country...”

<sup>26</sup> See part 3.1 of chapter three of this thesis for more details.

asked for the information may lose the customer. It should be noted, nevertheless, that while competition may be fruitful for private schemes, public schemes should not be allowed to compete as their basic aim is to provide services to the public at large, rather than to those who can afford the services.<sup>27</sup>

Further, competition between social security schemes which is caused by fragmentation fosters corruption. Corruption occurs between the employers and the social security schemes as "motivation" for inducing the employers to register with a particular scheme. As one of the administrators indicated, "corruption to win employers and directors of big employing companies does prejudice employees as they have no say regarding to which scheme they should belong."<sup>28</sup> These unaccounted-for payoffs have an impact on adequacy of benefits because, instead of concentrating on improving levels of benefits, monies are directed to winning more customers. Arguably, adequacy of benefits directly influences extension of coverage to the excluded as the latter will be motivated to join the existing schemes once the benefits are considered sufficient. It is therefore submitted that harmonisation and/or amalgamation of the social security schemes in Tanzania should be of paramount importance on the reform agenda.

On account of fragmentation, each scheme has a different contributory rate, different methods of collecting contributions, different qualifying conditions for entitlement to benefits, different kinds and levels of benefits, different timeframes for disbursement of benefits, different investment policies and different governing and adjudication bodies.<sup>29</sup>

It is because of these differences that governance of social security in Tanzania has also been fragmented, resulting in a lack of policy direction, poor quality of service delivery, a lack of accountability and transparency in the administration of schemes, ineffectiveness and inefficiency of social security administrators, and immense political interference.<sup>30</sup> As Kamuzora notes: "fragmentation is another shortcoming of Tanzanian social security systems. Social

<sup>27</sup> See part 2.2.4 of chapter two of this thesis for more details on competition between private schemes.

<sup>28</sup> Personal interview with a managerial administrator who preferred to remain anonymous: The interview was conducted on 3 March 2006 in Dar es Salaam.

<sup>29</sup> See chapters three and four of this thesis for more details on these aspects.

<sup>30</sup> See Rwegoshora, *op cit*, at p. 19. See also Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force, 2005, op cit*, at p. 19. See further, Bodor, *et al, op cit*, at p. 24 where it is stated that improvement of efficiency is very much dependent on facilitation of labour mobility across sectors.

security provision is administered by a number of institutions which are not coordinated. This makes it difficult to adopt a coherent national policy for social security."<sup>31</sup> These are the problems of administration of fragmented social security schemes. As Cruz puts it:

The social security system...is...fragmented because of lack of formal linkages among implementing agencies, often resulting in policy conflicts, programme disparities and administrative redundancies.<sup>32</sup>

It is proposed that a regulatory cum coordinating body should be established for all social security undertakings in Tanzania. This would be in line with the *National Social Security Policy* of 2003 which states that:

There shall be an [A]ct to govern and standardise operations of the social security sector. The law shall also provide for the establishment of a regulatory body that shall ensure smooth and efficient operations of the sector.<sup>33</sup>

In a similar vein, Olivier and Kaseke note that: "the problem of fragmentation can be attributed to the fact that there is no central body charged with the responsibility of coordinating social security provisioning in Tanzania."<sup>34</sup> Lessons can be drawn from the South African social security system where the South African Social Security Agency has been established to coordinate social security provisioning in South Africa.<sup>35</sup> Although the South African Social Security Agency is not a regulatory body, it serves as a good example for the establishment of a central social security coordinating body. In this respect, it is proposed that Tanzania should follow a similar path to minimise the impact of fragmentation on the existing social security system. It is further submitted that the idea of having a coordinating authority is viable and will solve many of the problems associated with in-country and cross-border social security coordination.<sup>36</sup>

Nevertheless, although the South African experience offers fine lessons in terms of the establishment of the coordinating body, and harmonisation of social

<sup>31</sup> Kamuzora, *op cit*, at p. 112.

<sup>32</sup> Cruz, *op cit*, at p. 2.

<sup>33</sup> Part 3.14 of the Tanzanian *National Social Security Policy* of 2003.

<sup>34</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force, 2005, op cit*, at p. 25.

<sup>35</sup> See the *South African Social Security Agency Act* of 2004, Act No. 9. As for now, the Agency is mandated to coordinate social assistance.

<sup>36</sup> See chapter five of this thesis for more details on coordination of social security provisioning. See also ss. 327 and 3 of the draft *Social Security Act* of 2005, the international experts' version and the social security institutions' version, respectively.

security undertakings,<sup>37</sup> there have been no efforts in South Africa to amalgamate the fragmented social security system.<sup>38</sup> It should be noted, however, that harmonisation and amalgamation are considered valid and viable options for Tanzania. It is advised that since most Tanzanian social security schemes are public schemes, there should be an amalgamation of schemes to result in three major schemes, such as a public scheme, a private scheme and an informal scheme.<sup>39</sup> Amalgamation of social security in Tanzania would ensure that governance of social security schemes is easily coordinated by the suggested regulatory body. This would also mean that the ministries and government departments dealing with social security would be minimised and monitoring would be assured.<sup>40</sup>

Alternatively, different schemes should cover different contingencies for the same groups of people. This would ensure equality of treatment, removing the existing discrimination between workers who are under different schemes since workers would receive the same kinds and levels of benefits under similar schemes. In this way, differences in terms of types and levels of benefits would not depend on the scheme but on the social risk that is covered by a particular scheme. For instance, one scheme could offer retirement, invalidity and survivors' pensions and other schemes could concentrate on medical care, health benefits and maternity benefits.<sup>41</sup>

## 6.2 ADMINISTRATION OF SOCIAL SECURITY SCHEMES

Social security administration involves four major aspects: registration, collecting and recording of contributions, awarding of and/or payment of benefits, and monitoring and enforcing compliance.<sup>42</sup> Each scheme deals with these administrative aspects in a different way when the system is fragmented.

<sup>37</sup> See the South African *Pension Funds Act* of 1956 which sets out the minimum operational requirements to which all the social security schemes must adhere. See also part 5.1 of chapter five of this thesis for more details.

<sup>38</sup> There are about 16,000 retirement funds operating in South Africa. See Olivier and Kalula, "Scope of Coverage" in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 137.

<sup>39</sup> See ss. 9, 14 and 217 of the international experts' version of draft *Social Security Act* of 2005. Information also based on a personal interview with one of the international experts for the Phase II Social Security Reform Programme in Tanzania. The interview was conducted on 12 June 2005 in Dar es Salaam.

<sup>40</sup> See Rwegoshora, *op cit*, at p. 58.

<sup>41</sup> A. Boudahrain, "The insecure social protection of migrant workers from the Maghreb," *International Social Security Review*, Vol.53 No. 2, 2000, pp. 47-73, at p. 69.

<sup>42</sup> L. G. Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, pp. 149-168, at p. 151.

In respect of registration, social security schemes need to identify their beneficiaries. Identification of beneficiaries eases the process of collection of contributions, disbursement of benefits when they are due, and enforcing compliance.<sup>43</sup> In this case, each of the existing social security schemes in Tanzania identifies its own beneficiaries and registers them. There are instances, however, where social security schemes scramble for customers, because there are some schemes which cover the same groups of workers, for instance, the NSSF and PPF both cover the private sector.<sup>44</sup>

The collecting and recording of contributions is a second essential element of social security administration.<sup>45</sup> It entails keeping records of all the contributions made by a member which later helps in establishing the eligibility criteria of a member to receive benefits under a particular scheme. This is best done through computerisation of members' records. The ILO notes that:

The electronic computer provides a means of collecting a mass of routine information, processing it and storing it economically. More and more social security institutions are turning to this as a most useful tool...The usefulness of a computer is not confined to its record-keeping and storage facilities; it is versatile enough to be able to adapt to virtually any technical and managerial aspect of social security, computing accurately and speedily, and providing information to assist in planning...unit costs of administration, paying benefits and reconciling payments.<sup>46</sup>

The social security schemes in Tanzania are mostly operated manually, which negatively impacts on service delivery, as the members' documents/files may get lost and this eventually delays payment of benefits. The effects go further because of fragmentation, where each scheme has its own priorities and some schemes give little attention to institutional development for the improvement of service delivery. For instance, it was indicated that while the NSSF and PSPF are in the process of upgrading their manually created members' files to computer-based filing systems, other schemes are lagging behind in the area of information technology.<sup>47</sup> Among

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<sup>43</sup> *Ibid.*

<sup>44</sup> See part 3.1 of chapter three of this thesis for more details.

<sup>45</sup> Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula, (eds), 2003, *op cit.* at p. 151.

<sup>46</sup> ILO, *Introduction to Social Security*, 1989, *op cit.* at pp. 149-150.

<sup>47</sup> Personal interviews with administrators of social security institutions from December 2005 to mid-March 2006. (See footnote 22 of chapter four of this thesis). See "NSSF gives new cards" Tanzanian

other reasons, the administrators of the majority of the schemes indicated that introducing computerised filing systems requires a lot of funds which they do not have at the moment: Concerns were raised about the costs of purchasing sophisticated equipment and of training personnel.<sup>48</sup> As such, the problems of delay of benefits because of “missing or lost files,” a lack of updated information about members’ contributions, and failure to trace the delayed remittances timeously are still persistent.<sup>49</sup> Once again, the effects of fragmentation of the social security schemes are shown here, and harmonisation and amalgamation of social security schemes can ensure that all schemes move at a similar pace for the improvement of service delivery, including the computerisation of members’ information.

Thirdly, social security administration is concerned with awarding and/or paying benefits.<sup>50</sup> Upon satisfaction that a certain member has met the eligibility criteria, the social security scheme is obliged to award the benefits and effect payment thereof. As indicated in chapters three and four, eligibility and qualifying conditions are different from one scheme to another and therefore each scheme has a different establishing statute and operates according to different rules and regulations. The problems associated with the disbursement of benefits to the beneficiaries include centralisation of services, which delays payment of benefits to beneficiaries who are residing outside the schemes’ headquarters.<sup>51</sup>

The fourth core element of social security administration involves monitoring and enforcing compliance.<sup>52</sup> As noted when discussing registration aspects, monitoring and enforcement of compliance is difficult to achieve where there is fragmentation which is “fertile soil” for competition amongst the schemes. Because a number of existing schemes cover the same categories of workers, and because employers can choose which scheme to register with, and can switch from one scheme to another, enforcement of compliance becomes impossible. For instance, contribution evasion is the order of the day as the social security institutions are

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*Mtanzania*, Sunday, 2 July 2006 and “*Smart card: new technology for computerised record keeping*” *Tanzanian Majira*, Thursday, 20 July 2006.

<sup>48</sup> Personal interviews with administrators of social security institutions from December 2005 to mid-March 2006. (See footnote 22 of chapter four of this thesis).

<sup>49</sup> More details on the problems in service delivery follow in part 6.4 of this chapter.

<sup>50</sup> Mpedi, “Administration and institutional framework,” in Olivier, Smit and Kalula (eds), 2003, *op cit*, at p. 151.

<sup>51</sup> See part 6.4 of this chapter for more details on the centralisation of service delivery and delay of benefits.

<sup>52</sup> Mpedi, “Administration and institutional framework,” in Olivier, Smit and Kalula (eds), 2003, *op cit*, at p. 151.

intimidated by employers who threaten to register under other schemes if the scheme insists on compliance.<sup>53</sup>

In addition, monitoring authorities are also different from one scheme to another, and they use different mechanisms for monitoring compliance to the requirements of the establishing legislation, rules and regulations. It should be noted, however, that the differences in monitoring compliance under social security schemes converge in measuring compliance in the courts of law as they all use the same courts. This, nonetheless, does not harmonise the differences as even the courts have to use different benchmarks as laid down by the laws establishing the schemes. For instance, the NSSF uses inspectors who monitor compliance with registration and the remittance of contributions, while other schemes' establishing statutes are silent about inspectors.<sup>54</sup> In the current state of affairs, extension of coverage is still far from reach, the provision of adequate social security benefits is imperceptible and coordination is a distant goal. As summarised by Gillion:

Extension of coverage depends on many factors, including the capacity of the social security administration. This affects both the credibility and the viability of the scheme and has implications for existing coverage in that many schemes experience difficulty in ensuring compliance. It also limits, however, the extension of coverage to the excluded groups and contingencies.<sup>55</sup>

It should be noted that in terms of monitoring and compliance, the law provides for enormous protection of the social security institutions. This is achieved by elaborative provisions on how enforcement of compliance is/will be undertaken against defaulters, who in most cases are the employers as they are used as collecting agents.<sup>56</sup> There are problems, however, associated with the fact that most social security schemes consider employers as collecting agents; these problems include

<sup>53</sup> Information obtained from personal interviews with the social security administrators from December 2005 to mid-March 2006, *ante*. (See footnote 22 of chapter four of this thesis).

<sup>54</sup> See s. 87 of Act No. 28 of 1997. The fact that NSSF uses inspectors does not place it in a better position for enforcement of compliance, because there are cases where NSSF has been misled by employers who register fewer employees than they have. See "*NSSF denies the investor's report*" *Tanzanian Mtanzania*, Saturday, 8 July 2006, where it is stated that a company employing about 120 employees registered only 36 of them.

<sup>55</sup> Gillion, *op cit*, at p. 41. See also Savoia, *op cit*, at p. 11. See further Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula (eds), 2003, *op cit*, at p. 165 where it is stated that "bad management ...leads to many eligible people being excluded from access to social security." See also chapters, three, four, and five of this thesis for more information on extension of coverage, adequacy of benefits and coordination of social security schemes respectively.

<sup>56</sup> See s. 11 of Act No. 14 of 1978, ss. 12 and 13 of Act No. 28 of 1997 and s. 41(3) of Act No. 2 of 1999.

contribution evasion and a compromise on enforcement of compliance.<sup>57</sup> It is stated that:

Contribution evasion or non-compliance is a critical issue in the design and operation of contributory social security pension programmes. It influences the adequacy of benefit payments to participants as well as both the financial status and the political legitimacy of the entire programme...It has seriously undermined the social security system in some countries, with revenue falling far short of that needed to pay benefits. This shortfall has resulted in social security systems failing to pay benefits, paying low benefits and receiving subsidies from general revenue *which increases the chances of government influence on social security schemes.*<sup>58</sup> (Italics are mine).

This means that poor administration, which results in contribution evasion, impacts on the adequacy of benefits which essentially impacts on the extension of coverage to the excluded. This occurs where the potential contributors are discouraged from joining the social security schemes on the basis of social security schemes not performing well financially,<sup>59</sup> because “achieving an extension of coverage is interdependent with good governance...”<sup>60</sup>

The *National Social Security Fund Act* of 1997 provides that employers are obliged to remit contributions to NSSF “within one month after the end of the month in respect of which the contributions are due and payable.”<sup>61</sup> *The Parastatal Pensions (Amendment) Act* of 2001, being more precise, states that “[b]oth the member’s and employer’s contributions shall be remitted by the employer to the Fund within thirty days after the end of the month to which they relate.”<sup>62</sup> Under the NSSF, delay of remittance attracts a penalty of “a sum equal to five percentum of the amount unpaid” over and above the normal contributions which would otherwise be due.<sup>63</sup> Similar protection and penalties are provided by the NHIF, LAPF and the PPF.<sup>64</sup> The *Parastatal Pensions (Amendment) Act* of 2001 goes an extra mile and criminalises delay of remittances as it states that “[a]n employer who fails to remit to the Fund any

<sup>57</sup> Gillion, *op cit*, at p. 44.

<sup>58</sup> Gillion, *op cit*, at p. 44.

<sup>59</sup> See chapter three of this thesis for more details.

<sup>60</sup> Gillion, *op cit*, at p. 44.

<sup>61</sup> See s. 14(1) of Act No. 28 of 1997.

<sup>62</sup> See s. 8(3) of Act No. 14 of 1978 as amended by s. 5 of Act No. 25 of 2001.

<sup>63</sup> See s. 14(3) of Act No. 28 of 1997.

<sup>64</sup> See s. 45(1) of Act No 8 of 1999, s. 44 of Act No. 6 of 2000 and s.9(1) of Act No. 14 of 1978 respectively.

contributions and additional contributions which under this Act are required to be remitted, commits an offence.”<sup>65</sup>

In contrast, there is no similar protection for social security beneficiaries whose claims are mishandled, benefits delayed or mistakenly deducted as a result of “general deficiencies in management and administration.”<sup>66</sup> The law neither provides for the protection of the beneficiaries nor does it provide for a penalty or interest on the benefits which are due to the beneficiary when they are delayed.<sup>67</sup> This negatively impacts on those whose benefits are delayed because most of them depend entirely on their social security benefits.<sup>68</sup> It is submitted that the law should protect the beneficiaries equally in the event of delay of disbursement of their benefits from the schemes or any other inefficiency on the part of the schemes. The law should also state that the social security schemes are obligated to pay a prescribed amount of interest on delayed benefits. The only two exceptions are the *National Health Insurance Fund Act* of 1999 and the *Community Health Fund Act* of 2001 which provide that “delay in actions on claims” and “provision of low quality health care services”<sup>69</sup> are punishable wrongdoings.

Additionally, social security legislation in Tanzania criminalises any act which is non-compliant with the whole process of registration, collecting and recording of contributions, and monitoring and enforcing compliance.<sup>70</sup> Surprisingly, any shortcoming in respect of awarding and/or payment of benefits, which rests entirely on the part of the social security institutions, is not criminalised and, to a great extent,

<sup>65</sup> See s. 9(2) of Act No. 14 of 1978 as amended by s. 6 of Act No. 25 of 2001.

<sup>66</sup> See Gillion, *op cit*, at p. 59.

<sup>67</sup> Information obtained from personal interviews with social security beneficiaries whose benefits were delayed for periods of 1 to 13 years. They received the same amount of benefits which they would have received had they not been delayed. The interviewees included Mr. Lawrence Makea, interviewed on 3 February 2006 in Mbeya, whose scheme took 13 years to pay him and Mr. Selestine B. Hekela, interviewed on 2 February 2006 in Mbeya, whose benefits were delayed for 3 years. Other beneficiaries included the retired officer of the defunct EAC *ante*, whose benefits were paid after 23 years, Mr. Mwalisu, *ante*, whose benefits took 1 year, Mrs. Rucy Kyejo, interviewed on 3 February 2006 in Mbeya, whose benefits were delayed for 1 year, Mr Yasin Miteya, interviewed on 2 February 2006 in Mbeya, whose benefits were delayed for 2 years, Mr. Bruno Kalongole, interviewed on 3 February 2006 in Mbeya, whose benefits were delayed for 13 months, and the Deputy Coordinator of PUT (1), interviewed on 17 January 2006 in Dar es Salaam, whose benefits were delayed for 1 year. See also “*Retirees in Temeke cry for their [long awaited] pensions*” *Tanzanian Alasiri*, Wednesday, 15 November 2006 (Translation is mine) where two retirees are said to have not received their benefits 10 years after their retirement.

<sup>68</sup> See the speech by President J. M. Kikwete of the United Republic of Tanzania, delivered on the World Workers’ day in Shinyanga Tanzania, on 1 May 2006 where it is stated that “a pension is the only benefit for a public servant when he/she retires.” (Translation is mine).

<sup>69</sup> See s. 41(c) of Act No. 8 of 1999 and s. 27(2)(a) of Act No. 1 of 2001 respectively.

<sup>70</sup> See Part VIII of Act No. 28 of 1997, Part VII of Act No. 2 of 1999, Part VIII of Act No. 25 of 2001, Part VII of Act No. 6 of 2000, section 29 of Act No. 1 of 2001, and Part IX of Act No. 8 of 1999.

slackness by the social security schemes is protected by law in the name of "*bona fide*" action or omission.<sup>71</sup> Delay of benefits, for instance, is not punishable by law and the social security schemes have been using this loophole to delay the payment of benefits for whatever reason they can advance: The common reasons are missing documents, files, and non-remittance of contributions by the employers who are collecting agents.

For almost all the social security schemes, the documents required to prove entitlement to benefits, for instance, pensions, include a letter of first appointment, a letter of employment on permanent and pensionable terms, a letter of confirmation of employment, a letter showing promotion to the last position at retirement, salary slips for the few months before retirement, a letter from the employer showing that the employer has allowed the employee to retire, and a copy of the employee's deductions for social security contributions.<sup>72</sup> Surprisingly, the social security schemes do not require some of these documents which would otherwise be available at the time of registration, or when the employee continues to contribute and the law does not compel them to do so. The schemes continue receiving contributions from the employer for that employee who later is required to produce documents which he/she may not necessarily have. For instance, an employee who has worked for 35 years is required to produce letters of his/her first appointment and confirmation of employment. How are these documents relevant to the eligibility criteria or the benefits one is entitled to? It is submitted that it is unfair for the employee to be required to produce documents which add no value to his/her entitlements. As such, it is proposed that the benefits should not be delayed because the employee is unable to produce the unnecessary documents which do nothing except to prolong the already cumbersome procedure.

Unavailability of documents is complicated by many factors. Firstly, a social security beneficiary does not know in advance what documents he/she will need to claim benefits, for instance, a letter of confirmation of employment, and would not demand it from the employer. Lack of awareness on the part of social security beneficiaries about their rights and obligations takes its toll here. Secondly, the

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<sup>71</sup> See s. 49 of Act No. 8 of 1999, s.57 of Act No. 6 of 2000, s. 88 of Act No. 28 of 1997, and s. 72 of Act No. 2 of 1999.

<sup>72</sup> See the Second Parliamentary Session, 9<sup>th</sup> Sitting, 17 February 2006, Hansard No. HS-2-8-2006.

employers are also not compelled to provide the employees with the kinds of letters which are demanded by the social security institutions many years later.

Whether the beneficiary has the required documents or not, he/she should be entitled to the benefits for which he/she has worked and contributed. This entitlement would be better served if social security rights were constitutionalised as the beneficiary would have a cause of action against any social security scheme and the administrators who are jeopardising his/her rights.<sup>73</sup> Proving that the beneficiary has qualified under the conditions set for a certain benefit, and has made sufficient contributions, should be sufficient. It is believed that it is the unexpected requirements of the social security institutions at the time of disbursement of benefits which cause the entitled members to lose their benefits.

Moreover, non-remittance of contributions by the employer tends to prejudice social security beneficiaries at the time when their benefits are due. However, the NSSF and PSPF recognise the member's contributions even where the employer has not remitted but there is proof that deductions were made from the member's salary.<sup>74</sup> This helps the beneficiary to access his/her benefits irrespective of the delay by the employer to remit contributions to the social security schemes.

It is proposed that the law should recognise the need to protect beneficiaries from slackness on the part of the social security institutions' administrators. Protection of beneficiaries may be done in two ways. Firstly, if the employer has delayed remittance of contributions to the social security scheme and this results in the beneficiary's benefits being delayed, interest should be payable by the employer for the number of days that payment of benefits is delayed. Secondly, where delay of benefits is solely caused by the inefficiency of the administrators, the social security institutions or the administrator responsible should be held liable for paying the interest on the delayed amount. It is believed that personal liability on the part of the administrators and social security institutions will increase efficiency and effectiveness in the efforts to protect the beneficiaries' right to social security. This is correctly put by the *National Social Security Policy* of 2003 which provides that:

Good governance is the key to smooth functioning and efficiency in all social security schemes, as they are entrusted to manage funds on behalf of the contributors. There has been poor governance in social security services...There

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<sup>73</sup> See chapter three of this thesis for more details.

<sup>74</sup> See s. 15 of Act No. 28 of 1997 and s. 39 of Act No. 2 of 1999.

shall be guidelines to ensure that all social security schemes are transparent and accountable to the members and the public at large.<sup>75</sup>

Lessons on how the beneficiary can be protected can be drawn from the South African experience where the *Financial Institutions (Protection of Funds) Act* of 2001 provides that persons dealing with funds, like the “[d]irector, member, partner, official, employee or agent of a financial institution or of a nominee company who invests, holds, keeps in safe custody, controls, administers or alienates any funds of the financial institution or any trust property” should observe the utmost good faith, exercise proper care and due diligence over the funds they are entrusted with.<sup>76</sup> This means that slackness or mismanagement of the funds by the mentioned categories of persons is punishable by law. For instance, the trustee of Art Medical Equipment Pension Fund, who was the employer of V. A. Mes’ deceased husband, delayed paying premiums to Liberty Life which was supposed to pay death benefits to the widow.<sup>77</sup> Liberty Life repudiated the claim of the widow because of the non-remittance of six months’ contributions from the trustee of Art Medical Equipment Pension Fund. V. A. Mes lodged a complaint with the Pension Funds Adjudicator who, deciding in her favour, stated that: “[t]he law and the rules of the fund impose several duties and obligations on pension fund trustees to ensure that *the interests of members and their beneficiaries are protected*. In this case, the trustee did not ensure premiums were recovered timeously.”<sup>78</sup> Therefore, the trustee was held personally responsible:

“to compensate the complainant for the financial loss she suffered by reason of his failure to exercise his duties with proper care and diligence, namely, ensuring that contributions are forwarded to Liberty Life timeously with a view to averting a lapsing of the underlying policy resulting in the complainant’s claim for an insured benefit being repudiated by Liberty Life.”<sup>79</sup>

<sup>75</sup> See part 3.13 of the *Tanzanian National Social Security Policy* of 2003.

<sup>76</sup> See s. 2 of the Act No. 28 of 2001.

<sup>77</sup> *Mes v Art Medical Equipment Pension Fund (Now Liquidated) and Others (2)* [2005] 4 BPLR 33 332 (PFA). See also “Trustee hit with hefty bill,” *South African Business Day*, 23 May 2006, accessed through [http://www.moneyweb.co.za/shares/financial\\_services/409460.htm](http://www.moneyweb.co.za/shares/financial_services/409460.htm), 23 May 2006. See further the case of *Mostert NO v Old Mutual Life Assurance Company (SA) Limited* [2001] 8 BPLR 2307 (SCA).

<sup>78</sup> See “Trustee hit with hefty bill,” *South African Business Day*, 23 May 2006, *op cit*.

<sup>79</sup> *Mes’ case*, *ante*, para 29. See also “Trustee hit with hefty bill,” *South African Business Day*, 23 May 2006, *op cit*. See also “R7m payout for 19 road workers” *South African Dispatch Online*, 27 June 2006, accessed through <http://www.dispatch.co.za/2006/06/26/Easterncape/abpay.html>, on 27 June 2006. It was reported that the High Court awarded R4,83m in pension fund benefits and R2,2m in

Similar protection for social security beneficiaries could be provided by social security law in Tanzania, which would increase the efficiency and personal accountability of social security administrators and employers alike.

While monitoring and enforcement of compliance protects the social security schemes, adjudication is by and large in favour of the social security schemes' clientele. Adjudication, in as far as this chapter is concerned, involves determination of claims and complaints by the beneficiaries of the social security system through either a judicial procedure or any other mechanism put in place for adjudication purposes.<sup>80</sup>

The *National Social Security Act* of 1997 provides that the Director General, who is obligated to oversee the daily operation of NSSF,<sup>81</sup> "shall be responsible for the determination of claims to benefits and liability for payment of contributions."<sup>82</sup> Also, the Director General is a point of first instance for all categories of claims for benefits under NSSF.<sup>83</sup> In the event that the "entitlement is dependent on a medical question, reference shall be made to a medical board for determination."<sup>84</sup> The *National Social Security Act* of 1997 establishes the Medical Appeals Tribunal for the adjudication of complaints either by the beneficiary or the Director General resulting from the decisions of medical boards on entitlement to benefits.<sup>85</sup> For other claims, where the beneficiary is dissatisfied with the decision of the Director General, appeals may be lodged with the Social Security Appeals Tribunal.<sup>86</sup>

The *National Health Insurance Fund Act* of 1999 establishes the National Health Insurance Fund Tribunal bestowed with appeal powers to deal with claims of members of NHIF and health care providers who are aggrieved by any decision of NHIF officers.<sup>87</sup> The grounds of appeal are stipulated under section 41 to include any violation of the rights of patient; a wilful neglect of duties by the implementers of NHIF that results in the loss or non-enjoyment of benefits by the beneficiaries;

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interest to 19 workers who were retrenched 3 years ago by Amathole District Municipality and faced financial hardship. The High Court ordered that the Amathole District Municipality should pay the beneficiaries within ten days.

<sup>80</sup> See M. P. Olivier, "Adjudication and enforcement of social security," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at pp. 169-196.

<sup>81</sup> See s. 4(2) of Act No. 28 of 1997.

<sup>82</sup> See s. 80(1) of Act No. 28 of 1997.

<sup>83</sup> See s. 81(1) of Act No. 28 of 1997.

<sup>84</sup> See s. 81(2) of Act No. 28 of 1997.

<sup>85</sup> See ss. 84(1) and 81(3) of Act No. 28 of 1997. See also part 3.3 of chapter three of this thesis for examples of benefits that are dependent on medical determination.

<sup>86</sup> See s. 83(1) of Act No. 28 of 1997.

<sup>87</sup> See ss. 42(1) and 40 of Act No. 8 of 1999.

unjustifiable delay in actions on claims; delay in the processing of claims that extends beyond the period agreed upon; and any other act or neglect that tends to undermine or defeat the purpose of *National Health Insurance Fund Act of 1999*.<sup>88</sup>

Similarly, the *Community Health Fund Act of 2001* provides a list of grounds upon which a member, a health care facility or the Council Health Services Board aggrieved on these grounds "may lodge a complaint to the Ward Health Committee, or to the Board or to the Council as the case may be..."<sup>89</sup> The list of grounds upon which a member may base his/her complaints include the quality of health care services provided by the health care facility; unjustifiable denial of certain health care services by a health care facility; delay in the provision of a required health care service; and poor attitude to beneficiaries of health care services under the CHF.<sup>90</sup> Further, where there are disputes between the Council Health Services Board and a health care facility, the grounds for appeal are: the quality of health care services is not in line with the granted fees; fee levels are lower than the agreed amount; and there are delays in payment for provision of health care services.<sup>91</sup> Where a member of a CHF has a complaint about the Council Health Services Board, the grounds for appeal include provision of low quality health care services and any other act or omission that undermines the purposes of the Community Health Fund.<sup>92</sup>

The rest of the schemes, *inter alia*, PSPF, PPF, PSRB, GEPF and LAPF depend on the normal judicial procedure. Nonetheless, the *Parastatal Pensions Act of 1978* provides that any dispute between the Board of Trustees of PPF and PPF relating to delegation of powers "shall be referred to the Minister [of Finance] whose decision thereon shall be final and binding on the parties."<sup>93</sup> Once again, the effects of fragmentation are shown here: each scheme has its own mechanism for dispute settlement which cannot be used by other schemes, and the beneficiaries are discriminated against as they are subjected to different adjudication mechanisms which have different advantages and shortcomings. On the basis of these effects of fragmentation on the governance of the social security system this study advocates

<sup>88</sup> See s. 41 of Act No. 8 of 1999.

<sup>89</sup> See s. 28 of Act No. 1 of 2001.

<sup>90</sup> See s. 27(3) of Act No. 1 of 2001.

<sup>91</sup> See s. 27(1) of Act No. 1 of 2001.

<sup>92</sup> See s. 27(2) of Act No. 1 of 2001.

<sup>93</sup> See s. 21(4) of Act No. 14 of 1978.

harmonisation and, in the long term, amalgamation of schemes that cover similar categories of workers, risks and provide more or less similar social security benefits.<sup>94</sup>

It is evident from the foregoing that, apart from a few schemes that have established their own specialised adjudication mechanisms, most schemes depend on the adversarial court procedure. As Olivier concisely puts it:

It should be noted, however, that not all social security laws make provision for ... remedies and adjudication procedures in the event of dissatisfaction. It thus appears that, in the absence of any such provision, any dissatisfied party will have to invoke ordinary common law or even administrative law remedies, before a court having jurisdiction.<sup>95</sup>

There are advantages and disadvantages to both the specialised social security adjudication mechanisms and the normal judicial process of adjudication. Specialised adjudication bodies may be more effective in terms of efficiency, affordability and accessibility, since the matter is dealt with by a professional in social security issues, and decisions made with less regard to technical legal considerations are more likely to be fair. A normal court of law may be thorough with the judgment, impartial, and trustworthy in whatever decision it reaches. The major problem associated with the specialised adjudication mechanisms, more so where there is fragmentation, is the number of inconsistencies "as different bodies or officials are called upon to hear complaints and appeal in respect of different parts of the social security system."<sup>96</sup>

The problems associated with the normal judicial procedure include undue delays in the determination of complaints, not having expertise in social security matters, limited accessibility as "courts proceedings tend to be prohibitively expensive," and "cases are often dealt with on a purely technical and legalistic basis, with little regard to broader fairness considerations."<sup>97</sup> It is on the basis of these problems that the Taylor Committee of Inquiry (2002) suggested that:

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<sup>94</sup> See chapter three of this thesis for more details on the differences that exist between the existing schemes in Tanzania.

<sup>95</sup> Olivier, "Adjudication and enforcement of social security," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, pp. 169-196, at p. 170.

<sup>96</sup> Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 167.

<sup>97</sup> Taylor Committee of Inquiry 2002, at p. 124. See also Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 167. See further "Appeals Court denies Urafiki workers 300m/- in..." *Tanzanian Guardian*, Thursday, 19 April 2007 where determination of Civil Appeal case No. 86 of 2002 involving social security benefits is reported to have taken at least five years.

One of the guiding principles in devising an appropriate social security adjudication system is the need to ensure that an institutional separation exists between administrative accountability, review and revision, and a wholly independent, substantive system of adjudication....[it is recommended] that a uniform adjudication system be established to deal conclusively with all social security claims. It should, in the first instance, involve an independent internal review or appeal institution. It should, in the second place, involve a court (which could be a specialised court) which has the power to finally adjudicate all social security matters, and that this court has the power to determine cases on the basis of law and fairness. The jurisdiction of this court should cover all social security claims...emanating from the social security system...<sup>98</sup>

Although the Tanzanian social security system, albeit limitedly, takes into account specialised adjudication mechanisms, it should be noted that these mechanisms are mostly ad hoc in nature and, to date, there has not been any case or complaint dealt with by any of the mechanisms discussed above.<sup>99</sup> Therefore, one may ask whether these mechanisms are effective in protecting the social security rights of beneficiaries. It is submitted that the ad hoc nature of these specialised adjudication measures prejudices the beneficiary who does not know where to lodge his/her complaints. In this case, the beneficiary ends up losing his/her rights or going to a normal court where he/she may lose on technical grounds.

Non-constitution of the bodies suggests two possibilities: that the social security schemes are very effective and that there are no complaints so far; or that the social security schemes are ineffective and the complaints would be too many for the ad hoc bodies to handle and the schemes would be unable to implement the decisions that were given. Since beneficiaries have registered their dissatisfaction with the social security schemes, and since the specialised adjudication bodies have never been constituted, it is doubtful whether these bodies were created to serve the beneficiaries or to "decorate" the statute.

It is submitted that apart from the fragmented specialised adjudication bodies, there should be a body designed and designated to adjudicate social security matters in Tanzania. In this respect lessons can be drawn from the Pension Funds

<sup>98</sup> Taylor Committee of Inquiry 2002, at p. 124.

<sup>99</sup> Information obtained from personal interviews with social security administrators from December 2005 to mid-March 2006, *ante*.

Adjudicator's office in South Africa which is permanent and is mandated to adjudicate all matters arising from registered pension funds.<sup>100</sup> All complaints from pension beneficiaries may be lodged with the Pension Funds Adjudicator who is required by law to "dispose of complaints lodged ... in a procedurally fair, economical and expeditious manner."<sup>101</sup> In the case of the Tanzanian social security system, a similar approach can be used for other benefits as well. Further, it is recommended that the establishment of the specialised adjudication body should be accompanied by harmonisation and amalgamation of the social security schemes, because there is little that the proposed body can do if each scheme is governed by a different legislation. Following from this, the question remains: What is the appropriate institutional framework for social security in Tanzania?

### 6.3 INSTITUTIONAL FRAMEWORK OF SOCIAL SECURITY ADMINISTRATION

Various bodies are entrusted with social security administration in Tanzania. Each scheme has a different body to administer social security which, once again, fosters inequalities between workers, inconsistencies in the determination of entitlement to social security benefits, and a lack of transparency and accountability on the part of the administrators.<sup>102</sup> The bodies that are mandated by social security law to administer social security include boards of trustees, directors-general and the officials under them, and the ministers responsible for the existing social security schemes.

All social security schemes in Tanzania, except the PSRB, GEPF and CHFs, are administered by boards of trustees.<sup>103</sup> The Boards of Trustees are the highest governing and decision-making bodies for social security institutions in Tanzania. Each social security scheme has a separate board of trustees.

The Board of Trustees of the National Social Security Fund<sup>104</sup> is entrusted with the control and administration of NSSF, among other functions.<sup>105</sup> It is also duty-

<sup>100</sup> See Chapter VA of the *Pension Funds Act* of 1956 inserted by s. 3 of Act 22 of 1996.

<sup>101</sup> See s. 30D of Act No. 24 of 1956, inserted by s. 3 of Act 22 of 1996. See also Sub-Part XX and Part VIII of the Drafts of the *Social Security Act* of 2005 by both the international experts and social security institutions respectively.

<sup>102</sup> See part 3.3 of chapter three of this thesis for a discussion on different qualifying conditions.

<sup>103</sup> See s. 4(1) of Act No. 28 of 1997, s. 7 of Act No. 14 of 1978, and s. 53 of Act No. 2 of 1999.

<sup>104</sup> Established under Part VI of Act No. 28 of 1997.

<sup>105</sup> See s. 55(b) of Act No. 28 of 1997.

bound "to manage and administer NSSF... and to protect, safeguard and promote the interests of the insured persons."<sup>106</sup> The Board is responsible for ensuring that NSSF is administered in accordance with the *National Social Security Act* of 1997, and for guaranteeing that the beneficiaries' welfare remains intact.

Similarly, the Board of Trustees of the Public Service Pensions Fund<sup>107</sup> must manage and administer PSPF, and protect, safeguard and promote the interests of the members of PSPF.<sup>108</sup> The Board of Trustees of the Parastatal Pensions Fund is similarly responsible to PPF.<sup>109</sup> The same obligations are given to the Board of Trustees of the Local Authorities Provident Fund.<sup>110</sup> Slightly different responsibilities are given to the trustees of the National Health Insurance Board, which is required "to devise control measures to prevent abuse of services,"<sup>111</sup> among other duties, and to the Council Health Service Board, which is obliged "to ensure that funds are available for health development activities in the council and essential drugs, medical supplies and vaccines are timely available."<sup>112</sup>

It is evident from the foregoing that the boards of trustees must ensure that the social security rights of the members of their respective schemes are protected. However, the members' rights are not well protected because of the differences that exist between one scheme and another, which essentially generate discrimination against workers because of the inconsistencies in the qualifying conditions, the social risks covered, and the value and number of benefits offered, among others. Therefore the chance of holding the boards of trustees accountable for the non-fulfilment of their legal obligations is very slim, because "insufficient provision is made for proper accountability and feedback, as far as the members/beneficiaries of the relevant funds or schemes are concerned."<sup>113</sup>

<sup>106</sup> See s. 56(a) and (b) of Act No. 28 of 1997.

<sup>107</sup> Established under s. 32 of Act No. 2 of 1999.

<sup>108</sup> See s. 54(a) and (b) of Act No. 2 of 1999.

<sup>109</sup> Established under s. 17 of Act No. 14 of 1978. See also s. 19 of Act No. 14 of 1978.

<sup>110</sup> Established under s. 11 of Act No. 6 of 2000.

<sup>111</sup> Established under s. 29(1) of Act No. 8 of 1999. See s. 30(b) of Act No. 8 of 1999.

<sup>112</sup> Established under *Local Government (District Authorities) Act* of 1982, Act No. 7 or *Local Government (Urban Authorities) Act* of 1982, Act No. 8. See s. 12(e) of Act No. 1 of 2001.

<sup>113</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 27. See also "Bank Seeking Reforms in Tanzania's Pension Funds" available at <http://www.globalaging.org/pension/world/2005/tanzifunds.htm>, last accessed on 19 February 2007, where Mr. Mpango, a senior economist with the World Bank, is quoted as saying "[Tanzania] should learn from experiences of other countries and adopt arrangements where the management of the funds is more accountable to members and where workers' savings are not put into risky ventures."

On account of the lack of accountability measures, there are incidents of careless investments and misappropriation of social security funds in Tanzania. For instance, NSSF and PSPF have invested enormous amounts of money in “dubious investments” which are unlikely to yield any profits in the future, let alone recovery of the monies invested.<sup>114</sup> Additionally, the social security schemes offer personal loans with or without collateral and the re-payment of which cannot be guaranteed.<sup>115</sup>

However, it is submitted that those who are entrusted with administration of social security should recognise that the social security beneficiaries must be guaranteed:

[t]he right to have a reasonable return on the investment of contributions made, the right to transparency as regards the disclosure of information relating to his/her contribution and/or benefit portfolio, the right to have his/her interests cared for by the managing board of the institution concerned, the right to an adequate level of benefits, and the right to just administrative treatment.<sup>116</sup>

This accords with the view that the right to social security should be constitutionalised to place the social security beneficiaries in a secured place in the event that administrators do not honour the promises that were made to the members by the scheme.<sup>117</sup>

Although the NHIF and CHF have specified the grounds upon which complaints from their members may be based, it is doubtful if members even know these grounds of complaints or even know that they have a say in the running of NHIF and CHF. This contention is based on the fact that some members are unable to claim benefits because they are “unaware of their entitlements and/or the procedures to do

<sup>114</sup> See part 4.1.2 of chapter four of this thesis.

<sup>115</sup> The incidents of misappropriation of social security funds are clear from the recent allegations that NSSF, among others, has given “fat” loans to its senior officers without proper procedures. For instance, one of the “beneficiaries” of these loans was awarded Tshs.46 million, which is equivalent to US\$36,377. See “*Treasury finally queries fat loans at NSSF*” *Tanzanian THISDAY*, Thursday, 21 September 2006. Exchange rate obtained through <http://www.bot.tz.org/FinancialMarkets/ExchangeRates/ShowExchangeRates.asp>, accessed on 26 September 2006. See also “*GEPF gives 200m – loans to 500 members*” *Tanzanian Guardian*, Tuesday, 7 June 2005 where it is stated that “the Government Employees Provision (sic) Fund (GEPF) has spent a total of 200m/- to offer loans without interest to 500 members...” See further “*All can get loans from PPF, seminar told*” *Tanzanian Guardian*, Thursday, 23 June 2005 where it was stated that “senior government and party leaders can get loans from the Pension Provident Fund (sic) even if they are not members.” See further “*Finally, Bunge agrees to probe PSPF suspect deal*” *Tanzanian THISDAY*, Monday, 30 October 2006.

<sup>116</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 38.

<sup>117</sup> See chapter three of this thesis for more details on the constitutionalisation of social security rights.

so.”<sup>118</sup> This being the case, one may ask, if beneficiaries are unable to claim their benefits for lack of awareness, how will they even know about holding the boards of trustees accountable? If a beneficiary has never approached the social security institution, it is unlikely that this member will know what the board is obligated to do. This is even more likely to be the case if a member does not know his/her rights or entitlements under the scheme.

If boards of trustees need to reach out to the beneficiaries, the question is whether they are autonomous bodies as claimed by their establishing legislation. Political influence over the existing schemes would render the performance of the boards’ functions meaningless. Although the government’s influence over the undertakings and performances of the schemes is something that the social security institutions will not admit to, such influence is obvious from the constitution of the boards.<sup>119</sup> For instance, the chairman of the Board of Trustee of the National Social Security Fund is a presidential appointee;<sup>120</sup> the Director General, who is a secretary of the Board, is also appointed by the President.<sup>121</sup> Similarly, the chairman of the Board of Trustees of Public Service Pensions Fund is the Permanent Secretary of the Ministry of Finance<sup>122</sup> who is a presidential appointee and the Director General is also an appointee of the President.<sup>123</sup> Also, the chairman of the Board of Trustees of Parastatal Pensions Fund is the Permanent Secretary of the Ministry of Finance and all other members of Board are appointed by the Minister of Finance.<sup>124</sup> Exceptionally, the Director General of the NHIF is appointed by the National Health Insurance Board.<sup>125</sup>

In the current situation, it is submitted, the boards of trustees are not autonomous and they cannot act in defiance of orders which come from the appointing authorities. The board members are likely to be inclined to serve political leaders rather than the members of their schemes. In a word, “there are...clear indications in the various laws of the possibility of political interference in the

<sup>118</sup> See Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005, op cit*, at p. 20.

<sup>119</sup> See Rwegoshora, *op cit*, at p. 54 where it is stated that “Government intervention...is a phenomenon which many appointed officials would not like to be open with specific details...”

<sup>120</sup> See Item 1 of the 2<sup>nd</sup> schedule of Act No. 28 of 1997.

<sup>121</sup> See s. 4(2) and Item 5 of the 2<sup>nd</sup> schedule of Act No. 28 of 1997.

<sup>122</sup> See s. 52 of Act No. 2 of 1999.

<sup>123</sup> See 34(1) of Act No. 2 of Act No. 2 of 1999.

<sup>124</sup> See Item 1 of 1<sup>st</sup> schedule of Act No. 14 of 1978.

<sup>125</sup> See s. 6(1) of Act No. 8 of 1999.

appointment and management of and decision-taking by the Board.”<sup>126</sup> Besides appointments being made by political leaders, the ministers responsible for the social security schemes are authorised by law to give “the Board directions of general or specific nature as to the performance of the Board of any of its functions in relation to any matter appearing to the Minister to affect national interest, and the Board *shall* give effect to every such directions.”<sup>127</sup> The fact that this all-encompassing statement does not specify the kind of directions a minister can give nor the limitations thereon “increases the possibility of political interference and may compromise the independence of the Board.”<sup>128</sup> Consequently, it would seem that social security schemes operate at the mercy of political leaders. It is believed that “interference by the directives from the minister for most of the funds affects governance of many social security funds.”<sup>129</sup>

From another perspective, nonetheless, the appointment of the heads of social security institutions by the President is viewed as one of the mechanisms of ensuring that the social security funds are safe,<sup>130</sup> which justifies the extensive government control over social security schemes’ undertakings. Firstly, social security schemes are placed under different ministries and it is the minister in charge of a specific scheme who must report to Parliament.<sup>131</sup> In this way, the law recognises that there is need for the minister to have control over a scheme for which he/she is responsible. As Rwegoshora notes:

[t]he National Assembly does control the functions of the Government, therefore, a Minister responsible for the Fund ...may be given directions, ordered to supply necessary

<sup>126</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 27.

<sup>127</sup> See s. 60 of Act No. 28 of 1997, s. 23 of Act No. 14 of 1978, s. 62 of Act No. 2 of 1999 and s. 18 of Act No. 6 of 2000.

<sup>128</sup> See Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 19. See also Rwegoshora, *op cit*, at p. 54 where it is stated that “[a]lthough we do not attempt to cite any specific examples here, by saying the Board shall give effect to every such directions, means much more than perhaps our mind (sic) may tend to limit it...The Minister’s directions are the directions of the Government and some degree of overriding decisions over the Board may in proper cases be termed as Government interference with the operations of the Fund.”

<sup>129</sup> See Rwegoshora, *op cit*, at p. 50.

<sup>130</sup> Personal interviews with the administrators of social security schemes from December 2005 to mid-March 2006. (See footnote 22 of chapter 4 of this thesis).

<sup>131</sup> See Rwegoshora, *op cit*, at p. 44 where it is stated that “[o]n the issue of accountability, it is the duty of the National Assembly to hold the respective ministers [responsible/accountable] for anything done by the Fund...” See also Hansard of 25 July 2005, 34th Parliamentary sitting where the then Minister of Labour, Youth Development and Sports had to answer questions about the investments which NSSF was making.

feedback that is missing and may hold the Minister accountable for any mismanagement of the Fund.<sup>132</sup>

Secondly, the government acts as a guarantor for each and every social security scheme in case of a shortage of funds to perform its functions, including the provision of funds for paying out benefits which are due to the members.<sup>133</sup> As a guarantor of the schemes, it may not be possible to allow the schemes to be independent, in the hope that they will control and conduct themselves responsibly. Because the government is responsible for financing the schemes in the event of a shortage of funds, it can justify its having a hand on the schemes' undertakings.

It is submitted that there are strong connections between the appointment of the directors-general, the directives by the ministers responsible for the existing schemes, and the fact that payment of social security funds from the consolidated fund is guaranteed. The consolidated fund is state money, and therefore the government is justified in influencing the decisions of the schemes, firstly by appointing the heads of the schemes, and secondly, by compelling them to give effect to the minister's directions.

Although it is indisputable that the involvement of the government cannot be totally avoided, its immense influence on the undertakings of the social security schemes affects the schemes and places the beneficiaries at the mercy of presidential/ministerial appointees who can be disciplined only by those who appointed them. It follows that it pays the presidential/ministerial appointee to continue to be loyal to his/her appointing authority and the authority's allies so that the appointee is able to maintain his/her position. Beneficiaries in Tanzania have witnessed personal loans being given to ministers without clear conditions and contrary to the investment policies of these schemes.<sup>134</sup> Not only that, the public has also witnessed their monies being wasted on "political investments" by the social security schemes who spend large amounts of money congratulating political

<sup>132</sup> Rwegoshora, *op cit*, at p. 41. See also the Drafts of the *Social Security Act* of 2005 by both the international experts and the social security institutions which provide that "[t]he Minister shall give regular accounts to the National Assembly on social security affairs in Mainland Tanzania, including/particularly the national policy framework for social security and its implementation" in ss. 320 and 93(1) respectively.

<sup>133</sup> See s. 64 of Act No. 28 of 1997, s. 52 of Act No. 14 of 1978 as amended by s. 14 of Act No. 25 of 2001, s. 46 of Act No. 2 of 1999, and s. 33 of Act No. 6 of 2000.

<sup>134</sup> See chapter four of this thesis for more details.

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<sup>132</sup> Rwegoshora, *op cit*, at p. 41. See also the Drafts of the *Social Security Act* of 2005 by both the international experts and the social security institutions which provide that "[t]he Minister shall give regular accounts to the National Assembly on social security affairs in Mainland Tanzania, including/particularly the national policy framework for social security and its implementation" in ss. 320 and 93(1) respectively.

<sup>133</sup> See s. 64 of Act No. 28 of 1997, s. 52 of Act No. 14 of 1978 as amended by s. 14 of Act No. 25 of 2001, s. 46 of Act No. 2 of 1999, and s. 33 of Act No. 6 of 2000.

<sup>134</sup> See chapter four of this thesis for more details.

leaders/appointees in the public media.<sup>135</sup> As indicated earlier on, this is where the problem of fragmentation, as a playing ground for competition amongst the schemes, and the need for harmonisation and/or amalgamation seem to converge. In the absence of competition, the levels of benefits may raise as there would be no adverts to “win customers and political favours.”

Following from this, it is submitted that those heading social security schemes should be free from political influence because “many schemes ... have suffered from bad management partly because of too much government interference, which has often strongly reduced the trust of members in the scheme.”<sup>136</sup> It is suggested that the positions should be elected with a prescribed term of office. Chairpersons and directors-general of the schemes should be elected by the representative members of the stakeholders of a particular scheme.<sup>137</sup> As long as the administration of social security schemes continues to be controlled by politicians, extension of coverage will remain impossible, as “extension of coverage to the whole population [depends on] improvement of governance.”<sup>138</sup> Improvement of governance means “involving the introduction of revised governance models, emphasising the role of Boards [of Trustees] with comprehensive responsibilities and chief executive officers with appropriate accountability requirements.”<sup>139</sup> This is in line with the ultimate goal of governance: that “public administration must be accountable...transparency must be fostered, by providing the public with timely, accessible and accurate information.”<sup>140</sup>

Having seen how administration of social security in Tanzania is conducted, one question remains: How are accountability and transparency ensured under the current conditions? Although accountability measures are not expressly provided for by law, members of social security schemes are legally entitled to receive statements of accounts whenever they request them.<sup>141</sup> It is not clear, however, whether members

<sup>135</sup> See chapter one of this thesis. See also Rwegoshora, *op cit*, at p. 50.

<sup>136</sup> Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, (ed), 1999, *op cit*, at pp. 8-9.

<sup>137</sup> Diop, *op cit*, at p. 21.

<sup>138</sup> Gillion, *op cit*, at p. 40.

<sup>139</sup> Mpedi, “Administration and institutional framework,” in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 165.

<sup>140</sup> Olivier, “Adjudication and enforcement of social security,” in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 183.

<sup>141</sup> See for instance s. 45 of Act No. 2 of 1999 which states that “[i]t shall be the duty of the Director General to inform any member of the Fund on request about the welfare of the member’s account.” As well, s. 26(2) of Act No. 6 of 2000 provides that “within six months after the end of every financial year each contributing employer shall be informed of the amount standing to the credit of all depositors under his employment and the contributing employer shall within one month after receiving such notification inform the said depositors accordingly.” Other information obtained from personal

can access information on the financial standing of the scheme, because participation of the members in decision-making bodies is too minimal to have any impact. For instance, there are only three representatives of workers on the Board of Trustees of NSSF (comprising 11 members), while the composition of the Board of Trustees of PPF does not guarantee/state the number of representatives of workers.<sup>142</sup>

The problem of fragmentation once again surfaces here: In the event of amalgamation, it is not clear whether workers' representatives will be the same individuals for all the social security schemes or will be different from one scheme to the other. If the former view prevails, then some workers will not be properly represented as the representatives could belong to one or two schemes and know nothing about the rest of the schemes. If the latter view succeeds, then there is a danger of multiplicity of representatives and inconsistencies may arise in terms of the demands of the workers at large. The latter will foster discrimination against workers as there will be different representatives for each scheme and while some may be vocal and effective, others may be timid and unable to represent workers adequately. As Olivier and Kaseke concisely state:

...while the composition of the various Boards, where appropriately, is generally of a tripartite nature, and may have to reflect experience in social security, financial matters or administration, the choice of a stakeholder representative may be restricted to a particular entity from amongst the stakeholders...<sup>143</sup>

While uniformity is non-existent, the members of the social security schemes are unable to monitor their undertakings or even understand their financial position. An example here is that of the investment portfolio where decisions are taken at two levels: by the investment committee of the scheme and by the Board of Trustees.<sup>144</sup> While the members have representatives at the Board level, albeit with minimal influence, they are not represented at the committee level where most of the investment decisions take place.<sup>145</sup> It is therefore submitted that there should be

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interviews with social security administrators from December 2005 to mid-March 2006, *ante*. (See footnote 22 of chapter four of this thesis).

<sup>142</sup> See 2<sup>nd</sup> schedule Item 1 of Act No. 28 of 1997 and 1<sup>st</sup> schedule Item 1 of Act No. 14 of 1978 respectively.

<sup>143</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit*, at p. 19.

<sup>144</sup> Personal interviews with social security administrators from December 2005 to mid-March 2006, *ante*. (See footnote 22 of chapter four of this thesis).

<sup>145</sup> See Hansard of 25 July 2005, 34th Parliamentary sitting. See also "Unions are furious over wasted money" *Tanzanian THISDAY*, Saturday, 18 March 2006. Information also based on personal interviews

participation of social security stakeholders in order to guarantee good governance of the schemes.<sup>146</sup>

Every social security scheme is obliged to follow the principles of democratic management, even more so for a scheme which is financed by contributions from members. Democratic management requires, as stated by Gillion:

Participation of workers' and employers' representatives in management of social security schemes [as] the direct consequence of financing through contributions. The aspect is a crucial one since it makes reference to the free use of salary whose suspension through the introduction of social security contributions (deferred salaries) becomes acceptable only when workers have, through their representatives, the right to influence the use of what, at the end of the day, remains their money.<sup>147</sup>

It is the participation of different stakeholders that guarantees transparency and accountability. The representatives of members of the social security schemes will question the wellbeing of the schemes based on the information they receive and, in turn, the social security schemes will operate according to the principle of transparency. As Mpedi puts it, "creation of optimum opportunities and processes for interaction with, and feedback from, beneficiaries and potential beneficiaries will promote better accountability and hence greater operational efficiency."<sup>148</sup> The current social security system in Tanzania does not seem to pay attention to the participation of beneficiaries in the undertakings of the schemes. As summarised by Rwegoshora:

all Funds [tend] to leave the stakeholders behind in the whole process of feedback...therefore the similar issues of participation, transparency, reciprocal feedback are apparently missing in [these] social security scheme[s].<sup>149</sup>

This being the case, one question remains unanswered: What is the situation of the beneficiaries and what quality of services do they receive?

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with social security administrators from December 2005 to mid-March 2006, *ante*. (See footnote 22 of chapter four of this thesis).

<sup>146</sup> See Hansard of 13 June 2006 where a Member of Parliament of Gairo constituency inquired about how the members of NSSF participated in the investment decisions. See also "Pension funds generate heated debate in House" *Tanzanian Guardian*, Wednesday, 14 June 2006.

<sup>147</sup> Gillion, *op cit*, at p. 40.

<sup>148</sup> Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p 165.

<sup>149</sup> Rwegoshora, *op cit*, at p. 44.

#### 6.4 THE QUALITY OF SERVICE DELIVERY IN SOCIAL SECURITY

The current state of affairs suggests poor social security service delivery: Members of the schemes have stated their dissatisfaction with the manner in which social security schemes take care of them. The major cause of dissatisfaction is the fact that “in Tanzania, the institutional framework for the delivery of social security services is very fragmented and uncoordinated.”<sup>150</sup> This has led to complaints about:

inadequacy of benefits, lack of equity and fairness in the administration of the services, delays in payments, lack of up to date information about the schemes, lack of information on contributions made by the individual members and generally lack of understanding on the rights and obligations of members.<sup>151</sup>

Firstly, members of the schemes complain about inadequacy of benefits, the details of which are discussed in chapter four. In this respect, it is submitted that social security schemes should strive to offer better benefits instead of concentrating on “political investments.” Likewise, benefits should be compatible with the changes that occur in the economy so as not to deprive the beneficiaries of their right to be protected against destitution.

Lack of equity and fairness in the administration of the services is another area of poor service delivery in the social security schemes. There are concerns about corruption in the administration of social security benefits and that service delivery is based on favouritism rather than on merit.<sup>152</sup> For instance, some beneficiaries indicated that their benefits were given earlier than expected because they knew one of the employees at the social security institutions who helped to expedite their applications.<sup>153</sup> Along similar lines, fairness of these schemes in terms of service delivery is doubtful as some members have to travel long distances to access the services and in most cases they are given different dates for follow up which keep

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<sup>150</sup> *Ibid.*, at p. 58.

<sup>151</sup> *Ibid.*, at p. 45.

<sup>152</sup> Personal interviews with social security beneficiaries from December 2005 to mid-March 2006. (For example see footnotes 69, 127, 128, 183 and 206 of chapter three of this thesis and footnote 154 of this chapter).

<sup>153</sup> About 41 per cent of the 37 interviewees in the category of beneficiaries indicated that payment of their benefits took less time than expected because they knew somebody at the social security institutions who expedited the application. See also “*Treasury finally queries fat loans at NSSF*” Tanzanian *THISDAY*, Thursday, 21 September 2006 where it was reported that the incumbent Director of Human Resources and Administration “allegedly got his job on favours of his father, who sits on the NSSF Board.” In view of this, the chances are that what the beneficiaries alleged is likely to be a reality in most of the schemes.

changing.<sup>154</sup> These beneficiaries who travel long distances have to use their own money which is never refunded by the schemes when the benefits are paid. In fact, some beneficiaries have to borrow money to cover travel costs, only to find that the benefits for which they are applying cannot be paid because, to take one example, the employer has delayed in remitting the contributions to the scheme.<sup>155</sup>

A third observation is that delays in the payment of benefits also cause dissatisfaction and distrust with the schemes. The beneficiaries wait for too long after the due date to receive their benefits. Theoretically, almost all social security schemes pay benefits after a period of seven days to two months. However, in practice, the earliest one can get benefits is after six months and those whose benefits are delayed may wait for up to three years.<sup>156</sup> The causes of delay of benefits include the laxity of social security law which does not specify when the benefits should be paid to the members, and careless investments that do not yield returns within the anticipated/projected timeline.<sup>157</sup> Similarly, social security schemes tend to give personal loans to politicians which negatively affects the financial ability of the social security schemes to disburse benefits on time.<sup>158</sup> Delay of benefits is also caused by the cumbersome procedures in place which require the production of unnecessary documents upon retirement or when the benefits are due.<sup>159</sup>

<sup>154</sup> Personal interviews with Messrs. Amani A. Ligopola and Iddy A. Ligopola on 1 March 2006 in Dar es Salaam. The two beneficiaries travelled from Kyela District to Dar es Salaam because they were told that they could not get their benefits (survivors' benefits) because some papers from the employer were missing. They therefore had to travel to Dar es Salaam so that they could confront both the employer and the scheme. There are also cases where social security beneficiaries have died while waiting for their benefits. See "A retiree dies at the Treasury while hunting for [his] pension" *Tanzanian Mwanza*, Saturday, 15 July 2006, "NSSF member dies while following up [his] pension" *Tanzanian Nipashe*, Wednesday, 22 June 2005 and "NSSF clarifies a death incident of its member" *Tanzanian Nipashe*, Friday, 24 June 2005. (Translations are mine). However, Mr. Faki, interviewed in Mbeya on 2 February 2006, who was the Regional Manager when a death occurred, indicated that the deceased member was being helped to have his benefits processed rapidly as he was ill. The application was lodged on 7 June 2006 and the death occurred on 21 June 2006.

<sup>155</sup> Personal interviews with Messrs. Amani A. Ligopola and Iddy A. Ligopola on 1 March 2006 in Dar es Salaam. See also "LAPF members from Chunya Complain" *Tanzanian MAJIRA*, Thursday, 20 July 2006 (translation is mine) where Mr. Mgaya, one of the members of the LAPF stated that while contributions were deducted from his salary, his 55 months of contributions were not remitted to LAPF by his employer and that he, together with other employees of the District Executive Director of Chunya District, Mbeya Region, did not know the fate of their contributions. See also "TAZARA fails to remit 4bn/- to NSSF" *Tanzanian Daily News*, Monday, 27 February, 2006.

<sup>156</sup> See footnote 67 of this chapter.

<sup>157</sup> See chapter four of this thesis for more details.

<sup>158</sup> See part 4.1.2. of chapter four of this thesis for more details. See also Rwegoshora, *op cit.*, at p. 54 and Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit.*, at p. 21.

<sup>159</sup> See part 6.2 of this chapter for details on the required documents. See also the Second Parliamentary session, 9<sup>th</sup> Sitting, 17 February 2006, Hansard No. HS-2-8-2006.

Another cause of delay of benefits is the fact that social security services are centralised in Dar es Salaam for most social security schemes, with the exception of LAPF which has its headquarters in Dodoma. The fact that all the schemes operate from Dar es Salaam has caused dissatisfaction with beneficiaries who live up-country, who lack timely services compared to beneficiaries who live in Dar es Salaam. In most cases, employers have remained the main "middle men" between the schemes and beneficiaries outside Dar es Salaam. In respect of this, Van Ginneken suggests that "[b]enefit payment procedures need to be streamlined so as to shorten the period involved in claiming benefits and to decentralise benefit payment procedures."<sup>160</sup>

However, almost all the social security schemes have offices in some parts of the Tanzania. The NSSF has offices in every political region in Tanzania and in about 16 districts.<sup>161</sup> All these regional and district social security offices are allowed to administer/offer social security services to the beneficiaries in those areas subject to a monetary maximum ceiling of Tshs.15 million (US\$11,363.63) for Dar es Salaam offices, Tshs.7.5 million (US\$5,681.81) for Arusha, Morogoro, Mwanza, and Kilimanjaro and Tshs.3 million (US\$2,272.72) for all other regional offices.<sup>162</sup> PPF has 4 zonal offices: Dar es Salaam, Arusha, Mbeya, and Mwanza for the coastal/eastern, northern, southern highlands and lake zones respectively.<sup>163</sup> Similarly, the NHIF has 7 zonal offices: the eastern zone, western zone, lake zone, northern zone, southern zone, southern highlands, and central zone.<sup>164</sup> The LAPF has 3 zonal offices, namely, the Lake Zone, Northern Zone and Eastern Zone.<sup>165</sup> Unlike the other schemes, the LAPF zonal offices are only for receiving claims which are transmitted to the headquarters for determination and other administrative procedures. The zonal offices come into play again for the payment of benefits to the beneficiaries. PSPF

<sup>160</sup> See Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed), 1999, *op cit*, at p. 14.

<sup>161</sup> There are about 120 administrative districts in Mainland Tanzania.

<sup>162</sup> Personal interviews with Messrs. Shemliwa and Faki, on 9 January 2006 and 2 February 2006, respectively, *ante*. (See footnotes 211 and 16 of chapter three of this thesis respectively). These were the exchange rates in August 2006.

<sup>163</sup> Personal interview with the Acting Fund Secretary on 19 December 2005, in Dar es Salaam, *ante*. (See footnote 21 of chapter three of this thesis). The zonal offices for PPF were established in 2003.

<sup>164</sup> Personal interview with Mr. Rehani on 13 December 2005, in Dar es Salaam, *ante*. (See footnote 30 of chapter three of this thesis.)

<sup>165</sup> Personal interview with one of the LAPF officials on 8 December 2005, in Dar es Salaam, *ante*. (See footnote 24 of chapter three of this thesis.)

and GEPF entirely depend on the employers of their up-country members/beneficiaries for receiving claims and paying benefits.<sup>166</sup>

Although it appears that many of the schemes operate on decentralisation principles, the reality is that the administrative activities of these schemes are still concentrated in their respective headquarters. It is believed that decentralisation of social security services is mandatory for any quality social security delivery. Many areas are still far from reach and the beneficiaries in those areas are still suffering. It is submitted that beneficiaries should not be prejudiced by the location of their residences. Coordination, harmonisation and amalgamation of the schemes would mean that a social security scheme which has an office in one area could service the entire group of beneficiaries of other schemes in a particular area. This approach would simplify disbursement of benefits. In this way, services will be brought closer to the people, and the quality of social security delivery will be improved.

Members of the social security schemes are not informed about the undertakings of schemes and therefore lack current information about the schemes.<sup>167</sup> They do not know about the financial status of their schemes, nor do they have information about the contributions they have made. Only when they apply for their benefits do they find out whether they have made sufficient contributions and whether they qualify for any benefits. This is a fourth area of dissatisfaction: that beneficiaries have no knowledge of their rights and also have no idea of their obligations.

For the reason that members are unaware of their rights and obligations, they fail to address problems experienced with the appropriate authorities. For instance, members are entitled to obtain information about the contributions they have made to the schemes, but they complain that they are not given information about the state of their accounts.<sup>168</sup> Initially, schemes did provide a monthly statement for every member to his/her employer. This turned out to be too costly and it did not add any value as the members were not given those statements; some of whom would approach the schemes directly for duplicate statements. Justifiably, the schemes

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<sup>166</sup> Personal interviews with the officials of GEPF and PSPF on 29 December 2005, in Dar es Salaam, *ante*, see footnotes 27 and 36 of chapter three of this thesis respectively.

<sup>167</sup> Personal interview with social security administrators from December 2005 to mid-March 2006 who indicated that information on members' accounts is given upon request by a member or the employer. (See footnote 22 of chapter four of this thesis).

<sup>168</sup> See s. 45 of Act No. 2 of 1999. Also information based on personal interviews with social security administrators between December 2006 and mid-March 2006, *ante*. (See footnote 22 of chapter four of this thesis).

decided to offer information on request. However, this approach has a negative side, especially where the services are centralised and the workers are located all over the country. It is impracticable for a member working up-country to travel to Dar es Salaam, where the majority of the schemes' headquarters are, just for a statement of account. It is proposed that statements of account should be sent to the members directly, because some employers would not want to give statements of account to their workers when they know that they have not remitted their contributions to the schemes. As Van Ginneken suggests, "[r]ecord-keeping needs to be improved and statements of account should be sent to members regularly."<sup>169</sup>

This approach will help both the member and the social security scheme. The worker will be able to approach the employer and inquire why his/her account does not reflect the deductions made from his/her salary for social security contributions for a specified period. The schemes will thus be helped in enforcing compliance at no cost. Therefore, it is recommended that the law should provide that members should get their statements of account, either yearly, twice a year, or quarterly.

There are three major challenges, however, to effective social security delivery in Tanzania: the inability of the social security schemes to collect revenues from their members,<sup>170</sup> high administrative costs, and a lack of coordination of social security matters both within and outside the country.

An inability to collect contributions coupled with contribution evasion by members, especially where the scheme is primarily mandatory and financed by contributions, has far-reaching effects. Inadequacy of benefits accompanied by stagnation of benefits seems to be the direct outcome of this state of affairs. Delay of benefits, caused by insufficient funds or non-remittance by the employer, is also a result of the inability of the scheme to follow up on revenues. Enforcement of compliance is impaired as the schemes are incapacitated by the fragmented state of affairs which causes competition between the schemes, while employers can, at any given time, switch from one scheme to another. To maintain their membership, the schemes have to be lenient about enforcement procedures, which again lead to bad governance and lack of proper administration. Gillion notes that:

<sup>169</sup> See Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed), 1999, *op cit*, at p. 14.

<sup>170</sup> See "TAZARA fails to remit 4bn/- to NSSF" *Tanzanian Daily News*, 27 February 2006. See also Gillion, *op cit*, at p. 59 where it is stated that "[t]he ...major problem of pension schemes in developing countries is that of governance. Many schemes, or their beneficiaries, are in financial difficulties simply because of inability to collect all the revenues due to them, to invest any reserves wisely, or to pay benefits promptly and in full."

Contribution evasion has direct effects on governance and administration of the fund. Also payment of benefits will be delayed and the levels of benefits may be very low. Evasion also attracts high spending of social security fund to enforce compliance which may be [more] expensive than the contributions being sought.<sup>171</sup>

High administrative costs are a second challenge for the quality of social security delivery in Tanzania. It is argued that high administrative costs may be a result of the fact that "staff of the pension agencies may be too numerous and their salaries too high."<sup>172</sup> The beneficiaries may be scattered all over the country, which requires more staff to serve them in their areas. It is submitted that harmonisation and coordination, with the eventual goal of amalgamation, will reduce the costs of administration as the facilities and staff of one scheme will be serving beneficiaries of other schemes. High costs of administration are also caused by the fact that schemes are "compelled" to bribe the employers to remit contributions. As Van Ginneken summarises, "the costs of delivering the benefits are often high and, without an efficient and accountable control and monitoring system, leakages or corruption are likely."<sup>173</sup> It is submitted that high costs impact on adequacy of benefits because the administrative costs are high, and therefore the proceeds from investment are used to supplement these costs rather than improve benefits.<sup>174</sup>

A third challenge for quality social security delivery is lack of coordination measures in the country which poses problems for coordination efforts at regional level and the world at large. If at country level there are experiences of poor service delivery, worse can be expected for service delivery to migrant workers. Taking the example of disbursement of social security benefits, where a migrant worker in Tanzania wants to return to his/her home country, disbursement of benefits will be delayed. Similarly, where a Tanzanian who worked in another country returns home, his/her benefits will be delayed by the cumbersome procedure and centralised social security system in Tanzania, even if the benefits are sent timeously by the host

<sup>171</sup> Gillion, *op cit*, at p. 59.

<sup>172</sup> *Ibid.* at p. 59.

<sup>173</sup> Van Ginneken, "Overcoming Social Exclusion," in Van Ginneken, (ed) 1999, *op cit*, at p. 9.

<sup>174</sup> See s. 43(1) and (2) of the Draft *Social Security Act* of 2005 by the international experts which states that the "Board shall administer the Fund in such manner as to give greater priority to the improvement of the benefits payable to contributors and control of administration costs... [and] the Board shall ensure that the Fund adhere to the keeping of administrative costs, which shall include all personnel expenses, at a maximum of three percent of the insurable earnings." A similar view is indicated by s. 72 (1) and (2) of the Draft *Social Security Act* of 2005 by the social security institutions.

country's social security scheme. As such, "administrative inertia and institutional inefficiency in the area of social security delivery are ... major obstacles for coordination ..."<sup>175</sup> It is submitted that Tanzanian social security service delivery should be improved in respect of regional coordination.

The South African experience of workers' compensation pay-outs for Mozambican mineworkers who returned to Mozambique offers good lessons here. The South African social security scheme, Rand Mutual Assurance, remitted compensation for the returning migrant workers to the Mozambican government which was required to pay the returned workers. After a random survey by the Rand Mutual Assurance on whether the beneficiaries received their benefits, it was established that "70 per cent of workers ... had never received any payment, despite Rand Mutual having remitted workers' compensation to the Mozambican government on behalf of all of them. Of the 30 percent ... who did receive compensation, payments were in each case lower than the remitted amount."<sup>176</sup> After negotiations with the Mozambican government, it was resolved that a private agency, the National Institute of Social Security, would distribute the benefits to the workers.<sup>177</sup>

A similar problem is likely to occur in Tanzania, where the contributors already experience considerable problems with benefit payments which are from the Tanzanian-based social security schemes; the problems will surely be worse for beneficiaries entitled to benefits from outside the country. It would appear from this state of affairs that there is close link between good governance, adequacy of benefits, extension of coverage to migrant workers, and coordination of social security issues. As such, it is important that the Tanzanian social security system should strive for good governance in order to protect its populace against destitution, which is done through the provision of adequate benefits, which is dependent on portability and coordination measures so that the periods and contributions made in the previous scheme or another country are not lost.

Therefore, apart from the discussed challenges, a summary of the challenges for governance would embrace a lack of participation of stakeholders in decision-making; competition between the schemes which has lead to a scramble for customers which, as indicated earlier on, affects monitoring and compliance; inability to invest

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<sup>175</sup> Olivier and Kalula, "Regional Social Security," in Olivier, Smit and Kalula, (eds) 2003, *op cit*, at p. 656.

<sup>176</sup> Fultz and Pieris, 1997, *op cit*, at p. 11.

<sup>177</sup> *Ibid.*

the financial proceeds wisely;<sup>178</sup> ineffectiveness of adjudication of clients' claims; centralisation of services which causes poor levels of social security services; lack of equity and fairness in service delivery; fragmentation of social security services;<sup>179</sup> a lack of databases and links between schemes as they operate as rivals; double dipping; a lack of understanding of the rights and the obligations of members; and centralisation of decision-making. As Mpedi puts it:

[A] central challenge affecting service delivery within the public sector is operational inflexibility ... Poorly structured hierarchies, over centralised decision making, in particular, with respect to basic operational matters and the lack of appropriate performance evaluation and remuneration leads to poor morale and ultimately poor service delivery. In addition, it is proposed that organisational capacity needs to be addressed by the implementation of effective and disciplined management processes.<sup>180</sup>

Despite the fact that there are numerous challenges for social security delivery, improvement of governance – transparency, democratic governance and participation of stakeholders, and devising yardsticks for accountability – may improve matters.

## 6.5 GOOD GOVERNANCE: THE WAY FORWARD

By and large good governance comprises eight major characteristics which may be presented as follows:

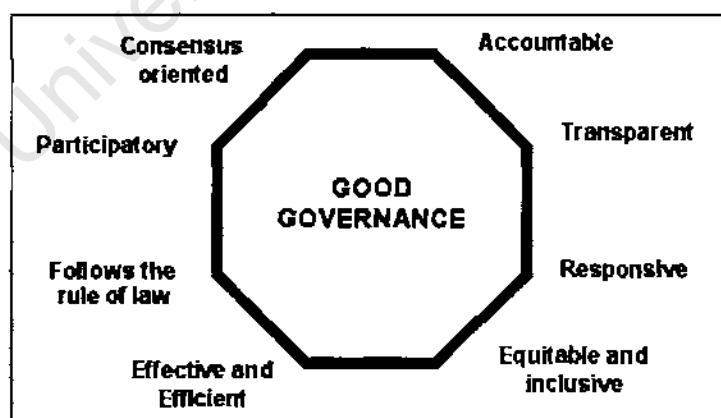


Figure 1: Characteristics of good governance

<sup>178</sup> See Gillion, *op cit*, at p. 59.

<sup>179</sup> Mpedi, "Administration and institutional framework," in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 163.

<sup>180</sup> *Ibid*, at p. 164.

Source: UNESCAP<sup>181</sup>

Although the “characteristics” of good governance are not specifically intended for social security administration, it is submitted that the same components should be incorporated into social security administration for the improved governance of social security schemes.

As indicated earlier, participation is an important aspect of social security administration. Participation ensures that stakeholders are involved in decision-making which leads to satisfaction about service delivery because of a better understanding of the social security scheme’s undertakings.<sup>182</sup> It also reduces the complaints that the beneficiaries may have about a social security scheme as they will trust that their representatives are heard and their concerns are being addressed by management.<sup>183</sup> It is recommended that the Tanzanian social security system should consider involving all social security stakeholders including employers, employees and the government in all decision-making. Gillion summarises the need for participation in the following words:

Some of the problems social security systems have encountered can be addressed by policies to improve management, governance and compliance. Governance can be improved by involving workers and employers in the process ... [and] participation in a management board. Management needs to be structured so that employers and workers have input into the structure of social security programmes. While, in some cases, it may be useful to have the formal input of these groups through their participation in management committees, in other cases, participation could occur through lobbying, voting, and their otherwise being involved in the political process.”<sup>184</sup>

Consequently, participation of different stakeholders in decision-making will result in achieving a “broad consensus in society on what is in the best interest of the

<sup>181</sup> United Nations Economic and Social Commission, for Asia and Pacific, (UNESCAP), *What is Good Governance?* Accessed through <http://www.unescap.org/huset/gg/governance.htm>, on 5 July 2006.

<sup>182</sup> See Scholz and Drouin, *op cit*, at p. 66.

<sup>183</sup> See part 6.3 of this chapter. See also Mpedi, “Administration and institutional framework,” in Olivier, Smit and Kalula, (eds), 2003, *op cit*, at p. 164 where it is stated that “[t]he opinions of the people who are served by the social security system are currently not given enough consideration. It is thus proposed that the views of vulnerable and marginal groups should be sought whenever the programmes are being evaluated. They can also be encouraged to participate in decision making ...”

<sup>184</sup> Gillion, *op cit*, at p. 45-46.

whole community and how this can be achieved.”<sup>185</sup> With consensus, improvement of governance of social security schemes will be guaranteed, and the different interests of different groups in the scheme will be considered. Participation will thus “ensure that contributors and beneficiaries have an opportunity to influence the decision-making process and to monitor the administration of social security schemes.”<sup>186</sup>

It is argued that “government institutions must be accountable to the public and their institutional stakeholders,”<sup>187</sup> because “accountability is the cornerstone of a democratic government.”<sup>188</sup> As we have seen from the discussion earlier on, there are no clear mechanisms established for making those who are entrusted with social security administration accountable to the people they purport to serve and who are affected by either the schemes’ non-performance or decisions that may be taken. It is submitted that social security schemes should be made accountable to the public: the law should clearly state the standards for performance of the social security schemes administrators, against which the beneficiaries can evaluate their performance. This should be done by establishing “a mechanism for monitoring and reviewing administrative performance.”<sup>189</sup> As Olivier and Kaseke summarise:

Good governance in social security schemes is critical for the viability and sustainability of the schemes...in order to improve governance ...the Board of Trustees should be made accountable to the three stakeholders groups, namely government, employers and employees. Thus the operations of the scheme should be transparent.<sup>190</sup>

This would be in line with the spirit of the *National Social Security Policy* of 2003, which states that “there shall be guidelines to ensure that all social security schemes are transparent and accountable to the members and the public at large.”<sup>191</sup>

Further, it is submitted that social security legislation should also “establish institutional arrangements which are accountable for the implementation of social

<sup>185</sup> UNESCAP, *loc. cit.*

<sup>186</sup> See Gillion, *op cit.*, at p. 42.

<sup>187</sup> UNESCAP, *loc. cit.* See also ISSA, *Guidance for investment of social security funds*, undated, available at <http://www.issa.int/engl/homef.htm>, accessed on 20 February 2007, at p. 4 where it is stated that “[t]he governing bodies of the social security scheme and of the investing institution should be accountable to the scheme members, beneficiaries, and other stakeholders of the social security scheme. In order to ensure the accountability of the governing bodies, their members should be liable for their actions and for their failure to act.”

<sup>188</sup> Mpedi, “Administration and institutional framework,” in Olivier, Smit and Kalula, (eds), 2003, *op cit.*, at p. 150. See also Butare and Kaseke, *op cit.*, at p. 8.

<sup>189</sup> See Gillion, *op cit.*, at p. 42.

<sup>190</sup> Olivier and Kaseke, *Report to the Tanzanian Labour Law Reform Task Force 2005*, *op cit.*, at p. 45.

<sup>191</sup> See Part 3.13 of the *National Social Security Policy* of 2003.

security programmes.”<sup>192</sup> Accountability mechanisms will ensure that investments are wisely chosen, that personal loans to politicians will be avoided, and that “political investment” by the heads of the institutions will also be avoided.<sup>193</sup> And, as indicated earlier on, the directors and chairpersons will be accountable to the public rather than to their appointing authorities. Independence from political and government interference will give autonomy to the administrators which will improve governance of the schemes.<sup>194</sup> The law should also devise mechanisms to “ensure that contributions are collected and accounted for and that the beneficiaries are paid promptly and accurately and with appropriate explanation.”<sup>195</sup>

Accountability has a flip side: transparency. The Tanzanian social security system should “ensure that contributors and beneficiaries are aware of their rights and obligations,”<sup>196</sup> which will result in disciplining anyone infringing their rights or failing to perform their obligations. In the absence of transparency, accountability cannot be achieved because the contributors will not know what their rights are and what the obligations of the administrators towards them are. In addition, management bodies will never be taken to task where social security beneficiaries and contributors do not know their rights.<sup>197</sup> Equally, the law should provide for a transparent method of governance so that contributors, beneficiaries and other stakeholders can have access to information on the undertakings of the social security schemes. It is accountability and transparency that can guarantee efficiency and effectiveness of the social security administration in service delivery. Good performance by the social security administrators, however, requires proper training for social security delivery.<sup>198</sup>

“Good governance requires that institutions and processes try to serve all stakeholders within a reasonable timeframe.”<sup>199</sup> As earlier noted, there are problems of delays of disbursement of social security benefits in Tanzania. It is submitted that the law should establish a time limit within which all social security institutions have

<sup>192</sup> Gillion, *op cit*, at p. 42.

<sup>193</sup> See parts 1.3 and 4.1.2 of chapters one and four of this thesis respectively.

<sup>194</sup> See Diop, *op cit*, at p. 22.

<sup>195</sup> Gillion, *op cit*, at p. 42.

<sup>196</sup> *Ibid.*

<sup>197</sup> See chapter three of this thesis for more details on awareness.

<sup>198</sup> See Butare and Kaseke, *op cit*, p. 8 where it is stated that “[i]n ... search for better governance, social security organisations will increasingly need to pay attention to better skills training in the various areas of social security administration ...”

<sup>199</sup> UNESCAP, *loc. cit.*

Similarly, it is recommended that the law should “establish financial control mechanisms to monitor the allocation and management of resources” with the ultimate aim of “minimis[ing] the cost of administration within the desired level of service.”<sup>207</sup>

Apart from the fact that it is important for social security schemes to uphold good governance principles, it is a fact that the state has a vital role to play in the facilitation, promotion and extension of coverage of social security,<sup>208</sup> and, for the success of extension of coverage efforts:

All [social security schemes] should conform to certain basic principles [of good governance]. In particular, benefits should be secure and non-discriminatory, schemes should be managed in a sound and transparent manner, with administrative costs as low as practicable and a strong role for the social partners. Public confidence in social security systems is a key factor for their success. For confidence to exist, good governance is essential.<sup>209</sup>

As Van Ginneken summarises:

...administrative reforms may improve compliance and enforcement, for example by developing cooperation with other public agencies...moreover, improved governance – supported by effective public relations and educational activities to increase awareness as to rights and obligations – needs to be underpinned by compliance and enforcement procedures and powers that reinforce the mandatory character of the scheme.<sup>210</sup>

## 6.6. CONCLUSION

The need for the improvement of social security administration in Tanzania is self-evident: delay of benefits, inadequacy of benefits, competition between the schemes and inability to enforce compliance, among many other problems, justify this

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possibility of amalgamation of social security schemes; three social security schemes, namely, the Social Security Institution, Social Security Organisation for Tradesman and Craftsman and the Retirement Fund of the Turkish Republic, are joined to form a single scheme. See Karadeniz, O., *Social Security of Casual Agricultural Workers in Turkey*, Paper presented at the 5<sup>th</sup> International Research Conference on Social Security: Warsaw, 5 – 7 March 2007; Conference theme: Social security and the labour market: A mismatch?, at p. 2.

<sup>207</sup> Gillion, *op cit*, at p. 42.

<sup>208</sup> A. Bonilla-García, *Recent reforms and experiences of pension scheme, Public Pensions Reform: A basic annotated reference time-line*, International Social Security Association, ISSA Regional Conference for Africa, Lusaka, Zambia, 9 – 12 August 2005, at p. 10.

<sup>209</sup> ILO, *Social Security: A New Consensus*, International Labour Organisation, Geneva, 2001, at p. 2. See also Bonilla-García, *loc. cit*. See also Ross, *op cit*, at p. 13.

<sup>210</sup> Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, (ed), 1999, *op cit*, at p. 15.

assertion. These challenges, coupled with fragmentation and the scramble for customers by the social security schemes, make the harmonisation and amalgamation of social security schemes a goal that the Tanzanian social security system should strive for.

This chapter has argued that for a successful social security scheme, administration must be monitored and good governance principles must be adhered to. It was indicated that social security issues, *inter alia*, low coverage, inadequacy of benefits, lack of coordination in social security matters, and governance are interconnected. It was shown that improvement in governance automatically leads to improvement of the other issues, and improvement in all aspects makes for a desirable comprehensive social security system, which is ideal for Tanzania's underway reforms.

It was also shown that good governance must be a top priority for any social security reform endeavours, because there cannot be extension of coverage in the absence of good governance:<sup>211</sup> There cannot be adequate social security benefits where there are no accountability measures, nor can there be portability and coordination measures, and the quality of social security delivery cannot be guaranteed amid fragmentation and competition between the schemes.

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<sup>211</sup> *Ibid*, at p. 13 where it is stated that "there is ... a close connection between the extension of coverage and the administrative capacity of employers and the social security agencies."

## CHAPTER SEVEN

### CONCLUSION

*"Only one in five people in the world has adequate social security coverage. The other four need it too, but somehow must manage without... the highest priority should be given to 'policies and initiatives that bring social security to those who are not covered by existing systems.'"*<sup>1</sup>

#### 7.0. INTRODUCTION

This study sought to investigate and report on the state of social security law in Tanzania and the current practices of social security provisioning through differentiated but more or less similar social security schemes. An empirical method of research was employed and the findings were reported on with reference to the South African social security legal and practical experiences.

Chapter one introduced this study by setting out the historical context of social security provisioning in Tanzania and South Africa. The justification, significance, and objectives of the study were set out, together with the research methodology on how the objectives would be achieved. Chapter two discussed the modern concept of social security and its origins. The issues that this study would address were described and the need to adopt a more comprehensive concept of social security was highlighted. The benchmarks for the social security issues chosen for the study were outlined. In addition, the World Bank's and the ILO's approaches to social security provisioning were contrasted.

Chapters three, four, five, and six reported on social security coverage in Tanzania, inadequacy of social security benefits, the coordination of social security, and fragmentation as the major challenge to good governance, respectively. In the course of discussion and reporting, references were made to the South African social security system and other jurisdictions in order to establish what they have done in respect of the problems that the Tanzanian social security system is currently facing. Recommendations were made in each of the chapters on the specific issues discussed.

This chapter seeks to give an account of the contribution that this study attempts to make to social security law, policy and practice. It also shows that all the

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<sup>1</sup> [http://www.ilo.org/public/english/bureau/inf/features/06/socsec\\_namibia.htm](http://www.ilo.org/public/english/bureau/inf/features/06/socsec_namibia.htm), last accessed on 7 November 2006.

social security issues that are a problem in social security provisioning in Tanzania have not been exhaustively researched. *And*, because of the fact that generalisations are not warranted by an empirical and qualitative study, a call can be made for further quantitative research which may warrant generalisations.

### 7.1 LINKS BETWEEN THE CONCEPTUALISATION OF SOCIAL SECURITY ISSUES AND THE RESEARCH FINDINGS

A number of authors have offered differing opinions on the social security issues at hand, *inter alia*, social security coverage, adequacy of benefits, coordination and good governance. The major reason for divergence of opinions, as indicated in chapter two, is the fact that while social security principles are similar in the developed and developing world, there are substantial differences between the underlying concepts in social security. Firstly, while social security in the developed world entails protection of income for workers, in most developing nations, the majority of the population have no income which social security institutions may claim to protect.<sup>2</sup>

Secondly, measures for social security provisioning in many developed countries are confined to public measures, while informally and privately organised social security provisioning is common in developing countries. The ILO's conception of social security fails to recognise this situation in developing countries: The examples here include the UMASIDA in Tanzania and SEWU in South Africa which are informal social security schemes, both of which would not fit into the categories of public measures. Therefore, it was indicated that a more encompassing concept of social security is needed, which would take into account private and individual measures *and* indirect and informal measures of social protection.<sup>3</sup>

Further, it was argued that it is important to adopt a more comprehensive conceptualisation so as to include natural disasters, crop failure and pastoral risks, to mention a few, which are left out of the ILO's contingent based list of social risks. It was noted that although the ILO's list of social risks, namely, medical care, family care, sickness, unemployment, old age, employment injury, maternity, invalidity and death of the bread winner, offers a standard list, a more "open-ended" list of risks

<sup>2</sup> See chapter two of this thesis.

<sup>3</sup> See part 2.1.2 of chapter two of this thesis. See also Olivier, "The concept of Social Security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, pp. 23-47 and Mpedi, "Indirect social security" in Olivier, Smit, and Kalula, (eds), 2003, *op cit*, pp. 535-558.

should be adopted for social security provisioning in developing countries so as to include the currently excluded risks which are more prevalent in these countries. Hence, it is believed that a comprehensive concept of social security can take into account the prevalent risks in developing nations.

Fourthly, although the ILO's concept of social security more or less focuses on compensatory measures, it was suggested that there is a need to consider including prevention, re-integration, redistribution of resources, poverty and social exclusion issues within the concept of social security. This approach is based on the fact this would serve most of the developing nations better than the compensatory measures which can only assist after the social risk has occurred.<sup>4</sup> Following from this, the World Bank's social risk management strategies, which include prevention of social risks, mitigation of the impacts of the unavoidable social risks and coping strategies were recommended.<sup>5</sup> It is submitted that adoption of these strategies into social security provisioning would help the beneficiaries before, during and after the occurrence of the inevitable social risks.

The limitations of the ILO's concept of social security, namely, the exclusion of social risks which are prevalent in Africa, confining social security provisioning to public measures, labelling social security measures as merely compensatory, and aligning social security to formal employment, have necessitated a call for a more comprehensive social security concept.<sup>6</sup> Comprehensive social security recognises, among other things, solidarity and redistribution principles, and takes into account the ultimate goals of social security provisioning, which include providing complete protection against human damage, protection of society and the state, poverty prevention and alleviation, and ensuring an adequate standard of living.<sup>7</sup> The comprehensive social security concept also aims to prevent social risks from happening, to mitigate the impact of unavoidable social risks, and to compensate people upon the occurrence of the social risks.<sup>8</sup> In Tanzania, it is reported, a comprehensive social security concept has not been adopted and the limited ILO

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<sup>4</sup> See part 2.1.1 of chapter two of this thesis.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Ibid.*

<sup>7</sup> See part 2.1.2 of chapter two of this thesis.

<sup>8</sup> See part 2.1.2 of chapter two of this thesis. See also Olivier and Kaseke, *op cit*, at p. 29 where it is stated that "[s]ocial security should be aimed at not only providing compensation, but also, where possible and appropriate, at preventing social contingencies from arising, and at integrating those who were the victims of such contingencies into the labour market and society."

concept is widely used by the existing schemes, resulting in the exclusion of vulnerable groups like the disabled, the rural poor and orphans.<sup>9</sup> It was suggested that the Tanzanian social security system should adopt a more comprehensive social security concept so as to extend social security provisioning to the excluded majority.

Certainly, it is against this background that most of the recommendations were made in the chapters reporting on the state of social security law in Tanzania.<sup>10</sup> The following sections summarise and conclude the findings which were reported on in chapters three, four, five and six.

### 7.1.1 Conclusion on social security coverage in Tanzania

As indicated in chapter three, social security coverage is based mainly on three categories, namely, groups of people covered, social risks that the covered groups are insured against, and the social security benefits that are available upon the occurrence of a particular social risk.

In relation to groups of people covered, the Tanzanian social security system covers about six per cent of the total labour force.<sup>11</sup> It is on the basis of exclusion of the majority of the working population that the need for extension of coverage was raised in chapter three. While some scholars have indicated that the existing social security schemes should expand their horizons to cover the excluded, this study has argued that because of the fragmented nature of social security schemes in Tanzania, it would be difficult for the current schemes to meet the expenses of expanding coverage to the excluded because of the challenges that they are facing.<sup>12</sup>

One of the challenges that was identified is the fact that the existing social security schemes are designed in such a way that contributions are shared between the employer and the employee: the excluded, who are mostly unemployed and self-employed, would be required to pay the whole contribution themselves. This contributions burden discourages the excluded from joining the existing schemes.<sup>13</sup> Secondly, the excluded comprises groups of people who live on a day-to-day basis

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<sup>9</sup> See chapter three of this thesis.

<sup>10</sup> For instance see chapters two, four, and six of this thesis and parts 3.5 and 5.3 of chapters three and five respectively.

<sup>11</sup> See part 3.1 of chapter three of this thesis.

<sup>12</sup> See chapter three of this thesis.

<sup>13</sup> See part 3.5 of chapter three of this thesis.

and are not likely to be interested in the existing schemes which concentrate on the future protection of income and cannot provide for their immediate needs.<sup>14</sup>

The low level of development in Tanzania is another reason why the extension of coverage is practically impossible. It was argued that there is a strong link between extension of coverage and the resources available in a particular country; coverage in Tanzania is very limited because the country is one of the least developed countries in the world. It was consequently noted that the existing schemes, however much they try to stretch their resources to cover the excluded groups, cannot extend coverage to the excluded majority because they lack the financial means. The fourth reason is that if principles of good governance are not endorsed by the social security institutions, there cannot be extension of coverage.<sup>15</sup>

On the basis of these challenges, the adoption of specialised schemes for the excluded was considered a viable approach to extending social security coverage in Tanzania.<sup>16</sup> This was premised on the fact that such specialised schemes would attract more members of the excluded groups than the existing schemes as they would take into account the priorities of the excluded groups, which include health care and education for their children. Following from this, it was recommended that a blend of the ILO's and the World Bank's approaches should be adopted.<sup>17</sup> This would mean establishing four categories of schemes: compulsory and contributory schemes, supplementary schemes, voluntary schemes, and universal coverage schemes. The contributory schemes and supplementary schemes would cater for those employed in the formal sector; the voluntary schemes would cover those who are in the excluded sectors but can afford to contribute; and the universal schemes would be for the poor and other vulnerable groups who cannot contribute for their social protection. It is believed that "[t]he introduction of universal non-contributory [schemes]...will increase social security coverage..."<sup>18</sup>

Additionally, for the excluded who wish to join or can afford to join the existing schemes, it was argued that the government should consider subsidising the

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<sup>14</sup> *Ibid.*

<sup>15</sup> See chapters three and six of this thesis.

<sup>16</sup> See part 3.5 of chapter three of this thesis.

<sup>17</sup> See part 3.4 of chapter three of this thesis.

<sup>18</sup> See Johnson and Williamson, *op cit*, at p. 62.

contributions which would otherwise be borne by the contributor, in the same way as the government subsidises the Community Health Funds.<sup>19</sup>

From another perspective, it was argued that the adoption of a more comprehensive concept of social security would necessitate constitutionalisation of social security rights as fundamental rights, which means that the excluded groups would have a justiciable cause of action with regard to their exclusion. This opinion *was informed by the fact the URT Constitution of 1977 considers social security rights as part of the directive principles of state policy.* Among other things, it is believed that this is the reason why some social security laws in Tanzania regard social security as a privilege rather than as a right.<sup>20</sup> In view of this, it was recommended that the URT Constitution of 1977 should be amended to enshrine social security rights in the Bill of Rights. This should eventually end the current approach of regarding social security rights as privileges, and those who are currently excluded would have similar rights to those who are currently covered by the schemes since they would be protected by the Constitution. Extension of coverage to the excluded would thus be guaranteed.

As for the social risks, the ILO enumerates the risks and benefits that social insurance institutions should offer, with an option to start with as few risks as three, with their corresponding benefits.<sup>21</sup> The Tanzanian social security schemes, using the loophole of the option to provide for the minimum of three benefits, cover the social risks of their choice ranging from two to seven risks and the corresponding benefits.<sup>22</sup> However, it was noted that the ILO list of social risks and benefits is not comprehensive for sub-Saharan African social security provisioning, particularly the Tanzanian social security system. The risks which are more prevalent in sub-Saharan Africa and Tanzania include drought, floods, famine, agricultural and pastoral risks, which do not feature in the ILO list of risks. The Tanzanian social security system leaves out these risks, based on the ILO's list which includes only the formal sector employees' risks.<sup>23</sup> In view of this, it was suggested that a more comprehensive and encompassing concept would be appropriate for Tanzania's social security system as

<sup>19</sup> *Ibid.*

<sup>20</sup> See parts 3.1 and 3.3.1 of chapter three of this thesis.

<sup>21</sup> See parts 2.2.1.2 and 2.2.1.3 of chapter two of this thesis.

<sup>22</sup> See parts 3.2 and 3.3 of chapter three of this thesis.

<sup>23</sup> See parts 2.2.1.2 and 3.2 of chapters two and three of this thesis respectively.

it would encourage more people to join schemes which actually address the risks that they are facing.

### 7.1.2 Conclusion on the adequacy of social security benefits in Tanzania

Social security aims primarily to protect people who are covered against poverty and destitution upon the occurrence of the social risks against which they are protected. But social security beneficiaries in Tanzania are not as such protected against becoming poor and destitute, because the benefits offered are inadequate both in terms of the quantum and numbers.<sup>24</sup>

On account of fragmentation, each social security scheme offers different benefits which are outlined in the establishing legislation, thus leading to a situation where some schemes offer more benefits than others. The NSSF covers retirement, invalidity, and survivor's pensions, maternity benefits, employment injury benefits, health insurance benefits and funeral grants; PPF offers retirement, disability and survivor's pensions, death benefits, education benefits and withdrawal benefits; PSPF offers retirement, invalidity, and survivor's pensions, death gratuities, sickness benefits and withdrawal benefits; GEPF and LAPF offer lump sum payments in the event of old age, termination of service and upon death.<sup>25</sup>

The differences between schemes go further, to the levels of benefits that a scheme offers. Again fragmentation has led to a situation where some schemes offer more valuable benefits to their beneficiaries than others.<sup>26</sup> While some schemes are pension schemes, offering prolonged or lifetime benefits, other schemes are provident funds, offering only lump sum payments to their beneficiaries. Although the beneficiaries receiving pension benefits are in no way better off than those who receive lump sum payments under provident funds, it is apparent that the problems associated with lump sum payments, which include making beneficiaries destitute, are shocking.<sup>27</sup> It is believed, therefore, that this state of affairs creates tension between workers who are covered by pension schemes and those covered by provident funds, and that workers in Tanzania are discriminated against on the basis of the schemes which cover them. Considering the problems associated with lump sum payments by

<sup>24</sup> See chapter four of this thesis.

<sup>25</sup> See part 3.3 of chapter three of this thesis.

<sup>26</sup> See part 4.1.2 of chapter four of this thesis.

<sup>27</sup> See parts 4.3.1 and 4.3.2 of chapter four of this thesis. See also Kamuzora, *op cit*, at p. 100 and Kanywanyi, *op cit*, at p. 17.

the provident funds and in some cases by the pension funds where the beneficiary has not met the criteria set for entitlement to pensions, it was suggested that “[g]radual elimination of the option for one-off lump-sum benefits at retirement with no subsequent lifetime income is ... important [because] taking lump-sum benefits ... leaves room for myopic spending by retirees with the potential to significantly reduce or eliminate retirement savings.”<sup>28</sup>

One of the reasons for the disparities in the levels of benefits are the statutes which set out the formulae which must be used by the social security schemes. Notwithstanding the differences in the levels of benefits between one social security scheme and another, there is no single scheme in Tanzania which even comes close to offering the minimum living expenses estimates. The monthly minimum living expenses for a family of five persons are estimated to be between Tshs.120,000 and Tshs.180,000.<sup>29</sup> and NSSF offers the highest minimum pension, which is 80 per cent of the national statutory minimum wage which is currently Tshs.66,000 i.e. Tshs.52,800. This is followed by PSPF which offers Tshs.20,000 and PPF which offers Tshs.10,000.<sup>30</sup> It is evident therefore, that the benefits offered are so low with the effect that the beneficiaries will become destitute despite the fact that they receive social security benefits.

Owing to the inadequacy of the currently offered benefits, several methods were suggested for making sure that a protected individual is guaranteed adequate benefits. One of the methods is the adoption of solidarity and redistribution principles, on the basis of intragenerational and intergenerational equity.<sup>31</sup> These principles, on the one hand, ensure that there is fairness in terms of social security provisioning not only between people of the same age groups, but also between different generations, for example between the working group and the retirees. On the other hand, redistribution of income from the rich to the poor, and from the higher income earners to the low income earners ensures that the retirees, the working population who face social risks, and other vulnerable groups are protected from becoming destitute.

Another method of ensuring adequate social security benefits is to embrace indexation principles, namely, indexation of benefits and indexation of prices, in order

<sup>28</sup> Asian Development Bank, *op cit*, at p. 27.

<sup>29</sup> These estimates were valid in December 2004.

<sup>30</sup> See part 4.1.2 of chapter four of this thesis.

<sup>31</sup> See part 4.3 of chapter four of this thesis.

to protect benefits against inflation.<sup>32</sup> The social security beneficiaries thus will be protected against inflation which adversely affects the levels and value of benefits so that they become poor and, in some cases, they die of shock because of the immense changes to the lifestyles to which they are accustomed.

In what would seem to be an attempt to ensure that adequate social security benefits are available for beneficiaries, the ILO, the World Bank and the IMF, among others, are engaged in a debate to tackle the issue of whether the design of social security schemes has a bearing on adequacy of benefits. While the ILO and the IMF seem to agree substantially on the fact that pay-as-you-go schemes should take primacy over private schemes, and suggest that the latter should merely be supplementary to the former, the World Bank argues that private schemes should be adopted in place of pay-as-you-go schemes because the latter place a heavy burden on the government budget which in most cases is already constrained by other developmental issues.<sup>33</sup>

The Tanzanian social security system and the legal reform agenda seem to adopt the ILO's and IMF's approaches as they stress maintaining the existing pension schemes, and there are even processes underway to change the existing private funded schemes to pension schemes.<sup>34</sup> In a way, the design of the social security scheme has little bearing, if any, on adequacy of social security benefits, at least for the Tanzanian social security system. Both designs of social security schemes have been in existence in Tanzania and, so far, there is no single design that has been able to provide adequate protection to people, apart from the fact that the pay-as-you-go schemes offer lifetime benefits as opposed to provident funds which offer once-off payments. This shows that the design of a scheme has a slight influence on the adequacy of social security benefits, thereby making the arguments by the ILO and IMF on the one hand and World Bank on the other untenable. However, it is believed that because pay-as-you-go schemes take into account redistribution and intergenerational equity in their principles, adequacy of benefits is more likely to be achieved in these schemes than in private fully-funded schemes where all individuals receive what they have accumulated in their accounts.

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<sup>32</sup> See part 4.2 of chapter four of this thesis.

<sup>33</sup> See part 4.3.2 of chapter four of this thesis.

<sup>34</sup> See part 4.3.2 of chapter four of this thesis and part 3.3 of chapter three of this thesis. See also "New pension scheme on the drawing board" *Tanzanian Sunday Observer*, Sunday, 9 July 2006, where it was stated that LAPF was to be converted into pension fund.

This being the case, firstly, the argument by the World Bank that pay-as-you-go schemes strain the governments because of their financial dependency, seems untenable at least for the Tanzanian situation, because both designs, private fully-funded and pay-as-you-go schemes, depend on the government in one way or another. While the private schemes need the government to supervise and regulate the social security undertakings, the pay-as-you-go schemes need the government as the guarantor of the schemes when they run short of funds.<sup>35</sup> In the case of Tanzania, even the provident funds, which may be equated with private fully-funded schemes, depend on the government as the guarantor in the event of financial difficulties.<sup>36</sup>

Secondly, it was noted that adequacy of benefits depends on adherence to the principles of indexation and solidarity measures, which are widely used by the pay-as-you-go schemes. Therefore, it may be argued that pay-as-you-go schemes are better placed to offer adequate benefits than the private account schemes which are dependent on market performance; there is no guarantee that adequate benefits will be available if market performance is low. Additionally, the fact that the financial market in Tanzania is in its infancy means that investment of private accumulated monies from private schemes may be far from reach, which makes the approach of the ILO and the IMF more viable in Tanzania than that of the World Bank.

Thirdly, it was argued that in the absence of solidarity and redistribution measures, there will be no one to take care of other vulnerable groups. How are the poor and low income earners going to cope where benefits are wholly dependent on what one has contributed? Protecting people from becoming destitute, it is submitted, requires solidarity and redistribution measures so that other vulnerable groups can also be considered.<sup>37</sup> In this respect, since the ILO's and IMF's approaches to social security reform embrace the solidarity and redistribution principles as against the World Bank approach which insists on individual accounts, it was opined that the former ought to take precedence in Tanzania.

### 7.1.3 Conclusion on the state of coordination of social security

There are numerous social security schemes in Tanzania, *inter alia*, NSSF, PSPF, PPF, LAPF, GEPEF, NHIF and CHF's. Where a member of one of these schemes

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<sup>35</sup> *Ibid.*

<sup>36</sup> See part 6.3 of chapter six of this thesis.

<sup>37</sup> See part 4.3.2 of chapter four of this thesis.

changes employment, for example, from the public service where he/she would be under PSPF to the private sector where he/she would be under NSSF and vice versa, he/she loses the benefits acquired under a previous scheme. Such a loss of benefits is caused by a lack of in-country coordination. The non-existence of in-country coordination is a result of the fact that the schemes operate on different principles: for instance, while some are pension schemes, others are provident funds. This is one of the reasons why social security coordination is intricate in Tanzania.

Secondly, fragmentation attracts competition between the schemes, so social security institutions operate as rivals against each other. The complications of in-country coordination are worsened by the fact that the schemes have different contributory rates, different levels of benefits, and offer different kinds of benefits, depending on the statute establishing each scheme. Therefore, legislative setbacks operate as the third constraint on in-country coordination.

The fact that the Tanzanian social security law is silent on in-country coordination leads to a loss of benefits when a member moves from one scheme to another.<sup>38</sup> The only exceptions are the *Parastatal Pensions Fund Act* of 1978 and the *Public Service Retirement Benefits Act* of 1999 which provide for the portability of benefits where a member who was previously covered by PPF is now covered by PSPF or vice versa.<sup>39</sup> This arrangement is available only for members of the two schemes to the exclusion of all other schemes.

Likewise, there is no cross-border coordination between Tanzanian social security schemes and other countries' social security schemes. Tanzania has not entered into social security bilateral agreements with any country except the Netherlands, an agreement which to date is not yet in force. Nevertheless, efforts are underway to enter into bilateral agreements with countries which host most Tanzania emigrants, including the Netherlands, Kenya, Uganda, South Africa, India, the United Kingdom and Zanzibar.<sup>40</sup>

At a regional level, Tanzania is a member of the EAC and SADC where she is obliged to coordinate with other member states on social security matters. Cross-border coordination is primarily intended for the protection of social security rights of migrant workers. It should be noted, however, that although the regional initiatives

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<sup>38</sup> See part 5.1 of chapter five of this thesis.

<sup>39</sup> *Ibid.*

<sup>40</sup> See part 5.2.1 of chapter five of this thesis.

have already commenced their activities, coordination on social security matters is still far from reach, and free movement of persons in the two regions is not fully operationalised. This is based on the fact that, firstly, the member states' social security systems are very different and, secondly, there is a fear that because some countries are relatively more developed than others, the developed countries will attract a massive influx of migrant workers from the region. This situation has two implications: the poor countries will remain sending countries which may deprive them of personnel, *and* the recipient countries will be overburdened by the responsibility to provide social security to the migrant workers from countries which cannot offer the same treatment to emigrants from developed countries.<sup>41</sup> Thus, the efforts to coordinate social security matters in the two regions will move slowly.

Since coordination efforts are in the formative stages, lessons were drawn from the European Union and CARICOM, which are ahead of the EAC and SADC in terms of social security coordination in many respects. The lessons showed how the two regional initiatives have operationalised the principles of social security coordination, *inter alia*, equality of treatment, determination of the applicable legislation, the aggregation of periods of insurance, and the export of benefits. It was opined that the EAC and SADC member states' initiatives to coordinate social security matters should take into account these important principles.

#### 7.1.4 Conclusion on governance of social security schemes

The principles of good governance, namely participation of social security stakeholders, accountability of the administrators of the social security institutions, transparency in the scheme's undertakings, responsiveness, effectiveness and efficiency, equity and inclusivity, and being consensus oriented, are hardly practised in the Tanzanian social security system. The poor governance of social security schemes has led to low coverage, low benefits and the absence of coordination. It was argued that extension of coverage, provision of adequate benefits, and coordination are all dependent on the observance of good governance principles.<sup>42</sup>

On account of non-adherence to good governance principles, social security service delivery is very poor. Benefits are delayed with no explanations being given to the beneficiaries and, there being no means to make the administrators accountable,

<sup>41</sup> See part 5.2.2 of chapter five of this thesis.

<sup>42</sup> See parts 6.2 and 6.5 of chapter six of this thesis. See also Gillion, *op cit*, at p. 44.

the beneficiaries are at the mercy of the administrators.<sup>43</sup> The administrators of social security institutions are largely protected by law in terms of enforcement of compliance and, in some cases, maladministration is covered up in the name of *bona fide* omissions or commissions.

Although all these problems are caused by a lack of accountability measures – which means that beneficiaries cannot hold the administrators accountable in cases of maladministration – fragmentation is considered to be the main cause of poor governance in Tanzania. Each scheme has a different establishing statute, operates under different rules and regulations, is controlled by different government departments and ministries, *and* uses different yardsticks for measuring performance. It is only when harmonisation and/or amalgamation are adopted by the Tanzanian social security system that good governance will be a possibility. Good governance in social security matters is possible, but the possibility fades when fragmentation, which is the playing ground of competition and corruption, is still widespread.

The findings of this study therefore indicate that there are peculiar issues that are prevalent in Tanzania in terms of social security provisioning, namely, the exclusion of the majority from the ambit of the formal employment-based social security schemes, the provision of inadequate benefits to the extent that beneficiaries are made destitute, a lack of coordination between the schemes in the country, and the effects of fragmentation on both coordination and good governance. Similar problems are shared by many countries in sub-Saharan Africa, and they are distinct from the problems that many developed countries face. For instance, as noted earlier on, the ILO aligns social security with formal employment, which is the main sector in developed countries. This approach cannot work in a country like Tanzania where the formal sector is very small and is also shrinking, accommodating less than 6 per cent of the total labour force.

However, as indicated earlier on, this is an empirical study, using qualitative methodology of data collection and analysis:<sup>44</sup> It does not warrant generalisations of any claims made and the data presented. Reference has been made to specific groups of interviewees as an indication that much more can be done if the scope is widened. For instance, field research was conducted only in three regions in Tanzania, namely, Dar es Salaam, Arusha and Mbeya, leaving out about 18 other regions of Mainland

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<sup>43</sup> See part 6.4 of chapter six of this thesis.

<sup>44</sup> See part 1.6 of chapter one of this thesis.

Tanzania. Further research is therefore recommended by means of wide field research coverage and the use of quantitative methodology so that generalisations can be made on the research findings. Nonetheless, there were no major differences in the responses from the three regions; the interviewees indicated similar dissatisfactions. The only difference that was observed was that beneficiaries in Dar es Salaam were very dependent on the benefits they got from the social security schemes, while in Mbeya and Arusha, despite the fact that social security benefits formed a major source of income, the beneficiaries were occupied with other small enterprises like small farms and shops.<sup>45</sup> Therefore, beneficiaries in Arusha and Mbeya are likely to augment the benefits they receive, while this may be difficult for Dar es Salaam beneficiaries.

## 7.2 IMPLICATIONS OF RESEARCH FOR POLICY AND PRACTICE

Following from the research findings, recommendations were made for the extension of coverage, the provision of adequate benefits, the need for portability of social security benefits and adherence to the principles of good governance.

In as far as extension of coverage of social security is concerned, the *National Social Security Policy* of 2003 acknowledges that a large part of the population is excluded and gives a commitment that there shall be “[a] legal framework [which] shall provide for all employees in the formal sector and devise means of extending coverage to the informal sector such as agricultural, mining, fishing and small businesses.”<sup>46</sup> This study has suggested that as much as extension of coverage of the current social security schemes to the excluded may be desired, its achievement may be far from reach because of the challenges of lack of public trust, the contributory burden being borne by the excluded members alone, the fact that these schemes are mandatory, and the fact that they do not deal with the immediate needs of the excluded.<sup>47</sup> It was further noted that members from the excluded sectors are likely to evade making contributions where the schemes to which they are compelled to contribute address future insurance rather than day-to-day issues.<sup>48</sup> The study indicated that specialised schemes for the excluded groups should be preferred in

<sup>45</sup> Information based on observation of the lifestyles of beneficiaries in Dar es Salaam, Mbeya, and Arusha, from December 2005 to mid-March 2006.

<sup>46</sup> See part 3.2 of the *National Social Security Policy* of 2003.

<sup>47</sup> See chapter three of this thesis for more details.

<sup>48</sup> See chapter three of this thesis. See also Van Ginneken, “Overcoming Social Exclusion,” in Van Ginneken, (ed), 1999, *op cit*, at p. 30.

place of extending the existing schemes which are already facing crises in terms of enforcement of compliance even with the few members they have. The study therefore suggested that the specialised schemes, which may be tailored according to the members' needs and priorities, be introduced in Tanzania to cater for the excluded groups.<sup>49</sup>

Further, this study has argued that in line with extending coverage to the excluded, there is a need to recognise social security as one of the fundamental rights of the Tanzanian population. In view of this, it was suggested that Part III of the URT Constitution of 1977 should be amended to recognise and provide for the right to social security as one of the fundamental rights enshrined in the Constitution. Inclusion of social security in the Bill of Rights should improve the protection of the social security beneficiaries since some of the current social security statutes consider social security rights as privileges and not as rights.<sup>50</sup> Also, it is believed that regarding social security rights as fundamental rights would do away with the current approach whereby the URT Constitution considers social security rights to be directive principles of state policy, which are not enforceable. In this way, social security rights would be enforceable in courts of laws just like any other rights in the Bill of Rights.

Provision of adequate levels of benefits is dependent on employing the principles of solidarity, redistribution, intergenerational equity, and using indexation of prices and benefits.<sup>51</sup> In general terms, social security law in Tanzania does not provide for any of these principles, save in cases of pension funds which take into account redistribution of income by offering minimum pensions, which the recipient would not have been entitled to if his/her contributions were used to determine the pension.<sup>52</sup> This indicates that in the absence of the above-mentioned principles, provision of adequate benefits can never be achieved. It was suggested that social security law should expressly provide for adherence to these principles so that beneficiaries are protected against the vagaries of economic turmoil, and the high rates of inflation which are currently alarming.<sup>53</sup>

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<sup>49</sup> See part 3.5 of chapter three of this thesis.

<sup>50</sup> See chapter three of this thesis.

<sup>51</sup> See chapter four of this thesis for more details.

<sup>52</sup> See part 4.1.2 of chapter four of this thesis for more details.

<sup>53</sup> See footnote 314 of chapter three of this thesis.

Likewise, the numbers of benefits offered by most social security schemes in Tanzania are inadequate. In view of this, the study suggested that social security law should provide for a baseline framework for all the social security schemes to follow, so that members belonging to a scheme which provides lesser benefits are not prejudiced and discriminated against, as is the situation to date.<sup>54</sup> This is in line with the *National Social Security Policy* of 2003 which provides that:

The number and quality of benefits offered by most of the existing social security funds are not adequate to meet the basic needs of beneficiaries; in terms in the number of benefits, magnitude and indexation to the current levels of earnings...Social security schemes shall have a standard minimum number of benefits offered and indexed to the current levels of earnings of contributors.<sup>55</sup>

On account of the fragmentation of social security schemes in Tanzania, the portability of social security benefits and the accumulation of contributions paid by a member under previous schemes are essential. This is because loss of contributions made under a previous scheme affects the eligibility of the member under the new scheme as most benefits are pegged on contributory time. For instance, almost all pension schemes require a member to have contributed for a specified period of 10 to 15 years before he/she can qualify for benefits. If previous contributions are lost, the beneficiary is awarded only a lump sum payment which is depleted in no time and he/she remains poor and dependent on the government's limited social assistance.<sup>56</sup> To reduce and/or alleviate poverty and minimise the government's responsibility to the people who would otherwise be protected by the social security schemes, it was recommended that portability should be regarded as of paramount importance. Also, it was suggested that people should not be prejudiced by the existence of many schemes in a country, a situation over which they have no control. Social security law, once again, should expressly provide for portability of social security benefits within the country as well as across borders.

As to the application of good governance principles in the administration of social security schemes in Tanzania, there is much room for improvement. Social security law does not provide for accountability measures where the administrators

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<sup>54</sup> See chapters three and four of this thesis for more details.

<sup>55</sup> See part 3.4 of the *National Social Security Policy* of 2003.

<sup>56</sup> See part 3.3 of chapter three of this thesis for more details.

fail to deliver services to beneficiaries; instead, the law protects them.<sup>57</sup> Because of a lack of accountability measures, social security delivery is poor in Tanzania and there are numerous complaints, including delays in the payment of benefits. One reason for this delay is the fact that social security services are centralised, for most schemes, in Dar es Salaam, where the headquarters of the institutions are. It was reiterated that decentralisation of social security services may be the ultimate option to improve the quality of service delivery in Tanzania. Also, delay of benefits is caused by the social security institutions when they demand unnecessary documents which have little relevance, if any, to the determination of social security entitlements.<sup>58</sup>

Further, it was argued that there is a close link between bad governance and fragmentation of social security schemes in Tanzania. This is because each scheme reports to a different line ministry and has different yardsticks to measure performance.<sup>59</sup> Since the need to improve the quality of social security service delivery was recognised, it was suggested that there should be harmonisation and/or amalgamation of social security schemes in Tanzania. This will ensure coordination between the existing schemes which in turn will help in developing baseline performance benchmarks for all the schemes. Developing benchmarks for the existing social security schemes will improve the quality of service delivery as the schemes will be cooperating, instead of competing and regarding each other as rivals. It is also believed that harmonisation of social security provisioning in the country will essentially resolve the existing obstacles to cross-border coordination, which include incompatibilities and differences in qualifying conditions between social security schemes of the EAC and SADC countries.

Additionally, in the efforts to improve administration of social security schemes, the social security administrators need training so that they know their responsibilities and are able to serve the beneficiaries well. Training should specifically be on social security issues and service delivery. Also, training in information technology and basic computer skills is essential for the improvement of social security delivery, since social security institutions must consider computerising members' information and other data which will automatically deal with the problem

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<sup>57</sup> See chapter six of this thesis for more details.

<sup>58</sup> See part 6.2 of chapter six of this thesis.

<sup>59</sup> See part 6.1 of chapter six of this thesis for more details.

of loss of members' files and other important information relevant to the whole process of social security delivery.<sup>60</sup>

It is evident from the findings of this study that new social security legislation is long overdue. New legislation will resolve many of the issues reported on in this study and will address the problems that social security beneficiaries are now facing.

### 7.3 CONCLUDING REMARKS

Social security law is the major cause of social exclusion, as it prescribes who to cover and who to exclude, *and* it plays a most important role in the determination of which benefits, value, and levels of benefits are offered. Legislation also plays a significant role in the transferability and portability of social security benefits through establishing coordination measures. Coordination, both in-country and cross-border, depends on the social security legislation of a particular country, though cross-border coordination, over and above the local legislation, requires the existence of bilateral and multilateral agreements between countries participating in a coordination initiative.

Tanzania is pursuing a deliberate move towards the reduction and/or alleviation of poverty. Therefore, this study has argued that major legal reforms are needed in the area of social security provisioning. The law should provide for the extension of coverage which would mean that those who are currently excluded but can potentially contribute for their social protection should be given the opportunity to contribute. As Kaseke puts it:

A major option in the interest of justice is the need to extend social security coverage to those who are currently not covered by any social security legislation. These include peasant farmers, workers in the informal sector and those in domestic service. Governments would need to adopt progressive tax measures to ensure that high income groups shoulder the burden of paying for the protection of poor members of society. The poor should also be asked to contribute fully towards their own social protection. The contributions should take cognisance, however, of the degree of marginalisation in order to minimise the financial burden. Governments should also work towards enhancing the ability of the rural population to contribute fully towards their own social protection.<sup>61</sup>

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<sup>60</sup> See part 6.2 of chapter six of this thesis for more details.

<sup>61</sup> Kaseke, 1995, *op cit*, at p. 36.

Further, poverty alleviation and/or reduction measures and strategies cannot succeed where the social security benefits being offered to beneficiaries are inadequate. Although this study advocates the extension of coverage, it would be irresponsible and foolish to allow people, who will either join the existing schemes or join the specialised schemes, to believe that they are well protected against social risks while the schemes will give them meagre benefits which are inadequate for their protection. Therefore, it was argued that legislation should align benefits to indexation principles. Also, to ensure that the poor or the low income earners are also adequately provided for, solidarity and redistribution principles, along with intergenerational equity, should be adhered to. The fight against poverty, therefore, is dependent on the provision of adequate benefits, at least to those who are covered by the social security schemes.

Additionally, in the absence of coordination, both within the country and across borders, the fight against poverty is doomed to fail, because there cannot be any meaningful protection where a person loses benefits by either moving from one scheme to another or by crossing the border. Loss of periods of contribution and the contributions made under a "sending" scheme or country precipitates inadequate benefits to the beneficiary, which automatically makes him/her dependent on the state or he/she becomes destitute. Therefore, the study has argued that the law should provide for coordination between the schemes and should encourage bilateral and multilateral agreements that Tanzania can enter into.

Most importantly, there can be no extension of coverage, adequacy of benefits or coordination without good governance. Good governance is the instrument for improving social security provisioning in Tanzania. The law should provide for transparency, accountability, and the participation of social security stakeholders in matters concerning social security provisioning. Therefore, social security law should specifically require social security institutions to observe the principles of good governance if the fight against poverty is to succeed.

It is submitted that this study has achieved its main objective, namely, to propose methods for social security legal reforms in Tanzania. This has been done through providing suggestions on what can be done and the challenges that can be expected. To support the recommendations, several aspects of the South African experience have been explored in order to create a clear understanding of what can be

done and how these changes can be made, as well as what can be expected from the implementation of the recommendations.

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## Appendix A

**NAMES OF INTERVIEWEES WHO AGREED TO HAVE THEIR IDENTITIES REVEALED:**

SN	NAME OF INTERVIEWEE	DATE	PLACE	COMMENTS/ OFFICE
<b>Administrators of social security institutions</b>				
1	Acting PPF Secretary	19 Dec 05	Dar es Salaam	PPF
2	Mr. Alex Nkinda	2 Feb 06	Mbeya	Pseudonym
3	City Medical Officer of Health	2 Feb 06	Mbeya	CHF
4	Customer Care Manager	4 Jan 06	Dar es Salaam	AAR Health Services
5	Mr. H. Faki	2 Feb 06	Mbeya	NSSF Regional Manager
6	LAPF official	8 Dec 05	Dar es Salaam	LAPF
7	Mr. Rehani Athumani	13 Dec 05	Dar es Salaam	NHIF Customer Relations Officer
8	Mr. Rudovick J. Nduhie	30 Jan 06	Dar es Salaam	CHF - Economist of the Ministry of Health
9	Mr. Sadi W. Shemliwa	9 Jan 06	Dar es Salaam	NSSF - Compliance, Records and Statistics Manager
10	Senior official of GEPF	29 Dec 05	Dar es Salaam	GEPF
11	Senior official of PSPF	29 Dec 05	Dar es Salaam	PSPF
<b>Employees in the formal sector</b>				
1	Dr. Alli Khajyoth	19 Jan 06	Dar es Salaam	University of Dar
2	Ms. Anamary Kavishe	13 Dec 05	Dar es Salaam	Tanganyika Law Society
3	Ms. Anita Moshi	13 Dec 05	Dar es Salaam	Tanganyika Law Society
4	Assistant Lecturer	6 Jan 06	Dar es Salaam	University of Dar
5	Bank examiner (1)	28 Dec 05	Dar es Salaam	Bank of Tanzania
6	Bank examiner (2)	28 Dec 05	Dar es Salaam	Bank of Tanzania
7	Dr. B. T. Mapunda	5 Jan 06	Dar es Salaam	University of Dar
8	Mr. Daniel Shayo	6 Jan 06	Dar es Salaam	University of Dar
9	Mr. D. J. Nangela	5 Jan 06	Dar es Salaam	University of Dar
10	Mr. Giney Kisasa	26 Feb 2006	Arusha	Pseudonym
11	Mr. Idris Kaya	3 Mar 2006	Dar es Salaam	Pseudonym - KPMG employee
12	Mr. Kize Binaya	3 Mar 2006	Dar es Salaam	Pseudonym -

				KPMG employee
13	Mr. Kyesa Kasesa	6 Feb 2006	Mbeya	Pseudonym
14	Mrs. Lina Kilasa	23 Feb 2006	Arusha	Pseudonym
15	Dr. Mino Sekeya	7 Feb 2005	Mbeya	Pseudonym
16	Dr. Mohammed S. Hussain	18 Jan 2006	Dar es Salaam	University of Dar
17	Mr. Rehani	13 Dec 05	Dar es Salaam	NHIF Employee
18	Mr. Samson Sina	3 Mar 2006	Dar es Salaam	Pseudonym - KPMG employee
19	Mr. Teko Sinakwa	3 Mar 2006	Dar es Salaam	Pseudonym - KPMG employee
20	Mr. Thomas Wenga	4 Jan 2006	Dar es Salaam	Pseudonym
<b>Interviewees in the informal sector/atypical employment/self employed/home workers.</b>				
1	Mr. Aliko Ngwena	10 Feb 2006	Mbeya	Informal employer
2	Mr. Ally Maneno	23 Jan 2006	Dar es Salaam	Informal employer
3	Mrs. Amina Lusilo	3 Jan 2006	Dar es Salaam	Atypical employee
4	Mrs. Anna Kashinde	26 Feb 2006	Arusha	Pseudonym
5	Ms. Celina Ujuku	20 Jan 2006	Dar es Salaam	Informal employer
6	Mrs. Elina Mosha	23 Feb 2006	Arusha	Pseudonym
7	Ms. Fatina Juma	16 Jan 2006	Dar es Salaam	Self employed
8	Mrs. Fina Kalembo	3 Jan 2006	Dar es Salaam	Informal employee
9	Mrs. Herieth Majani	16 Jan 2006	Dar es Salaam	Pseudonym -
10	Mr. Isyaka Mwakajumba	1 Feb 2006	Mbeya	Peasant
11	Mrs. Jane Tesha	26 Feb 2006	Arusha	Self employed
12	Mr. Jeremiah Urrio	17 Feb 2006	Arusha	Pseudonym
13	Mr. Jerry Mwasi	21 Jan 2006	Dar es Salaam	Informal employer
14	Mr. Kusila Sanga	4 Feb 2006	Mbeya	Peasant
15	Mr. Msemwa Kunda	17 Dec 2005	Dar es Salaam	Informal employee
16	Ms. Nagwe Kasembe	7 Feb 2006	Mbeya	Pseudonym
17	Mr. Paul Kessy	23 Feb 2006	Arusha	Home worker
18	Mr. Seko Sumanya	8 Dec 2005	Dar es Salaam	Pseudonym
19	Mr. Senga Mwakasendo	4 Feb 2006	Mbeya	Peasant
20	Ms. Sikitu Mnaku	23 Jan 2006	Dar es Salaam	Pseudonym
21	Mr. Sinaeli Kombo	26 Feb 2006	Arusha	Informal employer
22	Mr. Stanslaus Kameta	11 Feb 2006	Mbeya	Informal employee
23	Ms. Suzan Mziray	24 Feb 2006	Arusha	Home worker
24	Mr. Unase Kwenda	8 Dec 2005	Dar es Salaam	Small shop owner
25	Ms. Veda Shayo	25 Feb 2006	Arusha	Peasant
26	Ms. Veronica Samba	8 Feb 2006	Mbeya	Informal employee
<b>Social security beneficiaries</b>				
1	Mrs. Aisha Udindo	29 Feb 06	Dar es Salaam	PPF
2	Mr. Amani A. Ligopola	1 March 06	Dar es Salaam	NSSF
3	Mr. Andy Mwakilembe	7 Feb 06	Mbeya	PPF
4	Mr. Angelus E. Chavaligino	3 Feb 06	Mbeya	NPF

5	Mr. Bruno B. Kalongole	7 Feb 06	Mbeya	Treasury
6	Deputy Coordinator, PUT (1)	17 Jan 06	Dar es Salaam	Pensions Fund (now PSPF)
7	Deputy coordinator, PUT (2)	18 Jan 06	Dar es Salaam	Pensions Fund (now PSPF)
8	Mr. Edmund M. Mpoto	2 Feb 06	Mbeya	Treasury
9	Mr. Edson L. Mwakyusa	8 Feb 06	Mbeya	NSSF
10	Mr. Francis X. Kataya	17 Jan 06	Dar es Salaam	PPF
11	Mr. Godlove Madeje	1 March 06	Dar es Salaam	NSSF
12	Mrs. Grace Mkana	1 March 06	Dar es Salaam	Pseudonym - NSSF
13	Mr. Hatibu M. Mwalisu	2 Feb 06	Mbeya	NPF
14	Hon. Idd Simba	31 Dec 05	Dar es Salaam	PSRB
15	Mr. Iddy A. Ligopola	1 March 06	Dar es Salaam	NSSF
16	Prof. J. L. Kanywanyi	8 Dec 05	Dar es Salaam	University of Dar
17	Mr. Jabir M. Mwaijonga	4 Feb 06	Mbeya	NPF
18	Mr. Joe Ole Kuwai	18 Feb 2006	Arusha	PSPF
19	Mr. John A. Masawa	2 Feb 06	Mbeya	NPF
20	Mr. Jonathan L. Mwakyando	3 Feb 06	Mbeya	Treasury
21	Mr. Kania	2 Feb 06	Mbeya	Pseudonym
22	Prof. Kimambo	12 Dec 05	Dar es Salaam	University of Dar
23	Mr. Lawrence Makea	3 Feb 06	Mbeya	NBC Group Assurance
24	Mr. Mecky Y. Mwakajinga	3 Feb 06	Mbeya	GEPP
25	NBC retiree	3 Feb 06	Mbeya	PPF
26	Mr. Pina Sineye	23 Feb 06	Arusha	Pseudonym - PSPF
27	PPF member	3 March 06	Dar es Salaam	PPF
28	Professor of Law	3 March 06	Dar es Salaam	University of Dar
29	Retired officer from President office	2 Feb 06	Mbeya	Treasury
30	Retired officer of defunct EAC	20 Dec 05	Dar es Salaam	Treasury
31	Retired primary school teacher	2 Feb 06	Mbeya	PSPF
32	Mrs. Ruth Johnas Kyejo	4 Feb 06	Mbeya	LAPF
33	Mr. Sambo Mwakanosya	5 Feb 06	Mbeya	PPF
34	Mr. Selestine B. Hekela	2 Feb 06	Mbeya	PPF
35	Mr. Stephen Mwendo	1 March 06	Dar es Salaam	NSSF
36	Mr. Steven Ng'weng'we	2 Feb 06	Mbeya	Treasury
37	University Professor	4 Jan 06	Dar es Salaam	University of Dar
38	Mr. William Mwambaja	3 Feb 06	Mbeya	PPF
39	Mr. Yasin A. Miteya	8 Feb 06	Mbeya	Treasury
40	Mr. Yesaya I. Kibona	3 Feb 06	Mbeya	Treasury
<b>Other categories of interviewees</b>				
1	Mr. Andrew Magnut	11 Aug 05	Dar es Salaam	Pseudonym
2	One of Tanzania's	12 June 05	Dar es Salaam	

	international experts for Phase II of Social Security Reform			
3	Ms. Marie Eli	22 June 05	Dar es Salaam	Pseudonym
4	Mr. Sinaeli Twina	20 June 05	Dar es Salaam	Pseudonym

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## Appendix B

### INTERVIEW QUESTIONS FOR ADMINISTRATORS OF SOCIAL SECURITY SCHEMES

#### PART I: General Information.

1. Name of the scheme: .....
2. Position within the organisation.....
3. The number of customers/contributors .....

#### PART II: COVERAGE

1. What are the categories of people covered under the scheme
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  - e) .....
2. What groups are considered potential customers? (future coverage)
  - a) .....
  - b) .....
  - c) .....
3. What is the degree of coverage to the dependants?
  - a) How many spouses per member? .....
  - b) How many children per member?.....
  - c) Any other dependants? .....
4. What are the risks covered under the scheme?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  - e) .....
  - f) .....
  - g) .....
  - h) .....
  - i) .....
  - j) .....
5. Which risks are more prevalent than others?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  - e) .....

6. Which risks are easier and cheaper to deal with?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  
7. Which risks involve high costs?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  
8. Are there any categories of risks that the customers would like to be protected against that are not provided for?
 

.....

.....

.....
  
9. What kinds of benefits are offered by this scheme?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  - e) .....
  - f) .....
  - g) .....
  - h) .....
  - i) .....
  - j) .....

### PART III: ADEQUACY

1. What is the formula used for determination of social security benefits?
 

.....
2. To what extent do the benefits help the beneficiary to sustain an acceptable standard of living?
 

.....
3. What are the customers' concerns about the benefits?
 

.....
4. Are there complaints filed on the level of benefits?
 

.....
5. How do you reconcile the differences in benefits between the lowest wage earner and the highest wage earner?
 

.....
6. How often are the levels of benefits reviewed?
 

.....
7. How many categories of benefits are added to the list in the legislation?
 

.....
8. Are there any categories of benefits that the customers would like to be covered but they are left out?.....If so, which.....

- .....
9. Are there any prospects of adding other social benefits to the current list?  
.....
10. If 'yes' to 9, what are the potential benefits to be added?  
.....
11. What are the factors considered before adding other benefits?  
.....

#### PART IV: COORDINATION

1. Are there any limitations to transferability of social security benefits from this scheme to another? .....
2. If 'yes' to 1, what are the limitations?  
a) .....  
b) .....  
c) .....
3. What happens to accrued benefits where an employee moves from this scheme to another?  
.....  
.....  
.....
4. What happens when the employee changes employers?  
.....  
.....  
.....
5. Are there any arrangements for the period and contributions made?  
a) .....  
b) .....  
c) .....
6. Can the employee choose a scheme different from the employer's choice?  
.....
7. If 'no' to 6, who chooses the scheme?.....  
  
Is the employee consulted? .....
- Is consultation in writing or verbally?.....
8. Does this scheme cover migrant workers?  
.....
9. If 'yes' to 8, what are the arrangements when the migrant;  
a) Wants to go back to his/her home country  
i).....  
ii) .....

- iii) .....
- b) Wants to change employment?
  - i).....
  - ii) .....
  - iii) .....
- c) Has reached retirement age
  - i).....
  - ii) .....
  - iii) .....

10. How many migrants are covered under the scheme?.....

**PART V: FRAGMENTATION**

1. What is the effect of other schemes, if any, on this scheme?  
.....
2. What are the effects of competition amongst the schemes?  
.....
3. Do other schemes offer better benefits than this scheme?  
.....
4. How do other schemes' number and level of benefits affect the scheme?  
.....

**PART VI: GOVERNANCE**

1. Does the scheme have an investment policy? .....
  - a) Who makes investment decisions?.....
  - b) Does the government interfere in investment decisions?.....
  - c) Can the scheme initiate and decide where to invest without the governments' directives?.....
  - d) How do the ministerial directives affect the investment policy of the scheme?  
.....  
.....  
.....
2. Does the scheme lend money to the government?.....
3. If 'yes' to 2, how often?.....
4. If 'yes' to 2, what are the conditions given to the government in respect of such loans if any?.....  
.....  
.....  
.....
5. Are there any pending loan repayments from the government?.....
6. Does this affect the scheme in discharging its duties to customers?.....

7. If 'yes' to 6, in what ways does it affect the scheme?.....  
 .....  
 .....
8. Can the government force/request the scheme to provide social relief in the event of social strife?.....
9. How do you ensure safety of social security funds?.....  
 .....  
 .....
10. What mechanisms, if any, are in place to discipline mismanagement of public funds?.....  
 .....
11. How effective are these mechanisms?  
 .....  
 .....
12. How do you deal with claims by members who are up country?  
 .....  
 .....
13. How long does it take before one gets the benefits?  
 .....  
 .....
14. Are there any measures in place to mitigate the impacts of distance on members who live far away from the nearest office of the scheme?  
 .....  
 .....
15. How often does the scheme provide information to the clients/beneficiaries?  
 .....  
 Does the scheme give the information voluntarily?.....  
 If not, is it upon request? .....  
 Is the information confidential given confidential?.....  
 If yes, who is entitled to it?.....  
 Who cannot receive it?.....

## Appendix C

### INTERVIEW QUESTIONS FOR EMPLOYEES IN THE FORMAL SECTOR

1. Position with the organisation .....
2. How long have you been employed?.....
3. Have you ever changed employment?.....
4. If 'yes' to 3, are you under the same scheme?.....
5. If 'no' to 4, what happened to your period and contributions under the previous scheme?  
.....
6. To which social security scheme do you contribute?.....
7. Did you choose the scheme? .....
8. If 'no' to 7, who chose for you.....
9. What benefits have you ever received from your scheme?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
  - e) .....
10. What would you comment about the benefits?
  - a) Were they sufficient?.....
  - b) Did you receive them on time?.....
  - c) If 'no' to b, what are the possible and stated reasons for delay?  
.....  
.....  
.....  
.....
11. How many dependants do you have?.....
12. How many dependants does your scheme take care of?.....
13. How do you provide for the dependants who are left out?.....
14. Do you belong to any supplementary social security scheme?.....
15. If 'yes' to 14, which scheme?.....
16. How do you describe your supplementary scheme?  
Formal?.....

Informal? (E.g. A savings society/club, burial society or private lottery).....

17. What benefits are offered under the supplementary scheme?

- a) .....
- b) .....
- c) .....
- d) .....
- e) .....

18. How do these benefits help you?.....

19. How could the scheme be made more user-friendly?

.....  
.....  
.....

20. How could the scheme be made more accessible?

.....  
.....  
.....

21. Are you aware of other existing social security schemes? .....

22. How do you describe your scheme compared to other schemes?

.....  
.....  
.....

23. If you were given a chance to choose, would you choose the scheme that covers you now or not?.....

24. If no to 23, which scheme would you have liked to contribute to?.....

25. What are the possible reasons for your choice?

.....  
.....  
.....  
.....

26. Please feel free to make additional comments on anything about the social security schemes you belong to .....

.....  
.....  
.....  
.....  
.....  
.....

## Appendix D

### INTERVIEW QUESTIONS FOR EMPLOYEES IN ATYPICAL AND INFORMAL EMPLOYMENT

1. Type of employment .....
2. How long have you been employed?.....
3. Have you ever changed employment?.....
4. If 'yes' to 3, are you under the same scheme?.....
5. If 'no' to 4, what happened to your period and contributions you made under the previous scheme?  
.....
6. To which social security scheme do you contribute?.....
7. Did you choose the scheme? .....
8. If 'no' to 7, who chose for you? .....
9. What benefits have you ever received from your scheme?
  - a. ....
  - b. ....
  - c. ....
  - d. ....
  - e. ....
10. What would you comment about the benefits?
  - a. Were they sufficient?.....
  - b. Were you given on time?.....
  - c. If 'no' to b, what are the possible reasons for delay?  
.....
11. How many dependants do you have?.....
12. How many dependants does your scheme take care of?.....
13. How do you provide for the dependants who are left out?.....
14. Do you belong to any supplementary social security scheme?.....
15. If 'yes' to 14, which scheme?.....
16. What benefits are offered under the supplementary scheme?
  - a. ....
  - b. ....
  - c. ....
  - d. ....
  - e. ....

17. How do these benefits help you?.....

18. Please feel free to comment on anything about the social security schemes you belong to.....  
.....

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## Appendix E

### INTERVIEW QUESTIONS FOR SOCIAL SECURITY BENEFICIARIES

1. What social security scheme do you belong to?.....
2. Which scheme pays your benefits? .....
3. What kind of benefits are you entitled to?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
4. How long did it take to get your initial payment?.....
5. On average, how long does it take to get your monthly benefits?.....
6. For your initial payment, did you consider the benefits to have been delayed?
7. If 'yes' to 6, please give reasons for your answer.
  - a) .....
  - b) .....
  - c) .....
  - d) .....
8. Are the benefits offered by your scheme sufficient for your basic needs?  
 .....  
 .....  
 .....
9. To what extent do the benefits meet your basic needs (in percentage)?.....(for example considering inflation, increased responsibilities, higher cost of living, and others).....  
 .....
10. If 'no' to 8, what are the possible reasons for having insufficient benefits?
  - a) .....
  - b) .....
  - c) .....
  - d) .....
11. Do you have any dependants? .....
12. If 'yes' to 11, how many dependants do you have?.....
13. Are you aware of any other existing social security scheme?.....
14. If yes to 13, do you know any beneficiary under that (those) scheme(s)? .....

15. How do you describe your scheme compared to other schemes?.....

16. If you were given a chance to choose, would you choose the scheme that covers you now or not?

17. If no to 16, which scheme would you have liked?.....

18. What are the possible reasons for your choice?.....

.....  
.....  
.....  
.....  
.....

19. Please feel free to comment on anything else about the benefits you are offered by the scheme .....

.....  
.....  
.....  
.....

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