

Legal and Policy Implications of Uganda's Social Security Law

Research Dissertation presented for the approval of Senate in fulfillment of part of the requirements for the **Masters in International Commercial Law** in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

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28 March 2006

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ACKNOWLEDGEMENTS

I would like to thank Professor Evance Kalula for encouraging me to pursue this topic and without whose continuous guidance and support I could not have pulled this off.

I would also like to thank the Post Graduate Funding Office, University of Cape Town for the Financial Support; in the form an INTER Scholarship given to me- Keep up the good work.

My sincerest gratitude goes to my family for supporting me emotionally and financially in my academic endeavors. May the good Lord richly bless and Keep you.

And to God be all of the Glory!!!!!!!!!!!!!!

University of Cape Town

Abstract

Social security is an expression of social solidarity and an attempt to curb the ills of exclusion and poverty. The welfare state was premised on this very ideal of social solidarity. As a result of the changed and changing times, the welfare state which has now come to be known as social security is under siege by several forces unique to individual states. For this reason, social security is an area of rich diversity and the challenges facing social security are not homogenous. Whereas for rich and industrialized countries social security is very meaningful, for most of Sub Saharan Africa it is an abstract and relatively novel concept.

The Universal Declaration for the Rights of man, to which every country should aspire and to which most, if not all, constitutions are modeled provides for the right to social security. Whereas the declaration implies that social security is an inalienable right, the definition of social security or 'western notion of social security' adopted by most countries with a semblance of social security eliminates the vast majority of people namely; those in the informal sector, the poor and those in the rural areas.

Studies of social security advance the theory that the conventional definition of social security is not adequate for the African continent because formal social security schemes were introduced in Africa during the colonial era as a response to the social security needs of expatriate white workers. In Uganda, formal social security caters for less than 20 per cent of the population leaving the rest to harness any other means possible to maintain subsistence and a level of sanity. The needs envisaged by traditional formal social security are not the needs an ordinary Ugandan today faces. As a result of this disparity, there has been and there continues to be out cries to reform a system that government has been reluctant to change much because of the multi faceted and overwhelming social demands.

The cliché that '*a drowning man clutches at a straw*' could not be put better: Africans do not give up; we simply make the most of what we have.

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1 Introduction

“More than a third of the world’s population lives under extreme conditions of poverty and deprivation. These are typically people found in remote areas with difficult access to markets and institutions, not educated, with poor health, employed in jobs with little security or unemployed altogether and with inadequate access to productive assets.”¹

Worse still, globalization has increased the need for flexibility and for reducing labour and social security costs in order to remain competitive. “Such characteristics make the poor vulnerable to shocks caused by life style changes, economic reforms and other types of events such as illness or bad weather conditions.”²

“Owing to the fact that most countries in Sub Saharan Africa are poor, the result is that the statutory protections afforded to destitute persons are seldom given practical effect.”³ It has been noted also that the “treatment of social security in different systems and countries reveals that neither the traditional nor the definitional position appears to cater for particular approaches a country or a system might have or want to follow.”⁴ This paper makes note of the social security situation in Uganda with all the above considerations in mind.

It provides a critical review of the findings of the Social Security and Pension Sector Stakeholder’s Transition Group appointed by the Minister of Gender, Labour and Social development in 2003. The committee was constituted following an urgent need for reforming the social protection sector so as to make it universal, more vibrant and competitive and for the sector to be a catalyst for social economic transformation through

¹ P Justino, ‘Social security in developing countries: Myth or Necessity? Evidence from India’ September 2003 University of Sussex Poverty Research Unit Working paper No.20. Available at www.sussex.ac.uk/Units/PRU/wps/wp20.pdf (accessed 13 March 2006) at 3.

² *ibid.*

³ EML Strydom *Essentials of Social Security Law* (JUTA Law, 2001) at 3.

⁴ MP Olivier *Social Security Reform: Problems and Challenges* (Excerpt from: *Social Insurance and Social Assistance: Towards a Coherent Approach*) (A Report to the Department of Welfare, South Africa) (CICLA & FES, December 1999) at 4.

mobilizing domestic resources.⁵ The aim of this paper is to identify out standing policy considerations for a much needed and much sought after reform of social security in Uganda. It is arranged in four main sections.

Section one begins by giving a brief background of Uganda; its geographic attributes and social economic background. It proceeds to give a conceptual analysis of social security and how the concept evolved in Britain. My choice of Britain is hinged on the fact that Britain was Uganda's colonial master. The latter part of the section recounts the evolution of social security in Uganda. The importance of this section is to enable one to gauge how far Uganda has come and why the social security situation is as it is.

Section two explores the various social security provisions and benefits provided for by legislation. Section three analyses the legal as well as policy considerations that ought to be made note of in forging a way for social security reform. The inter and multi sectoral nature of social security necessitates some reflection on non legal principles and the integration of these into the legal framework. The section also articulates the implications of these considerations and their significance on social policy formulation. The challenges put forward point at a sense of need and the areas in which and to what extent Uganda is in a social deficit situation. Section four finally highlights the recommendations for Uganda. The Paper provides eclectic examples from the South African experience for comparison.

1.1 Background and Context

Uganda is a landlocked country situated in Equatorial Africa. It is bordered by Sudan to the North, Kenya to the East, Tanzania and Rwanda to the South and Zaire to the West. The country has a total area of 236,000 square kilometers. The country is blessed with the Nile river and its source not forgetting also Lake Victoria which is the world's second

⁵ The Report of the Social Security and Pensions Sector Stakeholder Transition Group; The Challenges and Financing of Social Security and Pension Reform in Uganda. (The Tripartite Consultative Process.) Policy considerations and the way forward. 2003.

largest freshwater lake covering an area of 67,850 sq km.⁶ Although it is not well endowed with minerals or fossil fuel, the country has rich soils and a favourable climate for agriculture.

Uganda was a British colony and was carved into its present shape by the British colonizers.⁷ The country got its independence in 1962. The decade following independence in October 1962 was marked by reasonably strong economic performance; with an annual real GNP growth rate of 6%. Unfortunately that “great potential and promise was soon lost when Uganda was engulfed in a constitutional crisis in 1966.”⁸ The advent of the Amin regime⁹ in January 1971 changed the economy drastically. The ‘pearl’¹⁰ ceased to shine; Uganda entered the dark age of political, economic and moral degradation.”¹¹ By the time of Amin’s over throw in 1979, the GDP had declined by some 20 per cent.¹² A renewed civil war lasted from 1981 to 1985. After the National Resistance Movement (NRM) ascended into power in 1986, Uganda has enjoyed relative political calm.

Uganda ranks among the world’s poorest countries; its ranking is 146th out of the total 177 reported countries.¹³ It is estimated that 96 per cent of the population lives on under \$2 a day.¹⁴ Uganda now has a population of about 24.7 million people growing at the rate of 3.4 per cent.¹⁵ The population lives primarily in rural areas with only 12 per cent living

⁶ See http://gorp.away.com/gorp/location/africa/kenya/ke_lkvic.htm (accessed 12 February 2006)

⁷ O Odongo *A Political History of Uganda; The Origin of Museveni’s Referendum 2000* (Kampala: Monitor Publications, 2000) at 7.

⁸ PLangseth, J Katorobo, E Brett & J Munene (ed) *Uganda; Landmarks in Rebuilding a Nation* (Kampala: Fountain Publishers, 1995) editors’ note at X.

⁹ See http://en.wikipedia.org/wiki/Uganda_under_Amin (accessed 12 February 2006)

¹⁰ Uganda was once described by Sir Winston Churchill as ‘*The Pearl of Africa*’.

¹¹ PLangseth et al (note 8) at X.

¹² Plangseth & J Mujaju ‘Civil Service Reform in Uganda; Objectives and Strategic Plans’ in PLangseth, J Katorobo, E Brett & J Munene (ed) *Uganda; Landmarks in Rebuilding a Nation* (Kampala: Fountain Publishers, 1995) at 91.

¹³ United Nations System in Uganda c/o Office of the United Nations Resident Coordinator *Common Country Assessment of Uganda* (Kampala: UN, 2004) at 5.

¹⁴ Braun Gabriela Human Development Report 2003, Most recent year available between 1990-2001 cited in Uganda Country Indicator, World Development Indicators(A country status review) 2003.

¹⁵ The Social Security and Pensions Sector Stakeholders Transition Group Report (2003) at 4.

in urban areas. The urban population is mostly young with over 50 per cent being 15 years and below¹⁶ Agriculture is thus the mainstay of the economy.

1.2 Conceptualizing Social Security

Understanding the concept of social security is of crucial importance in appreciating its enormity. The conception of social security rights probably began at the time of the French Revolution when the 'Declaration of the Rights of Man and of all Citizens' was proclaimed in 1789.¹⁷ It is thus seen as a precursor to many international instruments. Although initial human rights instruments may not have expressly referred to the term 'social security,' they nevertheless allude to it.

After the First World War,¹⁸ the International Labour Organisation (ILO) was established under the Treaty of Versailles. The mandate of the ILO, laid down in its constitution, charges the organization with the promotion of social justice and internationally recognized human and labour rights. The Declaration of Philadelphia, 1944 also clearly lays down the obligation of the International Labour Organisation which is to extend social security among the nations.¹⁹ Since its inception, the organization has been adopting resolutions, recommendations and conventions on various aspects of social security.

The 'Universal Declaration of the Rights of Man'²⁰ also provides for social security. It stipulates that "everyone as a member of the society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and

¹⁶ Uganda Poverty Status Report (2003) cited in (note 15) at 4.

¹⁷ The Declaration of the Rights of Man and of the Citizen is one of the fundamental documents of the French Revolution; defining a set of individual rights and collective rights of the people. It was adopted on 26th August 1789 by the National constituent Assembly. It is also a precursor to International Human Rights Instruments. See http://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man (accessed 12th February 2006).

¹⁸ The First World War lasted from 1914-1918. See also http://en.wikipedia.org/wiki/World_War_I (accessed 12th February 2006).

¹⁹ International labour Organisation's history, mission and mandate in terms of social security see www.ilo.org/public/english/protection/socsec/publ/ilofact.htm (accessed on 15th October 2005).

²⁰ Adopted and Proclaimed on 10th December 1948 by the general Assembly of the United Nations. See also <http://www.un.org/Overview/rights.html> (accessed on 11 February 2006).

cultural rights indispensable for his dignity and the free development of his personality.”²¹

A universally accepted definition of social security is however not at all possible due to the fact that different socio –economic factors and labour market policies have caused nations to deal differently with the various elements of social security.

The International Labour Organization for instance, understood the concept of social security in 1984 to mean: the protection which 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; the provision of subsidies for families with children.

The International Labour Organisation definition does give full effect to and supports ILO Convention No. 102 of 1952 but has been described as narrow because; it firstly, links contingencies to a lack of income due to cessation or interruption of employment. Many have advanced the concern that the first ILO definition of social security was drafted with developed countries in mind considering that they had near full employment then, and it is now thought that the definition is inadequate for third world countries.

Ed Shepherd asserts that objections to the ILO definition initially arose from its assumption of full employment with workers paying social insurance contributions from regular wages but events, he notes, have long overtaken this assumption even in most 'developed' countries, where a substantial minority of citizens are now classed as long term unemployed.²²

²¹ Of the 1948 under Article 22 at www.un.org/Overview/rights.html (accessed on 15th October 2005).

²² E Shepherd *Social Security and Full Employment - Two Sides of One Coin* Available at <http://www.amrc.org.hk/Arch/3500.htm> (accessed on 13 March 2006)

Secondly that it does not cover contingencies such as individuals or community crises, hardship and suffering caused by the state and lack of opportunities for the disadvantaged members of society.²³

The ILO approach relating to “public measures” obviously has its restrictions, owing to the fact that “in developing countries it would imply that traditional or informal social security, which still plays a very important role, would be ignored and excludes all other privately provided social security.”²⁴ This limited notion of social security has been termed by many as a ‘Western oriented concept of social security.’ Olivier articulates that “this approach is unable to comprehend, to give sufficient recognition to, and to support informal forms of social security obtaining in marginalised communities, consisting mainly of the rural and urban poor as well as the structurally unemployed and the informally employed amongst them.”²⁵

Social security may take any of the following features;

1.2.1 Social Assistance

According to the International Labour Organisation, social assistance may be described by the following attributes; it is the sole responsibility of the state being financed through tax revenues, benefits are paid as of legal right in prescribed categories of need, the assistance may be means tested referring to those persons who qualify for assistance in terms of a means test.²⁶ The assistance is thus aimed at maintaining a basic subsistence level and is designed to bring a person’s total income up to a community determined minimum.²⁷ In South Africa, a majority of social assistance beneficiaries are people who are poor; unemployed; live in poor rural areas and semi urban settings; and are excluded and marginalized from the formal social security schemes.²⁸

²³ EML Strydom *Essentials of Social Security Law* (Lansdowne:JUTA Law, 2001) at 6.

²⁴ Leliveld 1994 cited in Theo Van der Merwe ‘The Case for Social Security in South Africa: An Economic Perspective’ (December 2000) Vol 17 No.5 *Development Southern Africa* at 1.

²⁵ MP Olivier *Social Security Reform: Problems and Challenges* (Excerpt from : *Social Insurance and Social Assistance: Towards a Coherent Approach*) (A Report to the Department of Welfare, South Africa) (CICLA & FES, December 1999) at 4.

²⁶ In assessing need, a person’s other income and resources are taken into account.

²⁷ LG Mpedi, GY Kuppan & MP Olivier ‘Welfare and Legal Aid’ in MP Olivier et al (ed) *Social Security: A Legal Analysis* (1 ed) (Durban: Lexis Nexis Butterworths, 2003) p. 197-230 at 200.

²⁸ *Ibid.*

1.2.2 Social Insurance

This ascribes to the principles of insurance; in a sense it is a “contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure to yourself some benefit, usually but not necessarily the payment of a sum of money, upon the happening of some event...The event should be one which involves some amount of uncertainty.”²⁹ In South Africa, social insurance schemes include retirement, health insurance, workers’ compensation and unemployment insurance.

1.2.3 Social Relief

This entails short term measures undertaken by the state to assist persons during individual or community crises that have caused the affected persons or communities to be unable to meet their most basic needs.³⁰ Natural disasters are an example that normally prompts national action. In South Africa, this relief is administered in terms of the Disaster Relief Fund, which is established in terms of the Fund Raising Act and is available to all members of the society irrespective of their financial position.³¹

1.2.4 Social Compensation

Social compensation refers to the compensation which governments give to express their solidarity with people who have been exposed to hardship and suffering as a result of willful or unintended neglect by the state.³² Governments have been prepared to pay compensation to victims of war, persons whose human rights have been infringed upon by the state to mention but a few.³³

1.2.5 Employer Assistance

This entails the providing of assistance to employees by their employers. Unlike social insurance, there is by and large no obligation to create and finance a fund out of which

²⁹ *Prudential Insurance Co v Inland Revenue Commissioners* [1904] 2 KB 658 quoted from EML Strydom *Essentials of Social Security Law* (JUTA Law, 2001) at 10.

³⁰ *Supra* note 27 at 205.

³¹ *ibid* at 206.

³² EML Strydom *Essentials of Social Security Law* (Lansdowne: JUTA Law, 2001) at 13.

³³ *Ibid* at 13-4.

benefits are to be paid out to employees. The assistance provided by employers could be compulsory in terms of legislation or voluntary in terms of a contract of employment. In the case of Uganda, the Workers Compensation Act that is based on employer liability.³⁴ Similarly a collective agreement concluded with a trade union on behalf of union members working for the employer can make employer assistance compulsory. Compulsory assistance may also take the form of severance pay payable by employers to employees who are being retrenched, paid sick leave, paid maternity leave, paid paternity leave and family responsibility leave. The Employment Act allows for paid maternity leave and sick leave.

1.2.6 Private Savings and Insurance

As the title suggests, they are private initiatives of financing. In the absence of national or public retirement schemes, private retirement funds are a preferred alternative for ensuring financial support in old age by workers.³⁵ Obviously, these are the preserve of only those that can afford. They also cover health, life and any other insurable risks.

1.3 Social Security Versus Social Protection

Social security thus far just does not work for Sub-Saharan Africa leaving no way but to deviate from social security for the broad based approach of social protection. To some, social protection denotes a general system of basic social support which is no longer linked to the regular employment relationship and which is founded on the conviction that society as a whole is responsible for its weaker members.³⁶ To others social protection has been seen as a tool that is linked to “rights related to and ancillary to social security itself.”³⁷

Critics of social protection advance that financial difficulties arising in many countries from the extent of unemployment make social protection an almost insurmountable task.

³⁴ Workers Compensation Act 2000 as amended.

³⁵ A Asher & MP Olivier ‘Retirement and Old Age’ in MP Olivier et al (ed) *Social Security: A Legal Analysis (1 ed)* (Durban: Lexis Nexis Butterworths, 2003) p. 231- 300 at 250.

³⁶ MP Olivier ‘The Concept of Social Security’ in MP Olivier, ER Kalula & Smit *Social Security: A Legal Analysis 1ed* (Durban: Lexis Nexis Butterworths, 2003) at 26.

³⁷ Ibid.

Many also believe that the welfare state has become incompatible with other cherished goals such as economic development, full employment and even personal liberties,³⁸ being that they are essentially financed through compulsory levies such as social contributions and taxation, which are generally unpopular and constantly seen as a 'burden'.

This notwithstanding social protection is a justifiable endeavour because of the need to provide social insurance for broad and excluded categories of the population, the inadequacy of market forces not to mention globalisation and the extent of the economic uncertainties affecting private and funded retirement schemes.³⁹ Accordingly, if social protection is to make any sense, it is imperative to go back to the values which justify it, bearing in mind that it is a human right, and that it is therefore founded on the recognition of human dignity.

Human beings are vulnerable beings. This justifies the relatively new approach taken by the World Bank with regard to social protection. This approach focuses on social risk management as the conceptual framework for Social Protection.

Social protection is defined by the World Bank as public interventions oriented to human capital to help individuals, households, and communities better manage risk; and provide support to the incapacitated poor.⁴⁰ This approach postulates that all individuals, households, and communities are vulnerable to multiple risks from different sources, whether they are natural (such as earthquakes, floods, and illness) or man-made (such as unemployment, environmental degradation, and war).

³⁸ GE Andersen(ed) *Welfare States in Transition. National Adaptations in Global Economies* London: SAGE Publications, 1996) at 1.

³⁹ Barr, 1992, 1998 and 2001 cited in Euzeby 'Social Protection: values to be defended' (2004) 57 *ISSR* Issue 2 (p. 107-117) (11) at 1.

⁴⁰ R Holzmann and S Jorgensen *Social Risk Management: A new conceptual framework for Social Protection.* (World Bank, 1999).

It also recognizes that poor people are typically more exposed to risk and have inferior access to effective risk management instruments than people with greater assets. Dealing with risks therefore involves recognizing their sources and economic characteristics, for example, whether they affect individuals in an unrelated manner or simultaneously. The most appropriate combination of risk management strategies (prevention, mitigation, or coping) and arrangements (informal, market-based, or publicly provided or mandated) in any given situation depends on the type of risk and on the direct and opportunity costs and effectiveness of the available instruments.

The World Bank approach is in my opinion a more favourable and meaningful approach because it suggests that dealing with risks entails knowing their sources, characteristics and how they affect people. This therefore implies that a particular country's approach to social protection has to be tailor made to its own needs. It is more so, very broad based in the sense that it recognises all people with out a bias on the formal sector or informal means of social security provision.

All these terms and ideas of the concept of social security would seem abstract in the case of Uganda if one does not engage on an expedition of how it evolved. It is thus imperative to review the evolution of the 'welfare state' in Britain owing to the fact that Uganda was a British colony and most of what was past down came from the colonial government at the time.

1.4 Evolution of Social Security in Britain

Systems of social security were introduced in Europe in the late 19th century.⁴¹ These were established as a means of improving the well being of the poor, reducing the inequality within society and conciliating different social demands, thus avoiding the social and political conflicts that arose as capitalist forms of production evolved in the industrialized countries.⁴²

✂ ⁴¹ The first modern social insurance programme was established in Germany in 1880 by Chancellor Von Bismarck and was quickly adopted in other European countries. See Supra note 1 at 5.

⁴² Supra note 1 at 6.

The industrial revolution played a major role in laying the foundations of welfare law and what is now more commonly referred to as social security. Increase in production per capita was the definitive characteristic of this industrial revolution and was manifested first in agriculture and then industry.⁴³ This economic change led to an increase in population in the fast growing cities as a result of increased employment prospects.⁴⁴ Increased population was followed by an increased demand for consumption and the only way to meet this demand was through technical innovation which later mechanized the process.

Ideologically the period also spewed out a spirit of individual liberty that encouraged, in the words of Fraser “the free spirit of self interest.”⁴⁵ Social classifications began to implant themselves in the society. Indeed the “social consequences of industrialisation provided the field work with which social policy had to deal and served as an impetus for income protection schemes.”⁴⁶

“In place of the security of a cohesive vertical social structure in which every individual had a formal or informal connection with those above and below, there was the uncertainty of a mass society in which a horizontal class structure gradually emerged. The first generation migrant had forsaken his niche in the old world yet was without the security of a stable position in the evolving new one. The factory owner had the privilege of the old lord of the manor but none of the responsibilities.”⁴⁷ Apparently, the industrial revolution was causing significant socio-economic and political instability.

Mechanisation on its own “debased and rendered obsolete certain craft skills which had taken years of experience to perfect. Men were not compensated for their changed

⁴³ D Fraser *The Evolution of the British Welfare State* (2ed) (London:Macmillan, 1984) at 2.

⁴⁴ Ibid.

⁴⁵ ibid at 5

⁴⁶ MP Olivier ‘The Concept of Social Security’ in MP Olivier et al (ed) *Social Security: A Legal Analysis* (Durban: Lexis Nexis Butterworths, 2003) p.23-47 at 29.

⁴⁷ Op cit at 5.

economic status by higher wages and after the 1840s depressed workers experienced falling wages.”⁴⁸

The quality of life took a plunge; the absence of modes of transport forced workers to adapt to factory life accordingly. Over crowding, minimum building standards and insanitation provided workers with a physical environment that the middle classes could buy themselves out of.⁴⁹

This scenario was indeed a dilemma for the British government. Appropriately so, the duties of social life were summarized as; “...to strive to the utmost to be self supporting not to be a burden upon any other man or upon society...to make such use of all superior advantages whether of knowledge, skill or wealth as to promote, on all occasions, the general happiness of mankind.”⁵⁰In view of this, the reaction of the British government was that “people should find their own salvation and that the common good was really the sum of the self interest of every member of the society.”⁵¹

As a result of the squalid conditions prevalent disease was rife. This was followed by a labour shortage and wage control by the statute of labourers of 1351; which was reinforced by the Poor Law Act of 1388 that not only tried to fix wages but also tried to prevent its mobility owing to the fact that this would inevitably cause wages to rise.⁵²

Despite there being a shortage of labour, there were also people that for some reason or the other were not working⁵³ and yet had to be supported to survive. The state therefore instituted laws against vagrancy that became the origins of poor relief. In 1536, parishes were authorized to collect money to support the impotent poor who would thus no longer

⁴⁸ *ibid* at 6.

⁴⁹ *Supra* note 43 at 7.

⁵⁰ Anon., *A Few Questions on Secular Education*, by the author of ‘*The Outlines of Social Economy*’ (1848) p.23 cited in *ibid*.

⁵¹ *Ibid*.

⁵² *Supra* note 43 at 31.

⁵³ Vagrants were the rogues, vagabonds and criminals and the laws against vagrancy were targeted at them.

need to beg. The state was thus acknowledging some minimal community responsibility for those who were unable to work.⁵⁴

In spite of this legislation vagrancy persisted. Indeed some contended that instead of discouraging pauperism, the poor laws encouraged it by offering such great benefits.⁵⁵ In 1576 the concept of 'setting the poor on work' was made law; "if the able bodied required assistance, they had to work for it."⁵⁶ Consequently, the 1834 poor law amendment made room for tighter measures.

Later amendments⁵⁷ to this law begun to classify the poor into; the impotent poor, that is to say the aged, the chronic sick, the blind, the lunatic. These were to be accommodated in 'poor houses.' The able bodied were to be set to work on hemp or other appropriate material and finally the able bodied who absconded and refused to work were to be punished in the 'house of correction'. All these were to be administered through parishes.⁵⁸

The weaknesses of the poor laws were soon to create disgruntlement among the masses and were criticized for being very inhumane. In 1786, a Rev. Townsend contended that; "These laws so beautiful in theory, promote the evils they mean to remedy and aggravate the distress."⁵⁹

More so, the new poor law was geared to people who were work shy but ignored the fact that some genuinely became unemployed because of market forces. In essence it failed to provide for those that were genuinely in need. Rathborne, for instance, remarked that "....There is grinding want among the honest poor; there is starvation, squalor, misery beyond description, children lack food and mothers work their eyes dim and their bodies

⁵⁴ Op cit.

⁵⁵ *ibid* at 44.

⁵⁶ *Ibid*.

⁵⁷ The 43rd of Elizabeth which was called the Elizabethan poor law.

⁵⁸ The Acts of 1598 & 1601 firmly gave them these powers. See also *supra* note 43 at 33.

⁵⁹ *Supra* note 43 at 38.

thin to emaciation in the vain attempt to find the bare necessities of life but the poor law authorities have no record of these struggles.”⁶⁰

With time social utilities such as water and sanitary requirements begun to be financed through taxes on a select few such as land owners which was in ‘effect redistribution of wealth through taxation.’⁶¹

These very real human practical problems compelled men to act in any way they could conjure to cope with the deficiencies of an ever more complex competitive society.⁶² In a situation of ‘laissez faire’, intervention was justifiable; charities thus took centre stage. In spite of the role that charities played they were criticised as being inadequate as they were ‘imbued with social snobbery’ and were a “means of social control- an avenue for the inculcation of sound middle class values.”⁶³

The beginning of the 20th Century saw the ‘pulling and tugging’ of several forces, such as the labour party among others,⁶⁴ in the political arena advocating to make social policy adaptive to the new Britain. This set the stage for Beveridge’s notions. The “Committee on Social Insurance and Allied Service was set up in June 1941 to inquire into the wide range of the anomalies that had arisen as a result of the ‘haphazard and piecemeal’⁶⁵ growth of the social security system over the past 50 years.”⁶⁶ This was bound to create bigger problems and in this vein Harris did note that “Such a variety of systems gave rise to much overlapping and duplication of services and at the same time failed to make provision for many people in need, particularly children and particular sections of the aged.”⁶⁷

⁶⁰ W Rathbone *Social Duties Considered* (1867) p.48-9 cited in *ibid* at 55.

⁶¹ *Ibid* at 66.

⁶² *ibid* at 117.

⁶³ *ibid* at 128

⁶⁴ *ibid* at 170 and 222.

⁶⁵ In 1941 no less than seven government departments were concerned with administering cash benefits for different kinds of needs. See J Harris *William Beveridge; A Biography* (Oxford:Clarendon Press, 1977) at 378.

⁶⁶ *Ibid*.

⁶⁷ *ibid* at 379.

Through out the 1930s there was tremendous criticism of the social security and the system appeared to be in much need of overhauling. There were, for example complaints of wide variations in benefits received from the same rate of contribution, anomalies in the private sector and lack of any regular provision for large families.⁶⁸ Later the outbreak of the Second World War served to enhance the need for reform.

Titmus postulated in this regard that “the tremendous disturbance of civilian population during the bombing of 1940 underlined the defects of existing services and areas of neglect which had lain concealed in peace time were glaringly exposed by the impact of war. In particular, mass evacuation had revealed to middle class people just how severe the problem of poverty among children in great cities and had at the same time drawn attention to the widely varying quality of many social services-to the bad conditions in many old poor law hospitals. A third factor was the sense of solidarity induced by war and the muffling of ideological conflict.”⁶⁹ The Beveridge committee was therefore set up in a very conducive atmosphere for discussion of social reform.

Beveridge proposed a system of benefits and contributions based on an insurance model dominated by the concept of ‘interruption of earnings’.⁷⁰ He was soon to realise that “such a concept could not be realistically applied to those outside the labour market. He therefore proposed that there should be seven different kinds of cash benefits namely; family allowances, old age pensions, disability benefit, unemployment benefit, funeral expenses, loss grants for the self employed who suffered theft or bankruptcy and special provision for the marriage needs of women. The whole system was to be underpinned by means tested public assistance to be paid at subsistence level which was to be financed by the national exchequer.”⁷¹

⁶⁸ *ibid* at 380.

⁶⁹ RM Titmus *Problems of Social Policy* (1950) pp. 66-73, 114-33 cited in J Harris, *William Beveridge; A Biography* (Oxford: Clarendon Press, 1977) at 381.

⁷⁰ Earlier referred to in Section 1.2

⁷¹ MP Olivier ‘The Concept of Social Security’ in MP Olivier et al (ed) *Social Security: A Legal Analysis* (Durban: Lexis Nexis Butterworths, 2003) p.23- 47 at 29.

Cautiously, Beveridge emphasized in his report that “social insurance should be seen merely as an integral stage in a much wider programme, covering transport, housing, education, employment and health.”⁷²The report⁷³ itself summarized the “the main feature of the plan for social security as: A scheme of social insurance against interruption and destruction of earning power and for special expenditure arising at birth, marriage or death. The scheme embodies six fundamental principles: flat rate of subsistence benefit; flat rate of contribution; unification of administrative responsibility; adequacy of benefit; comprehensiveness; and classification...Based on them, and in combination with national assistance and voluntary insurance as subsidiary methods, the main of the plan for social security is to make want under any circumstances unnecessary.”⁷⁴

More than five decades later, this caution is put to the test by the more favoured approach of social protection. One may wonder consequently of what significance the developments in Britain were with regard to the welfare state to British Africa.

1.4.1 Evolution of Social Security in Uganda

It is not surprising that the British capitalists imported their bourgeois legal system by the 1902 order in council, which made British laws applicable in Uganda.⁷⁵This ordinance made provision for administration of Uganda by the crown. It designated an official responsible for administration; the Commissioner. Article 12 of the ordinance empowered the Commissioner to make ordinances for the administration of justice, raising of revenues and generally for the peace, order and good government of all persons in Uganda.

In 1920 another order in council was promulgated. This time a legislative body was created and it designated its own membership. The body was to be called the Legislative Council, otherwise known as the LEGCO. At the time all its members, seven in number,

⁷² J Harris *William Beveridge; A Biography* (Oxford:Clarendon Press, 1977) at 418.

⁷³ The report of the Committee on Social Insurance and Allied Service headed by William Beveridge.

⁷⁴ R Lowe *The Welfare State in Britain since 1945* (London: Macmillan, 1993) at 126.

⁷⁵ F Bogezi *The Right to Social Security and Pension: A case of Public Service and Caltex (U) Ltd* (LLB Dissertation, Makerere University, 1999) at 34.

were to be Europeans.⁷⁶ Legally, these two years represented significant land marks in Uganda's legislative history. The 1902 order in council made British laws applicable to Uganda and later the 1920 order in council further gave the British the authority to make and pass law. This very much reinforced British hold on Uganda as they could do as they pleased by law.

The situation at home regarding social security was in sheer turmoil as different groups struggled to advance their views on social security and the effects of war further exacerbated the plight of the needy. For those that were overseas, they kept their ear to the ground to keep track of the developments at home as the effects of capitalism also took their toll. The crown owed its servants a duty to provide some form of social security just as their kin at home were enjoying in this regard.

Several laws provided for social security; there was the Armed Forces Pensions Act of 1939 to provide for the payment of pensions, gratuities and other allowances in respect of death, disablement or sickness of members of the armed forces while serving in any unit raised in Uganda and residents of Uganda while serving in any other unit of such forces.

The government at the time then enacted the Pensions Ordinance of 1946⁷⁷ to provide for the grant and regulating of pensions, gratuities and other allowances in respect of the public service of officers under the Government of Uganda.

The year 1951 saw the enactment of the Provident Fund (Local Governments) Act; an act to establish a provident fund for the benefit of employees of such local governments that desired to become contributors thereto and provided for the control and management thereof and other matters incidental thereto. Later that same year, the Municipalities and Public Authorities Provident fund Act was enacted to make provision for the establishment of provident funds by public authorities.

⁷⁶ See <http://www.parliament.go.ug/history.htm> (accessed on 13 March 2006).

⁷⁷ Laws of Uganda -1962

In 1967, the Special Pensions (Former Rulers and Constitutional Heads) Act, 1967 was enacted to provide for the grant of pensions, gratuities or other allowances to the former rulers and constitutional heads, for the devolution of property connected with the institution of ruler or constitutional head and for other purposes connected therewith. The pensions ordinance of 1946 was later amended by the Pensions Act of 1969. The Pensions Act did not however apply to the armed forces as they were provided for under the Armed Forces Pensions Act of 1939 and the Armed forces (Disability and Death Pensions and Gratuities) Regulations of 1968.

It is crucial to note that during the 1960s there was increased urbanization and industrialization thus changing the environment to include those that did not work in the government arena. A new system of social protection was therefore imperative. Under the advice of the then British government in 1967, the Social Security Act No. 21 was enacted and became operational in 1968. The Act provided for the establishment of a Social Security Fund; its membership, the payment of contributions to and the payment of benefits out of the fund.

It suffices to note that the enactment of this law was in response to workers that did not fall within the scope of government employees. It was also compliant with the Universal Declaration of the Rights of man of 1948 whose article 22, provided that "Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality."⁷⁸

It was more so closely akin to the International Labour Organisation Convention No. 102 of 1952 that provided for the Minimum standards desirable. It was for this reason a step in the right direction as it would, among other things, minimize expenses incurred by the government and was also capable of expansion into a fully fledged comprehensive

⁷⁸ See the 1948 Declaration of the Rights of Man at www.un.org/Overview/rights.html (accessed on 15th October 2005).

scheme covering several contingencies as recommended by the International Labour Organisation.⁷⁹ Decades later, even the International Labour Organisation convention in this regard is very inadequate in addressing the social security needs of numerous countries.

For over 17 years, the Social Security Fund operated as a department of the Ministry of Labour until the National Security Fund Act No. 8 of 1985 transformed the fund into an autonomous body; a public private partnership with a tripartite board consisting of representatives of labour, employers and government. Originally the fund was put under the Ministry of Gender, Labour and Social Development until 2004 when it was moved to the Ministry of Finance, Planning and Economic Development following gross mismanagement.

⁷⁹ See ILO (Minimum Standards) Convention No.102 of 1952.

2 Legal Framework

2.1 The Constitution of the Republic of Uganda, 1995

The current Constitution of the Republic of Uganda was promulgated in 1995.

It does not provide expressly for the right to social security as the Universal Declaration of the Rights of Man does. It does however allude to its importance.

The preamble to the Constitution states that

“We the people of Uganda: Recalling our history which has been characterized by the political and constitutional instability; Recognising our struggles against the forces of tyranny, oppression and exploitation; Committed to building a better future by establishing a socio-economic and political order through a popular and durable national constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress; Exercising our sovereign and inalienable right to determine the form of governance for our country and having fully participated in the constitution making process: Do hereby adopt, enact and give to ourselves and to our posterity this constitution of the Republic of Uganda.”

To put it simply our future as Ugandans is established upon a socio-economic and political order based on several principles; social justice inclusive. This notwithstanding, however glossily worded the preamble is, it serves very little effect if its aspirations are not accorded provision in the body of the constitution it self. This is the case with the Ugandan one. A preamble merely serves the purpose of explaining the object of the statute, for this reason therefore, it has no legal effect or statutory force.⁸⁰ Objectives too are of no legal force and can not be termed justiciable rights.

The fifth objective of the constitution states that the State shall guarantee and respect institutions which are charged by the State with the responsibility for protecting and promoting human rights by providing them with adequate resources to function

⁸⁰ Bills Digest No. 32 1999-2000 Constitution Alteration (Preamble) 1999 Parliament of Australia at <http://www.aph.gov.au/library/pubs/bd/1999-2000/2000bd032.htm#Purpose> (accessed on 14 March 2006)

effectively. The implication here is that the state is ready to give its backing to such institutions. Its support is manifest in creating an enabling environment to foster human rights by making necessary laws and making financial provision to this effect. The financial responsibility is however limited by the financial capacity which is more often than not lacking in any case.

The seventh objective states that the State shall make reasonable provision for the welfare and maintenance of the aged. The fourteenth objective states that the State shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that all developmental efforts are directed at ensuring the maximum social and cultural well being of the people and all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.

The sixteenth objective stipulates that society and the State shall recognize the right of persons with disabilities to respect and human dignity. All these objectives are very well intentioned and are aspirations as we have noted. However all ideal situations are quite different from the real life and this real life is the financial incapacity of poor countries to turn their dreams to reality. Many human rights, especially socio-economic rights, are dreams for the ordinary Ugandan. The Universal Declaration of the rights of man makes note of this limitation in Article 22 by adding that the right to social security has to be enjoyed in accordance with the organization and resources of each state.

Chapter Four is the section that provides for the protection of fundamental and other human rights and freedoms; Article 20 Clause one provides that fundamental rights and freedoms of the individual are inherent and are not granted by the State. Clause two further provides that the rights and freedoms of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of government and by all persons.

Article 21 Clause one further provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law.

Chapter four is the chapter that provides some semblance of provision for such a right as social security although not expressly so. It does this by referring to rights such as the right to; Freedom from discrimination,⁸¹ right to life,⁸² human dignity,⁸³ education,⁸⁴ rights of women,⁸⁵ children,⁸⁶ persons with disabilities,⁸⁷ right of minorities,⁸⁸ Right to a clean and healthy environment,⁸⁹ and economic rights.⁹⁰ Even with these provisions, the constitutional court that is provided for by law is quite redundant considering that Article 50 of the constitution provides for enforcement of these rights if they are violated. The South African Constitution is one of the very few constitutions that expressly provides for the right of access to social security.⁹¹ It is also commendable that the South African constitutional court has made significant strides in the area of constitutional litigation where it comes to socio-economic rights.

Article 254 Clause one of Uganda's constitution provides that a public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service. This pension is exempt from tax and is subject to periodic review to take account of changes in the value of money.⁹² The payment of pension shall be prompt and regular and easily accessible to pensioners.⁹³

⁸¹ Constitution of the Republic of Uganda, 1995 Article 21

⁸² *ibid* Article 22

⁸³ *ibid* Article 24

⁸⁴ *ibid* Articles 30-32

⁸⁵ *ibid* Article 33

⁸⁶ *ibid* Article 34

⁸⁷ *ibid* Article 35

⁸⁸ *ibid* Article 36

⁸⁹ *ibid* Article 39

⁹⁰ *ibid* Article 40

⁹¹ Constitution of South Africa, 1996 Section 27 (c)

⁹² *ibid* Article 254 (2)

⁹³ *ibid* Article 254 (3)

Following the constitutional mandate, several pieces of legislation; some of them older than independence and others newer than Uganda's current constitution, have been enacted to provide for social security. They are dealt with hereunder under two distinct heads namely those that apply to the civil service and those that apply to the private sector;

2.2 Civil Service Social Security Mechanisms

2.2.1 The Pensions Act

Pensions for public officers are expressly provided for in Article 254 of the 1995 Constitution of the Republic of Uganda. Besides being given Constitutional recognition, public service pensions are also provided for by the Pensions Act.⁹⁴The Act provides for the grant and regulating of pensions, gratuities and other allowances in respect of the public service officers under the government of Uganda.

It defines a pensionable office as an office to which a person has been appointed, on probation or otherwise by the authority having power for the time being to make appointments to the public service of Uganda on terms which include eligibility for the grant of a pension under this act or under any ordinance repealed by this act and which he or she has not ceased to hold on such terms.⁹⁵ If it is with respect to other public office, it has to be an office which is for the time being a pensionable office under the law or the regulations in force in the service or an office to which a Ugandan national was appointed on probation or otherwise by the authority having power for the time being to make appointments in the East African community on terms which include eligibility for the grant under the Pensions Act.

The Act applies to every officer appointed to the service of the government after the 9th August 1948, every teacher appointed to the teaching service on or after the 1st day of July, 1953, every officer in the service of the administration of a district, an officer serving in an urban authority who is a member of a pension scheme established by the

⁹⁴ Cap 286 as amended by the Pensions (Amendment) Statute No.4 of 1994.

⁹⁵ Ibid s 1.

urban authority in which he or she is serving as well as to every officer appointed to the service of an urban authority on or after the pensions authority may determine.

The Act also provides for officers in the service of a district administration; only service on or after the 1st day of January 1954, with respect to officers in the service of the former Buganda government and on or after the 1st day of January 1950 in respect of officers in the service of the former Eastern, Western and Northern provinces.⁹⁶

Pensions may be granted in the case of an officer in the public service on the 16th February 1961 who was forty five years of age at the time or in the case of an officer in the public service who is in receipt of overseas addition or who was recruited by the secretary of state or by the crown agents for overseas governments and administrations on terms of service which did not include payment of inducement pay or overseas addition or who is or was on independence day, an officer eligible for vacation leave. It may also be in the case of an officer in the public service on the 16th February 1961 who attained the age of forty five years not later than 16th February 1962 on or after attaining that age.⁹⁷

A second instance is in the case of a transfer to other public service, in circumstances in which he or she is permitted by law or regulations of the service in which he or she is last employed to retire on pension or gratuity; provided that if the other public service is superannuated service under the federated Superannuation system for universities or under a similar insurance scheme, he or she has retired under the prescribed grounds under this subsection.⁹⁸

Pensions are also granted on the abolition of a person's office, compulsory retirement if it is for the purpose of facilitating improvement in the organization to which he or she belongs, on medical evidence that he or she is incapable by reason of any infirmity of

⁹⁶ Pensions Act Cap 286 (as amended amended by the Pensions (Amendment) Statute No.4 of 1994) s 5.

⁹⁷ Ibid s10 (a).

⁹⁸ The grounds include abolition of his or her office, compulsory retirement, incapability on presentation of medical evidence, retirement with the Presidents consent. See Section 10 of the Pensions Act, Cap 286 as Amended.

mind or body of discharging the duties of his or her office and that the infirmity is likely to be permanent.⁹⁹

Further to this a person is entitled to a pension if he or she retires from public service with the written consent of the president acting on the advice of the public service commission, the judicial service commission or the education service commission as the case may be.

It further provides that a gratuity may be granted to a female officer who resigns on or with a view to marriage or is required to retire on account of her marriage notwithstanding that she is not otherwise eligible under this section to any gratuity, pension or other allowance.

Notwithstanding prior provision, a pension, gratuity or other allowance shall be paid to an officer who retires on the attainment of the age of forty five if he or she has served for a continuous period of ten years or more.¹⁰⁰

Every officer shall retire from the public service on the attainment of the age of fifty five and has the option to remain in public service if such person notifies the appropriate authority at the age of fifty. This provision is however applicable to officers who were in the public service at the commencement of the Pensions Act (Amendment) decree.¹⁰¹

Where an officer is removed from the public service in the public interest and he is entitled to a pension, gratuity or allowance, the pensions authority shall grant such pension, gratuity or other allowance as it considers to be just and proper, not exceeding in amount that for which the officer would be eligible if he or she retired from the public service in the required circumstances under the Act.¹⁰² Pensions may also be paid to an

⁹⁹ Op cit ss 10 (c),(d) & (e) respectively.

¹⁰⁰ Ibid s10 (2).

¹⁰¹ Decree No.11 of 1977.

¹⁰² Op cit s 11.

unconfirmed officer, an officer dismissed from the public service as the pensions authority thinks fit.¹⁰³

Besides the previous sections, the act makes a distinction and provides for compulsory retirement on the attainment of the age of sixty years. This section does not however apply to judges of the High Court, Court of Appeal or Supreme Court.¹⁰⁴

Every pension ceases, unless it ceases sooner, upon the death of the person to whom it is granted. If however, the person dies before the expiration of fifteen years after the date of his or her retirement, the pensions authority may continue paying the pension or other allowance to the spouse or child. This therefore implies that a pension is payable for a period not exceeding fifteen years from the date of retirement.

The Act also provides for survivors benefits to dependents of officers dieing from injuries received or disease contracted on duty. The injuries referred to are those received in the actual discharge of and specifically attributable to the nature of his or her duty and not attributable to his or her negligence or contracting a disease to which he or she is specifically exposed by the nature of her duties.¹⁰⁵

The public service pension system is a very categorical one; Civil servants employed in central government ministries have their pensions managed by the Ministry of Public Service. The second marked category is that of teachers who are still employed by government but are catered for by the Ministry of Education and Sports. The third categorization is that of the army and is catered for by the Ministry of Defence. There are also urban authorities that fall under the Ministry of Local Government; these however have their own pension arrangements.

¹⁰³ Ibid ss 14 &15 respectively.

¹⁰⁴ Ibid s 12.

¹⁰⁵ Ibid s 20.

2.2.2 The Armed Forces Pensions Act

Whereas the pensions Act provides for civil service, the Armed Forces Pensions Act is an act to provide for the payment of pensions, gratuities and other allowances in respect of the death, disablement or sickness of members of the armed forces while serving in any other unit of such forces. Other legislation related to the army includes;

The Armed Forces (Disability and Death Pensions and Gratuities) Regulations of 1968; that provide for the establishment of a pensions assessment Board as well as payment and qualifying criteria for pensions and other benefits, **the National Resistance Army Statute No.3 of 1992** that provides for the establishment and regulation of the army. Section 104(2) of this statute enables the Minister of Defence to make regulations on conditions of service including conditions relating to pensions and other allowances. Such regulations include **The National Resistance Army (Conditions of Service) (Officers) Regulations No.6 of 1993** and **The National Resistance Army (Conditions of Service) (Men) Regulations No.7 of 1993;** which instruments provide for the terms and conditions of service including retirement and other benefits. The benefits provided include disablement, gratuity for early retirement, retirement pension and a survivor's pension.

Notably, public sector schemes such as those mentioned above are unfunded except by the consolidated fund. Government on this note therefore budgets for pension payments each financial year. The state pension is an earnings related scheme in which the benefit is calculated by reference to the member's pensionable earnings for the period of pensionable service ending at or before the normal pensionable date or leaving service.¹⁰⁶

2.2.3 The Municipalities and Public Authorities Provident Fund Act

This Act makes provision for the establishment of provident funds by public authorities. 'Public authorities' refers to any municipal council established under the Local

¹⁰⁶ DJ Bakibinga 'Retirement and Pension Trusts in Uganda' (Feb 2003) Vol 1 No.3 *The Scope Magazine* 7-11 at 7.

Governments Act and any other authority or association of persons recognized by the minister by statutory instrument as a public authority for purposes of this act.¹⁰⁷

2.2.4 The Provident Fund (Local Governments) Act

This is an act to establish a provident fund for the benefit of employees of such local governments as may desire to become contributors thereto and to provide for the control and management thereof.

2.3 Private Sector Social Security Mechanisms

2.3.1 The National Social Security Fund Act

The National Social Security Fund is a provident fund established under Section 1 of the National Social Security Fund Act 8 of 1985. The fund is a body corporate with perpetual succession and a common seal and may sue and be sued in its own capacity. The fund may also, in connection with its functions under the NSSF Act hold, manage and dispose of any property, enter into contracts.¹⁰⁸ This Act justifies the national social security fund which is a contributory scheme where contributions are paid into the scheme by or on behalf of the member and usually increased by an amount based on the investment return on those contributions.¹⁰⁹

The fund is governed by a board of directors consisting of a chairman, the managing director and not less than six nor more than eight other members.¹¹⁰

The chairman and other board members used to be appointed by the Minister of Gender, Labour and Social development until recently when they were appointed by the Minister in charge of Finance, Planning and Economic Development. This appointment may be revoked if the Managing Director is unable to perform the functions of his office, insolvency or bankruptcy, if he is convicted of an offence involving fraud or

¹⁰⁷ The Municipalities and Public Authorities Provident Fund Act (Cap 285) s 1.

¹⁰⁸ National Social Security Fund Act, 1985 s 1(2).

¹⁰⁹ Supra note 106 at 8.

¹¹⁰ National Social Security Fund Act, 1985 s 2 (1)

dishonesty.¹¹¹The general functions and duties of the board include; operating and managing the fund. It ensures that there is secure and profitable and effective financial management of the fund for the benefit of workers in particular and the country at large.¹¹²

A person is eligible for membership of the fund if such person is between the ages of 16 and 55 years of age.¹¹³This is with the exception of persons excluded under an International Convention to which Uganda is a member; employment by a university or college by virtue of which the employee is entitled to receive benefits under a superannuation scheme appointed by the Minister; employees of the Uganda Police, Prisons service, Army and Airforce; employees by virtue of which employees are eligible for pension benefits under the Pensions Act; students on vacation employment; employees under the age of 18 who are apprentices or are under going full time education at a university school or college; recipients of less than 75% of the legal monthly wage for full time employees; non resident employees; and employees not employed in Uganda.¹¹⁴

The fund makes provision for;

2.3.1(a) Old Age benefit

A member of the fund is entitled to an old age benefit if he attains the age of fifty years and has retired from regular employment; or if he has attained the age of fifty five years.¹¹⁵A member may be treated as having retired from regular employment when he attains the age of fifty years if he is not in a gainful occupation or if he engages in an occupation only occasionally, inconsiderably or in circumstances not inconsistent with his retirement.¹¹⁶The benefit is paid to the member in a lumpsum.

¹¹¹ *ibid* s 2 (3).

¹¹² *ibid* s 3 (1) & (2) respectively.

¹¹³ *Ibid* s.5.

¹¹⁴ Refer to the First Schedule of the NSSF Act, 1985.

¹¹⁵ *Op cit* s 19 1 (a) & (b).

¹¹⁶ *Ibid* 19 (2) a & b.

2.3.1 (b) Invalidity Benefit

Another noteworthy benefit is the invalidity benefit. It is payable to persons who have permanently lost a substantial proportion of their capacity to earn. A member of the fund is entitled to invalidity benefit if he or she is subject to such physical or mental disability as to be suffering from permanent total incapacity or if he or she is subject to such physical or mental disability as to be suffering from partial incapacity of a permanent nature and he is unable by reason of such disability to earn a reasonable livelihood.¹¹⁷

For purposes of this provision, permanent total incapacity is defined in the Act as “such incapacity of a permanent nature as incapacitates a person for any employment which he was capable of undertaking before the accident, illness or other occurrence that was the cause of that incapacity.”¹¹⁸

2.3.2 (c) Emigration grant

Section 22 of the Act provides that a member of the fund who emigrates permanently from Uganda to a country with which no reciprocal arrangement under this act has been made, shall be entitled to the full balance of his account in the fund and in any other case he shall be entitled to his own contribution and the rest shall be paid in to the reserve account.

2.3.3 (d) Survivors Benefit

Survivors benefit is intended for widows or widowers and children of a member of the fund. The essence of this benefit is to provide for those that cease to have financial support on the death of the main provider. Under the Act, the dependant relatives of a member of the fund are entitled upon his death to survivors benefit where the dependant relatives of a deceased member include a wife, a husband, a son, a daughter under 18 years of age who is wholly or substantially dependent on the deceased ; or where the dependent relatives of a deceased member do not include dependent relatives of the class mentioned above but include a parent, a brother or a sister; or where the dependent

¹¹⁷ Ibid s 21 (1)

¹¹⁸ Ibid s 21 (2).

relatives of a deceased member do not include dependent relatives of the prior mention but include grandparents, a grand child or other relatives prescribed by the minister as belonging to a class of the deceased's relatives.

To clear any doubt, 'dependent relatives' means a wife or a husband of the deceased member, a son or a daughter, any other relative who at the date of the member's death was wholly or substantially dependent on the deceased member for the provision of the ordinary necessities of life suitable to the person of his status.¹¹⁹ A daughter and son includes step children, illegitimate children or those adopted in any manner as recognized as lawful by the laws of Uganda.

Where there are no dependent relatives, the person or persons who pay the reasonable funeral expenses of the deceased member are entitled to a refund out of the balance in the member's account in the fund of a sum not exceeding five thousand shillings or the amount of reasonable expenses paid by that person which ever is the lesser and when such refund has been made no further claims by any person of such refund lie against the fund or for the balance remaining in the account of the deceased member.¹²⁰ Such benefits are payable only to beneficiaries that are alive on the date of such payment.

2.3.2 The Workers Compensation Act

This Act was promulgated in 2000 as the Workmen's Compensation Act. It was amended later in 2002 to become the Workers Compensation Act. It is an Act to provide for compensation to workers for injuries suffered and suffering from scheduled diseases incurred in the course of their employment.

The act applies to all employment within Uganda and to workers employed by or under the Government of Uganda in the same way and to the same extent as if the employer were a private person. It does not however apply to active members of the armed forces

¹¹⁹ Ibid s 23 (5) a, b & c.

¹²⁰ Ibid s 23 (2).

of Uganda.¹²¹ In this context, 'worker' means any person who performs services in exchange for remuneration, an apprentice engaged primarily for the purpose of receiving training in a trade or profession but does not apply to independent contractors.

Part 2 of the said Act provides for employers' liability to compensate for injury that arises out of and in the course of a worker's employment and results in permanent incapacity or incapacitates the worker for at least three consecutive days from earning full wages where such person is employed.¹²²

It stipulates that the injury has to arise out of an act that is done in the course of employment. An act is deemed to be done in the course of employment when a worker acts to protect any person on the employer's premises whom the worker believes to be injured or imperiled or when a worker acts to protect property on the employer's premises.¹²³ However any personal injury by accident arising while the employee is traveling directly to or from the place of work for the purpose of employment shall be deemed to be an accident. The onus of proving that the travel was direct is on the employer.¹²⁴ Compensation is payable whether or not the incapacity or death of the worker was a result of the employee's recklessness or negligence and is payable either in the form of periodic payments or lump sum payments.¹²⁵

Where permanent total incapacity results from any injury the amount of compensation is a sum equal to sixty months' earnings and where an injury requires the injured worker to have the constant assistance of another person on a permanent basis then the amount of compensation payable is increased by one quarter.¹²⁶

¹²¹ Workers Compensation Act 2000 (Cap 225) of the Laws of Uganda (as amended) s 2.

¹²² Ibid s 3.

¹²³ Ibid s 3 (3)

¹²⁴ Ibid s 3 (5)

¹²⁵ Ibid s 3(6)

¹²⁶ Ibid s 5 (1) & (2)

The Act differentiates and provides for permanent total incapacity, permanent partial incapacity and temporary incapacity.¹²⁷

Emphasis is placed on notice of the accident being given to the employer by or on behalf of the worker as soon as is reasonably practicable one month after the date the accident occurred or within three months after the date the symptoms of the occupational disease became apparent. No notice is required where the employer was aware of the accident or disease at or about the time it occurred or symptoms became apparent.¹²⁸

Where the worker has given notice of an accident, the employer shall as soon as reasonably possible after the date on which notice has been given arrange to have the worker medically examined by a qualified medical practitioner at no charge to the worker although the worker is entitled to have his or her medical practitioner or an official of a trade union at his or her expense.¹²⁹ During the period of temporary total incapacity, the employer shall be liable to pay medical costs.

Alternatively, the employer and worker may with the written approval of the labour officer agree that compensation be paid in respect of an injury which would otherwise give rise to a claim under this Act.¹³⁰ In a case where the final assessment of disability made by a medical practitioner after a medical examination is disputed by the employer or worker, the employer or worker may apply to the labour officer to request that the dispute be referred to the medical arbitration board.¹³¹

Compensation payable under this act shall not be capable of being assigned, charged or attached and shall not pass to any other person by operation of law nor shall any claim be set off against that compensation.¹³²

¹²⁷ Ibid ss 5,6 &7 respectively.

¹²⁸ Ibid s 9.

¹²⁹ Ibid s11.

¹³⁰ Ibid s 12 (1).

¹³¹ Ibid s 13 (1).

¹³² Ibid s 23

Medical aid is provided for under section twenty four of the Act. The section stipulates that where an accident occurs entitling the worker to compensation, the employer shall defray the reasonable costs incurred by the workers with respect to medical expenses, transport and incidental expenses arising out of the accident. However if the worker is killed as the result of an accident for which the employer has liability, the dependants, if any, of the deceased may recover from the employer the expenses of medical treatment of the deceased or in case of death burial expenses.¹³³

Part four of the act makes provision for occupational diseases. Compensation in case of occupational diseases has to be evidenced by a certificate by a medical practitioner with respect to the scheduled diseases. The certificate has to be to the effect that the worker is suffering from a scheduled disease causing disablement or that the death of the worker was caused by a scheduled disease and that the disease was due to the nature of the worker's employment and was contracted within 24 hours immediately previous to the date of disablement or death except in the case of a scheduled disease that manifests itself after or during several years of employment.¹³⁴ A disease is contracted when the symptoms of the disease are clearly manifested in physiological or psychological signs or when its first diagnosed by a medical practitioner.¹³⁵

Liability to pay compensation falls upon the employer who last employed the worker during the period of 24 months previous to the date of disablement or death except where a scheduled disease manifests itself after or during several years of employment.¹³⁶

Schedule two of the Act defines and provides for permanent incapacities and schedule three for the scheduled diseases.

2.3.3 The Employment Act

Under the Employment Act, an employer may with the consent of the employee make deductions from the wages¹³⁷ of such employee for any provident fund, pensions fund or

¹³³ Section 24 (3) of the Workers Compensation Act (Cap 225)

¹³⁴ Section 27 1 (a) & (b)

¹³⁶ Section 29 (1) of the Workers Compensation Act (Cap 225)

scheme approved by the commissioner. Whereas, the act provides enabling provisions for the institution of social security measures, it still limits the scope of social security to an employer-employee relationship and therefore fails to account for those in the informal sector; In a sense, institutionlising social exclusion. The act also provides for maternity leave and sick leave for employees.¹³⁸The 1995 Constitution refers to maternity rights as economic rights stating that the employer of every woman worker shall accord her protection during pregnancy and after birth in accordance with the law¹³⁹but also provides broadly for the rights of women in article 33.

2.3.4 Other In house arrangements

These include among others British American Tobacco staff pension scheme, Stanbic Bank staff pension scheme, Makerere University staff pension scheme, and Bank of Uganda staff pension scheme.

2.3.5 Private Insurance schemes

According to the Uganda Insurance Association, insurers have been offering several insurance packages for some time in Uganda including but not limited to private pension schemes, health insurance and education insurance.¹⁴⁰Several of such schemes exist but are the privilege of a minority owing to the high poverty levels prevalent in the country.

2.3.6 Informal Social Security Mechanisms

Informal social security mechanisms are the only source of social protection for the poor who constitute the majority of the region's population. These are a major source of social protection because formal social security systems in much of Africa, and evidently in Uganda, are poorly developed and are the preserve of only about 10 to 30 per cent of the population. In Uganda, the informal sector for instance comprises of over 95 per cent of the economically active population including agricultural workers and urban workers in the informal economy; self employed workers, wage earners in small enterprises, low

¹³⁷ Employment Act, 2000 s 32 (1).

¹³⁸ Cited as the Employment Act, 2000.

¹³⁹ The Constitution of the Republic of Uganda, 1995 Article 40 (4)

¹⁴⁰ The Social Security and Pensions Sector Stakeholders Transition Group Report (2003) at 34.

income earners, part timers, intermittent workers, domestic servants and unpaid family workers.¹⁴¹ These informal arrangements range from voluntary contributions for social events, burial societies, groups with a common interest for example market vendors contribute to mutual funds. It was noted by the stakeholders' transition group that there were about 50 associations with varying membership

University of Cape Town

¹⁴¹ Ibid at 37.

3 Legal / Policy considerations and their Implications

3.1 Conceptual framework

In reality, the solution to a problem or a challenge always begins with not only ascertaining a problem but also defining the problem. A proper discussion of the challenges faced by social security in any system therefore have to begin with developing a conceptual framework. With regard to this therefore, there is no doubt that the most profound limitation to social security reform is the fact that the term social security has been 'loosely conceived'¹⁴² as Kasente put it. She contends that, "obviously this covers a big range of services provided by different institutions ranging from the state to non-government organisations and communities. Further, these different arrangements are subject to different regulations stretching from the legal to self-regulation, and it is common practice to have interrelations and interdependence across the different social systems."¹⁴³

The International Labour Organisation's attempt at defining social security has been heavily criticised for espousing a narrow approach because it focuses on employment related social insurance and a targeted and means tested social assistance system.¹⁴⁴ Secondly, the traditional definition also only refers to "public measures" therefore excluding social security provisions by means of informal and private measures. In the African context, this definition referring only to state regulated schemes is too restricted in its scope of coverage.¹⁴⁵ The implication is that 95 per cent of the Ugandan population is therefore not covered by the traditional notion of social security.

The International Labour Organisation's conceptualization is also narrow in the sense that it follows a risk based approach, which concerns itself with future contingencies that

¹⁴² D Kasente 'Gender and Social Security Reform in Africa' published by International Development Research Centre (Ottawa Canada, 11th August 1998). Available at <http://meltingpot.fortunecity.com/lebanon/254/kasenta2.htm>. (accessed on 14 March 2006).

¹⁴³ *ibid.*

¹⁴⁴ MP Olivier 'The Future of Social Security in SADC: Some critical elements' in Acceptance of social security in Africa Presented to the 15th African Regional Conference International Social Security Association (Lusaka Zambia 9-12th August 2005) at 1.

¹⁴⁵ *Op cit*

may or may not happen.¹⁴⁶ Olivier also reiterates that “most Africans are concerned about the here and now. Thus they are concerned primarily with their day to day survival. The concern about the future is of secondary importance.”¹⁴⁷ An additional weakness of the traditional approach is that it narrowly focuses on individual risks and so neglects covariant risks, such as floods and drought, which occur frequently among African people and impact negatively on human welfare. These considerations have indeed motivated the development of the new conceptual framework of ‘Social risk management adopted by the World Bank.’¹⁴⁸

The definition fails to properly capture the characteristics of social security in developing countries; some of which include high poverty levels across the African continent; Uganda like all countries in Sub Saharan Africa registers high levels of poverty. No wonder recent research studies have argued that the notion of social security is too limited in face of the social and economic needs of developing countries and a more extensive notion of social protection should be used.¹⁴⁹

It suffices to say that social security must be distinguished from the wider concept of social protection.¹⁵⁰ It has been noted that the traditional concept founded on employment based social insurance and categorical and means tested social assistance is inappropriate for developing countries due to the extent of poverty and deprivation of which millions of those living in developing countries. Some countries have borne this in mind and accepted that a broad conceptualization of social protection has certain merits. For South Africa, the Taylor report came up with a comprehensive social protection definition and defined it as a system “ that seeks to provide the basic means for all people living in the

¹⁴⁶ Op cit at 2.

¹⁴⁷ Ibid.

¹⁴⁸ R Holzmann, ‘Risk & Vulnerability: The Forward Looking Role of Social Protection in a Globalizing World’ at 4. This is the revised version of a paper prepared for “The Asia and Pacific Forum on poverty-Policy and Institutional Reforms for Poverty Reduction” Asian Development Bank (Manila, February, 5-9, 2001) at 4.

¹⁴⁹ Kabeer, 2002; Barrientos & Shepherd 2003 cited in Patricia Justino Social security in Developing Countries: Myth or necessity? Evidence from India Poverty research unit at Sussex (September 2003) University of Sussex Working Paper No.20 at 6. Available at www.sussex.ac.uk/Units/PRU/wps/wp20.pdf (accessed on 13 March 2006)

¹⁵⁰ MP Olivier ‘The Concept of Social Security’ in MP Olivier et al (ed) *Social Security: A Legal Analysis* (Durban: Lexis Nexis Butterworths) at 26.

country to effectively participate and advance in social and economic life and in turn to contribute to social and economic development.¹⁵¹

Thus far it is evident that modern social security systems require improved targeting and monitoring. Justino contends that this would be financially unfeasible in poorer economies because the extent of poverty and vulnerability in developing countries reaches far beyond the objectives of typical systems of social security implemented in richer countries.”¹⁵²

3.2 Regulatory Framework

In the Ugandan Context; the 1995 Constitution merely makes mention of social security in its objectives giving particular emphasis to the pension needs of civil servants.¹⁵³ Much as this may be applaudable it is discriminatory and repulsive to the right to freedom from discrimination; a right that is also guaranteed under this very constitution.

Article 254 is the only article that specifically provides for social security and particularly relates to pensions for public officers. The Social Security Stakeholders Transition Group noted in this regard that “The constitutional protection however falls short when it does not extend protection to those outside the public service which public service refers to service in a civil capacity of government or local government thereby excluding persons serving government in political military, or other capacities as well as private and informal sectors.”¹⁵⁴

Coverage falls far short if one considers that Uganda has a population of about 24.7 million people with a labour force of about 12 million. Of this, the NSSF is the largest retirement scheme and covers about 300,000 members while government pension

¹⁵¹ *ibid.*

¹⁵² *Op cit.*

¹⁵³ The Constitution of the Republic of Uganda, 1995 Article 254.

¹⁵⁴ The Social Security and Pensions Sector Stakeholders Transition Group Report at 24.

schemes cover about 200,000.¹⁵⁵ Total coverage is therefore about, 500,000 about 2 per cent, falling far short of any acceptable standards.

Furthermore that “the various social security arrangements provided a limited range of benefits with no provision for other social protection needs such as housing and education for example; those that provided for the army only provided for retirement and medical benefits.¹⁵⁶ Worse still, the conditions pertaining to army pensions were quite restrictive in the sense that pensions only accrue after serving a minimum of 13 years of reckonable service. This notwithstanding it can be denied to an officer that is dismissed with disgrace, benefits may be forfeited if they are not collected within one year or they may be withheld if one is in prison or is deported and can only be restored if one is pardoned by the president.¹⁵⁷

This, indeed as the committee noted, contradicts not only the Universal Declaration of Human Rights that provides for the right to social security as a basic human right but also Uganda’s constitution that human rights are inherent and not provided by the state.¹⁵⁸

The public service pension scheme provides meagre retirement, and survivors’ benefits.¹⁵⁹ The existing benefits under the public service pension scheme are retirement pensions, survivor’s benefits, death gratuity, contract gratuity, marriage gratuity and short service gratuity in a case of premature retirement.

Worse still of the nine recommended benefits by the ILO convention on minimum standards of social security, the National Social Security Fund was organized to provide only four of these benefits namely; age, invalidity, emigration and the survivors benefit.¹⁶⁰ The National Social Security Fund Act, it was noted, stifles the operation of the

¹⁵⁵ DK Ramadhani ‘Trends in Social Security in East Africa: Tanzania, Kenya and Uganda’ (2003) Vol 56 Issue 3/4 *International Social Security Review* p.25-38 at 31.

¹⁵⁶ Op cit at 28.

¹⁵⁷ Ibid at 29.

¹⁵⁸ The Constitution of the Republic of Uganda, 1995 Chapter 4, Article 20

¹⁵⁹ The Pensions Act (Cap 286 as amended by the Pensions Act (amendment Statute No.4 of 1994) s 20.

¹⁶⁰ Refer to s 2.3.1 (a) to (d) herein.

fund by rigidly and narrowly restricting the products it can offer. Social needs like sickness and unemployment or other calamities such as HIV/AIDS were not envisaged.¹⁶¹

More to this the National Social Security Fund Act was designed for only employees that were employed in institutions of five or more people leaving out lots of small scale enterprises and family owned businesses that are smaller in number.

It is imperative to note that only lump sum payments are paid out by the National Social Security Fund. This obviously does not provide adequate long-term income security and defeats the reason for which social protection exists in the first place which is to provide future economic and social security.

Legislation also expressly excludes; leadership of lower governments, directors of the National Resistance movement secretariat, commissioners of various commissions under the constitutions, resident district commissioners and employees of intelligence agencies among others.¹⁶²

The Social Security and Pension Sector Stakeholders Transition Group report also mentions members of parliament as a group that is excluded. It is fine to say that but controversy arises in as far as whether they are eligible for pensions in the true sense of the word. Several groups have criticised the parliamentary pensions Bill, 2003 for advancing the selfish whims of parliamentarians.¹⁶³ For starters, the office of a member of parliament is not a permanent and pensionable office and according to the constitution, their term of office is five years after which they seek a fresh mandate for re-election.¹⁶⁴

The regulatory frame work is largely lacking because there is no specific law that governs private schemes. The social security and pensions sector stakeholders transition group

¹⁶¹ The Social Security and Pensions Sector Stakeholders Transition Group Report at 33.

¹⁶² Ibid at 29

¹⁶³ Several NGOs under the umbrella of Uganda Women's Network, Uganda Debt Network, Human Right Network etc. See also The Parliamentary Pension Scheme: A call for citizen action (September 2003) *The Lobbyist* available at www.ngoforum.or.ug/docs/lobbyst_special_issue_september_2003.pdf (accessed on 13 March 2006)

¹⁶⁴ The Constitution of the Republic of Uganda, 1995 Article 77 (3).

noted that Uganda Insurance Commission generally oversees the insurance companies since there is no centralised regulator for pension schemes.¹⁶⁵ All the private schemes operated in Uganda are currently not centrally registered and therefore lack competent supervision.¹⁶⁶ Of particular concern was the fact that because these schemes have no independent supervisor, there are no minimum standards in place for operating a good pension scheme with such schemes making only book entries without any funds existing.¹⁶⁷

3.3 Administrative weaknesses

Probably one of the most important issues of administration is pension indexation. It is no doubt that times change and so pensions also need to change. Indexation refers to adjustment of the pensions to a cost of living index so that they rise or fall in accordance with inflation rates. This has made pensions very meaningless especially as they are not commensurate with the cost of living. Consequently this has made pensions especially inadequate to pensioners and their families.

The system also has a lot of administrative flaws thereby causing delays in processing pensioners' benefits.¹⁶⁸ To begin with, almost all record keeping is manual; implying that files are likely to be lost or become untraceable and consequently not even updated. This speaks volumes for incapacity and inadequacy.¹⁶⁹ The Public Service and Local Governments committee in parliament also noted that there were delays in accessing the pensions payroll which was attributed to lack of coordination between the Human

¹⁶⁵ A Ssemanda 'Social Security and Pensions Reform; The Position of Federation of Uganda Employers (FUE)' (January 2002) at 6. Available at www.employers.co.ug/docs/FUE_Position.doc (accessed on 14 March 2006)

¹⁶⁶ The Social Security and Pensions Sector Stakeholders Transition Group Report at 35.

¹⁶⁷ *ibid* at 109.

¹⁶⁸ *Ibid* at 30.

¹⁶⁹ Proposals for the Reform of the Public Service Pension Scheme Uganda available at www.info.worldbank.org/etools/docs/library/205745/Uganda%20Presentation.pdf (accessed on 14 March 2006) at 3.

Resource Department and the Compensation Department.¹⁷⁰ Also notable is the creation of files for fictitious persons and the existence of a redundant appeals tribunal system.¹⁷¹

One would think that the private sector would know better and therefore be capable of better organisation; the story is not very different. A case in point is one in which Makerere University and National Insurance Corporation Limited (NICL) are involved in a row that puts to risk billions of staff contributions to the company's life and pension scheme. About 3,600 Makerere senior academic and administrative staff contribute to the scheme.¹⁷² This follows the university's decision to terminate the staff Deposit Administrative Plan (DAP) with NICL; a life insurance scheme worth US\$14 billion.¹⁷³

The Makerere University DAP scheme started in 1996 as a continuation of the Makerere superannuation fund and the retirement benefit scheme that was started in 1968 to cater for retirement and death of senior academic and administrative staff. Under the DAP scheme, members are entitled to death benefits, surrender value if a member left employment irrespective of age, retirement benefits payable in a lump sum with an option to convert to annuity and a declared interest of 10 per cent.¹⁷⁴

Apparently, the university's decision was based on several grounds, including the fact that "the life insurance business of NICL which included pensions management was not doing well as indicated by the actuarial report of December 2004. The actuarial report had advised that the 10 per cent guaranteed interest on DAP scheme was not viable for NICL, therefore the insurance company was advised to reduce guaranteed interest to 6 per cent and a charge of 2 per cent administration cost be introduced."¹⁷⁵

¹⁷⁰ Public service and Local Government Committee Report on the Policy Statements and Budgetary provisions for the fiscal year 2004/05.

¹⁷¹ I Augusto I & R Palacis, *Managing Public Pension Reserves: Evidence from International Experience*, April 2000 cited in B Mugasha *Evaluating Pension Schemes in the Public Service of Uganda* (LLB Dissertation—Makerere University, 2001) at 61.

¹⁷² B Atuhairwe & Mulondo 'NIC furious over Shs 14bn Makerere Pension Scheme' *The Monitor*. Available at www.monitor.co.ug (accessed on 9th November 2005).

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

Coupled with this is the dominance of government even when it is not a stakeholder. The Social Security Stakeholders Transition group made note of this and stated that the law vested too much power in the government for instance, under sections 29-34 the law provides that no investment can be made by the fund before consulting the Minister.

A very embarrassing scenario happened in 2004; NSSF was involved in a financial scandal that caused a loss of US\$8.3 billion after an ill-fated investment in the Nsimbe Housing Project. The President, Yoweri Museveni, subsequently sacked the entire board including the Chairman, Mr Onegi-Obel and Managing Director Leopard Mpuma.¹⁷⁶ Subsequently, the NSSF which had always been under the Ministry of Gender, Labour and Social Development is now supervised by the Central Bank (Bank of Uganda) under the Ministry of Finance since September 2004.¹⁷⁷

President Yoweri Museveni's reason for this measure was that the Ministry of Gender, Labour and Social Development lacked the capacity to regulate the management and investment of billions of shillings in the fund as well as ensure that such investments are in conformity. Accordingly the Minister of Finance, Planning and Economic Development appointed the Bank of Uganda¹⁷⁸ to regulate and supervise the NSSF on behalf of the Ministry of Finance, Planning and Economic Development, pending the establishment of the social security and pension sector regulator. Bank of Uganda was to play the role of supervisor of the fund during the interim period.¹⁷⁹

The Bank of Uganda was thought to be a more prudent option because of the risk to safety of member's contribution in as far as corporate governance and transparency in the management of the institution, the condition and market value of assets including loans

¹⁷⁶ E Masumbuko 'No Response Yet On NSSF- IGG' Daily Monitor (Kampala: January 7, 2006) at 22.

¹⁷⁷ D Tumwesigye Social Security and HIV/AIDS; the experience of the National Social Security Fund (Uganda) International Social Security Association Regional Conference for Africa (Lusaka, Zambia: 9-12th August 2005) at 9.

¹⁷⁸ This was with effect from 1st January 2005.

¹⁷⁹ Available at www.bou.or.ug/NSSF.pdf (accessed on 26 January 2006). The press release was made on 19th January 2005.

and securities and adequacy of policies and procedures to maintain value of contributions and role of the fund in the macroeconomic stability framework.¹⁸⁰

Another issue of concern that has been raised regarding pensions in Uganda is that when a member of a fund moves from one sector to another, they are not comfortable with the fact that they may have to withdraw completely from a certain scheme or worse still lose their savings or lose social security coverage altogether. This is not a phenomenon common only to Uganda as has also been noted by Olivier. He enunciates that “this problem operates at different levels, namely when a person moves from a public scheme to a private scheme or vice versa from one private scheme to another or between different schemes across the country.”¹⁸¹ The term associated with this is portability. Currently in Uganda, there are no legal provisions governing transfer from one system to another. Similarly, provisions are also blurred for when a member of a fund wishes to transfer to another country. Stakeholders were particularly concerned that this situation served as a barrier to labour mobility.¹⁸²

A factor we probably inherited from our colonial masters is the very fragmented nature of social security provision. This was the case in Britain in 1941 and provided the terms of reference for the committee that drafted the Beveridge Report of 1942.¹⁸³ At the moment, in the Ugandan context, the NSSF is Supervised by the Ministry of Finance, Planning and Economic Development but still under the Bank of Uganda, Pensions for civil servants fall under the Public Service, Pensions for the Army fall under the Ministry for Defence while the Ministry of Local Government administers those related to Local Government, The Municipalities also have to grapple with their share, the Superannuation schemes, private schemes, to mention but a few. Consequently there is no coherent regulation with regard to social security schemes.

¹⁸⁰ Ibid.

¹⁸¹ MP Olivier ‘The Future of Social Security in SADC: Some Critical Elements’ in Acceptance of Social Security in Africa IRASA Conference (Stellenbosch, Spier, 4-6 October 2005) at 4.

¹⁸² The Social Security Stakeholders Transition Group Report at 101.

¹⁸³ J Harris *William Beveridge; A Biography* (Oxford: Clarendon Press, 1977) at 378.

3.4 Funding and Sustainability

The Social Security Stakeholder Transition Group noted in its report that “the absence of a contributory fund combined with economic difficulties has resulted in a failure in most countries to maintain the real value of pensions rendering them unsustainable. Benefits are therefore prone to government deficits.”¹⁸⁴

The social security arrangements for the public service and the army, police and prisons, as already noted, are funded by the government. Government’s incapacity is nothing new to the Ministries in charge. It was observed that expenditure on pensions rose from 14.5% in 1998/99 to 28.3% in 1999/2000.¹⁸⁵ In a study done by the International Monetary Fund in 1998, there were over 3000 cases that were waiting assessment, worse still, there were over 7000 former employees of the defunct East African Community to whom the government owed pensions arrears.¹⁸⁶

This state of affairs has not changed much; the Ministry of Public Service, for instance, once informed the Committee on Public Service and Local Government in the Public Service and Local Government committee report on the policy statements and budgetary provisions for the fiscal year 2004/05 that “it could not contend with the problem of arrears which have become unmanageable. It was revealed that the pension arrears currently stand at Ushs 313.4 billion and continues to grow.”¹⁸⁷

Obviously, this is draining government coffers; even more so in light of the World Bank dictating that there is a need to lower government expenditure and privatize. As a result of these policies, several government employees have since been retrenched and ministries restructured leaving behind pensioners that the state is in no position to afford.

¹⁸⁴ Op cit at 31.

¹⁸⁵ Deloitte & Touche Review of Public Service Pension Arrangement in Uganda (Kampala, May 2001) at 23.

¹⁸⁶ Sheetal, Ruggiero & Timios Uganda: Reform of the Government Pension System (International Monetary Fund, 1998) at 26.

¹⁸⁷ Public Service and Local Government Committee Report on the Policy Statements and Budgetary Provisions for the fiscal year 2004/05.

To elaborate on this point, it is worth noting that Uganda has a very low tax revenue base; over 24 million Ugandans have to depend on slightly over 150,000 income tax payers.¹⁸⁸

For the man or woman that does not work in the civil service and toils extra for the money earn, the civil servant is an enemy to his or her development as well as a cheat. This is purely because the civil servant does not contribute for his or her pension and yet has one at the end of the day. Worse still this pension is not even subject to tax yet that of a worker in the private sector is subject to tax; a situation that is perpetuating social and economic inequity.

3.5 Informal Sector

The World Bank estimated the size of the informal sector in Uganda to be at 43.1 per cent.¹⁸⁹ Whereas this may have been the so, this percentage does not seem to account for the fact that employment in the agricultural sector accounts for 94.1 per cent of total employment with 71 per cent engaging in subsistence agriculture.¹⁹⁰ The agriculture sector employed relatively higher proportions of women - 83 per cent than men.¹⁹¹ One may wonder what this has got to do with the informal sector.

The fact that agriculture accounts for a large percentage implies that this percentage falls outside the scope of formal employment and is therefore not provided for by what one may call the 'traditional notion' of social security. It also means that women bear the brunt of marginalization in terms of the formal social security mechanisms owing to the fact that they are mainly rural based (where there is more poverty); there are more

¹⁸⁸ Study to Inform the Development of a Framework for Social Protection in the context of the Poverty Eradication Action Plan (PEAP). Phase 1 Report : Vulnerability Assessment & Review of Initiatives. Prepared for the Social Protection Task Force Kampala 2002

71.

¹⁸⁹ The World Bank Fact Book 2002 cited in World Development Indicators 2003 Uganda country indicators

¹⁹⁰ The World Development Fact Book 2002 cited in World Development Indicators 2003, Uganda Country Indicators

¹⁹¹ Uganda Bureau of Statistics (UBOS) "The 2002 Uganda Population and Housing Census-main report", March 2005, Kampala Uganda at 16.

women than men in rural agricultural work, in casual employment, in informal activities and in low wage work for government.¹⁹²

The traditional notion of social security gives credence to the way the National Social Security Fund was designed with the private sector in mind and the unfunded public service pension scheme for civil servants. As a result of this flaw in the system, populations evolved or relied on other means. The Social Security and Pensions Sector Stakeholders Transition Group noted this in its report; “the provision and financing of social protection in Uganda was largely informal, unfunded and unstructured.”¹⁹³

While, the group made cognizance of this, it also gave recognition to the significance of what one may term as ‘informal social security mechanisms.’ It reiterated in this regard that “the traditional social insurance cover of the extended family systems have been the main source of care for the vulnerable persons that include the elderly, orphaned, children, widows, widowers, the disabled, destitute, incapacitated, victims of disaster, the sick and the unemployed.”¹⁹⁴

Mention has been made of the fact that Africans in their day to day existence are joined together by ‘African traditional values’ such as solidarity, collective responsibility, compassion, equality, unity, self determination, human respect and human dignity.¹⁹⁵ Kaseke pointed out that “informal social security is a way of life for the majority of the African people as it is an embodiment of their values and culture. Thus informal security forms part of the culture of the African people.”¹⁹⁶

These values have been given constitutional recognition in some parts of Africa. In South Africa, the Constitutional court up held the principle of ‘Ubuntu’ in the case of *S v*

¹⁹² F Lund & Srinivas *Learning from Experience: A gendered Approach to social protection for workers in the informal economy* (Geneva: ILO, 2000) at 5.

¹⁹³ The Social Security and Pensions Sector Transition Group Report at 5.

¹⁹⁴ Ibid .

¹⁹⁵ MP Olivier ‘Extending social Protection to families in the African Context: The complementary Role of formal and informal social security’ accessed at www.issa.int/pdf/anvers03/topic2/2olivier.pdf at 21.

¹⁹⁶ E Kaseke ‘Informal Social Security in Eastern and Southern Africa’ Paper prepared for the SADC Social Security Conference), Johannesburg (17-19 October 2001).

Makwanyane by defining it as “a culture which places emphasis on communality and on the interdependence of members of a community. It recognizes a person’s status as a human being, entitled to unconditional respect, dignity, value and acceptance from members of the community such person happens to be part of. It also entails the converse however. The person has a corresponding duty to give the same respect, dignity, value and acceptance to each member of that community. More importantly, it regulates the exercise of rights by the emphasis it lays on sharing and co-responsibility and the mutual enjoyment of rights by all.”¹⁹⁷ These values have no doubt been a catalyst for the formation of kinship based and collective mutual aid organizations to supplement the meagre coverage of formal social security.

In Uganda, one of the most popular types of self-help groups is known as ‘*Munno Mukabi*’ which refers to a ‘Friend In Need’. Its ‘*modus operandi*’ is such that at the inception, a budget is agreed on and split equally among the members and the proceeds used to purchase such assets as are required for most household social functions that draw large numbers of people.¹⁹⁸ After the initial capital investment is made, members attend weekly or monthly meetings at which a collection is made. One group for example, collects US\$200 per head per sitting; others collect up to US\$5, 000. This money is kept and lent out whenever a crisis strikes. Members also pledge to make their labor available whenever a member faces a crisis or holds a celebration.¹⁹⁹

It should however be accepted cautiously that informal arrangements on their own provide sufficient response to the risk poor people are faced with. Holzmann reiterated that; “While informal or market based risk management instruments can often handle idiosyncratic risks, they tend to break down when facing highly covariant, macro type

¹⁹⁷ S v Makwanyane & Another 1995 3 SA 391 (CC); 1995 6 BCLR 665 (CC), Par 224.

¹⁹⁸ The assets include large saucepans, dishes, lanterns, canvas, etc for functions such as burials, weddings, children's graduations, baptismal parties, etc.

¹⁹⁹ Wright, AN Graham, Deborah Kasente, Germina Ssemogerere and Leonard Mutesasira. 1999. ‘Vulnerability, Risks, Assets and Empowerment -The Impact of Microfinance on Poverty Alleviation’ (September). Final report. Kampala, Uganda: MicroSave-Africa available at http://www.cgap.org/docs/FocusNote_17.html

risks.....AIDS, wars and conflict, seasonal volatility in prices, drought and macro economic shocks. Since many of the risks are faced by the poor people are covariant in nature, informal management mechanisms at the family are typically not very effective.”²⁰⁰ Consequently, “informal social security should not be romanticized as the safety net for the poor because it is ‘*inter alia*’, unreliable, unstable and susceptible to external shocks.”²⁰¹

3.6 Unemployment

In Uganda, highest unemployment rates are observed in the younger age groups, that is, 20-29 age brackets at 5.5 per cent. Unemployment is higher in urban areas at 12 per cent compared to 1.7 per cent in rural areas and on a regional basis, unemployment is highest in the central region, with Kampala itself having an unemployment rate of 16.5 per cent.²⁰² It is however important to note that the unemployment rate may be low because the bulk of the population does engage in some economic activity, however little or inadequate it may be (i.e. minimum one hour’s work).

The demographic structure of Uganda’s population and the Labour Market are such that the population comprises of a very young population with comparatively few working age people, and even fewer elderly. According to Bloom and Williamson (1998), Uganda’s current phase can be described as a ‘demographic burden’. 52.3 per cent of the population is aged between 0-14 with 2.2 per cent above the age of 65, giving Uganda a dependency ratio of greater than 1.²⁰³ This not only exacerbates the vulnerability of three quarters of Uganda’s population; plunging them deeper into poverty but is also evidence of the social exclusion prevalent.

²⁰⁰ R Holzmann ‘Risk and Vulnerability: The forward looking role of Social Protection in a globalizing world’ A paper prepared for The Asia and Pacific Forum on Poverty-policy and Institutional Reforms for Poverty Reduction Asian Development Bank (Manilla: February 5-9, 2001) at 6.

²⁰¹ MP Olivier ‘Extending social Protection to families in the African Context: The Complementary Role of Formal and Informal social security.’ Available at www.issa.int/pdf/anvers03/topic2/olivier.pdf at 22.

²⁰² Higher urban unemployment can partly be explained by the higher rate of urban population growth (average of 5.4% since 1991/92) outstripping the increase in urban job creation.

²⁰³ Population Growth and Poverty Eradication Discussion Paper No.9 (Ministry of Finance, Planning and Economic Development Uganda:December 2004) at 11.

3.7 Alarming levels of Poverty

Poverty dynamics require that it is established who the poor are in Uganda. They are the orphaned, the displaced, abandoned children, the handicapped, female headed households, older people and their families, landless peasants and generally people residing in the northern part of Uganda.²⁰⁴

Several classifications have been added to these. The Programme for the Alleviation of Poverty and Social Costs Adjustment (PAPSCA) adds children generally, women including widows, the urban poor including the unemployed retrenched civil servants and people living in the twelve poorest districts of the country.²⁰⁵

The Oxford Committee for Famine Relief (OXFAM) concurs with the above mentioned categories but adds pastoralists, refugees and small indigenous usually isolated communities like the Batwa of Kisoro and Ndorobo of Kapchorwa among the poor.²⁰⁶ It is these categories that are chronically poor experiencing extended durations of poverty and benefit least from contemporary development policies and practices and for whom emergence from poverty is most difficult in the context of Uganda's economic liberalisation.²⁰⁷ Consequently, the poor in Uganda do not constitute a homogenous group.

The official poverty statistics of Uganda show that absolute income /consumption poverty declined nationally from 56 per cent to 30 per cent between 1992 and 2000. Survey data shows that consumption expenditure for the richest 10 per cent of the population grew by 20 per cent while that of the poorest 10 per cent grew by only 8 per

²⁰⁴ The World Bank Report (1993) cited in Mujumbi et al Review of how, when & why does Poverty get priority Study done by Economic Policy Research Centre for Centre for Aid & Public Expenditure(CAPE) London. Occasional Paper No.9 at 11.

²⁰⁵ United Nations Development Programme (1998) cited in Mujumbi et al, "Review of how, when & why does Poverty get priority" Study done by Economic Policy Research Centre for Centre for Aid & Public Expenditure(CAPE) London. Occasional Paper No.9 at 11

²⁰⁶ Ibid.

²⁰⁷ Hulme & Shepherd, 2001 cited in Okidi & Andrew Mackay 'Research Dynamics in Uganda' (Chronic Poverty Research Centre: 199-2000) Research Series No. 32. Working Paper No. 27 at 1.

cent.²⁰⁸ The poverty head count has increased during the last four years although the economy was on the growth path of 6.3 per cent on average.

Additional evidence suggests that poverty has increased primarily among households whose heads engage in agriculture, growing from 39 per cent to 49 per cent and especially among people involved in crop agriculture whose proportion grew from 39 per cent to 50 per cent.²⁰⁹ Poverty declined from 64 per cent in 1992 to 46 per cent in 2000.²¹⁰

Although poverty has steadily decreased other evidence shows that real wages have fallen for many Ugandans, especially among those earning lower salaries, whose income fell on average by 31 per cent for the lowest wage quartile.²¹¹

It is also worth mentioning that there has been rising inequality. In 1992, the gini coefficient moved from 0.364 to 0.428 over a ten year period.²¹² In the rural areas, the percentage of people living in poverty rose from 37 per cent to 42 per cent corresponding to 8.5 million people in 2003 and in the urban areas, the population living in poverty rose from 10 per cent to 14 per cent.²¹³ The United Nations country office was of the view that the positive effects of economic growth have inequitably accrued to the rich sub population since they gained more than other social layers from the overall performance.²¹⁴ Worse still, regional imbalance especially between the North and the rest of the country has persisted as a result of protracted war.²¹⁵

²⁰⁸ *ibid* at 2.

²⁰⁹ Common Country Assessment of Uganda 2004 (United Nations System in Uganda c/o office of the United Nations Resident Coordinator) at 6.

²¹⁰ *Op cit*.

²¹¹ Appleton and Sewanyana (2003) cited in Common Country Assessment of Uganda 2004 (United Nations System in Uganda c/o office of the United Nations Resident Coordinator) at 6.

²¹² *Ibid*. This is according to reports by the Uganda Bureau of statistics (UBOS).

²¹³ Common Country Assessment of Uganda 2004 (United Nations System in Uganda c/o office of the United Nations Resident Coordinator) at 5.

²¹⁴ *ibid* at 6

²¹⁵ Okidi & Andrew Mackay, "Research Dynamics in Uganda 1999-2000. Research Series No. 32. Chronic Poverty Research Centre Working Paper No. 27 May 2003 at 2.

Poverty is not just poverty. It is defined by its manifestations and consequently its repercussions. It is therefore pertinent to understand these in order for one to appreciate how it affects social policy.

3.7.1 Gender Dimensions

Beneath the figures and on closer scrutiny, poverty also has gender dimensions. In a study prepared for the Poverty Eradication Action Plan (PEAP), Lawson shows that women are more likely to be living in poverty than men because women have fewer assets in general than men; for example cultivated land held by women headed house holds amounts to 2.15 acres compared to 3.55 acres held by men headed house holds among other things.²¹⁶

It is worth noting in this regard that most of the Ugandan societies are patrilineal and women do not inherit property from their families simply for the reason that they are eventually married off and hence shift the property to other families and lineages where they marry and have children.

Worse still property co ownership with spouses 'sticks out like a sore thumb'; a situation that is largely compounded by the generally low status of women in terms of literacy and wealth. Most men have land, which is the dearest asset in our agricultural economies.

Quite the contrary, women only have access to men's land and mainly for purposes of growing produce for family consumption. Sample responses in a study done by Najjumba validated this:

"When men sell the produce from our gardens, they drink all the money without even buying a single item for the home. Every time I complain about this, he just tells me that it is his land not mine; and I am just left penny less". (Elderly lady, Nawampiti, Iganga).

²¹⁶ Supra note 213 at 6.

“Even in situations where we have some energy to grow maize, sorghum, cassava, sweet potatoes, etc., it is the men who take over when it comes to harvesting and selling of the surplus leaving us needy at all times”. (Elderly lady, Ihome, Mbarara).²¹⁷

This deprivation has led many women to join and largely be a part of mutual aid organizations because they give women an opportunity to accumulate income and assets/capital in their own right.

3.7.2 Political Instability

Uganda’s poor as previously mentioned also include those in war ravaged areas like parts of northern Uganda. The protracted war in the north has displaced significant numbers of people and has in this sense exacerbated the poverty of these people.

The Northern region, where conflict has been ongoing for the last 18 years has the highest incidence of poverty with 63 per cent.²¹⁸The Uganda Participatory Poverty Assessment report of 1999 cited the chronically poor Ugandans to be predominantly found among internally displaced persons in areas of protracted violent conflicts.²¹⁹The number of displaced people is estimated to be nearly two million people.²²⁰ As is characteristic of war, people are always on the move and are in no position to engage in economic or agricultural activity because they have no land to cultivate.

They depend on hand outs from humanitarian agencies for food and clothing. As if this is not enough, they live in the most deplorable of conditions with no basic social services, water, latrines or medical care. Traditionally and typically, women and children are the ones that bear the brunt of the scourge of war as the men are forcefully or even

²¹⁷ Najjumba-Mulindwa ‘Chronic Poverty among the Elderly in Uganda: Perceptions, Experiences and Policy Issues. (Institute of Statistics and Applied Economics, Makerere University) at 15. See also Chronic poverty Research Centre www.chronicpoverty.org/pdfs/conferencepapers/mulindwa.pdf (accessed on 21 March 2006)

²¹⁸ Common Country Assessment of Uganda 2004 (United Nations System in Uganda c/o office of the United Nations Resident Coordinator) at 5.

²¹⁹ Okidi & Andrew Mackay Research Dynamics in Uganda 1999-2000. Chronic Poverty Research Centre. Research Series No. 32. Working Paper No. 27 (May 2003) at 1.

²²⁰ The number of Internally Displaced Persons (IDPs) peaked at 1.6 million in March 2004. Op cit at 7.

voluntarily conscripted into rebel ranks. Their plight is far from over let alone being heard as they are more often than not the ones that are forgotten when it comes to social policy formulation.

3.7.3 Disability

Disability can loosely be described as a condition that denies a person a normal economic and social life that has lasted or is expected to last 6 months or more. According to the Ugandan definition, 4 per cent of the population had disabilities compared to 3.3 per cent using the international definition.²²¹

The prevalence of disability is not even through out the country. The northern region has the highest incidence of disability at 4.4 per cent while the western region has the lowest at 2.9 per cent, eastern and central regions had rates of 3.6 per cent and 3.1 per cent respectively.²²² The reason for this disparity between regions may be attributed to the protracted war in the north. The prevalence of disability increased with age from 2% among the children aged less than 18 years to as high as 18% among the elderly.²²³

3.7.4 Elderly

Poverty studies have singled the elderly out as one of the groups experiencing deprivation because of their stage in the lifecycle other periods being child hood and parenthood.²²⁴

Research studies on old age and poverty strongly associate old age poverty with reduced framework of capacity, arising from the ageing process; that it is a status which few if any can be expected to escape; and that it is both a function and cause of intergenerational poverty.²²⁵ A reduced capacity for income generation and a growing

²²¹ In Uganda cases of epilepsy and rheumatism are classified as disabilities while internationally they are not. The 2002 Uganda Population and Housing Census-main report (Uganda Bureau of Statistics (UBOS) Kampala Uganda March 2005), at 17. The International Classification of Functioning (ICF) defines disability as the outcome of the interaction between a person with impairment and the environmental and attitudinal barriers he/she may face (available at www.dpi.org/en/resources/pdfs/03-04-08-definition_dis.pdf)

²²² The 2002 Uganda Population and Housing Census-main report (Uganda Bureau of Statistics (UBOS): Kampala Uganda, March 2005) at 17.

²²³ *ibid* at 18.

²²⁴ (World Bank, 2000) cited in *supra* note 217 at 1.

²²⁵ (Heslop and Gorman, 2002) cited in *ibid* at 2.

risk of serious illness are likely to increase vulnerability of the elderly to fall into poverty, regardless of their original economic status.²²⁶

As a result of the exclusion the social security system in Uganda has superimposed on categories like the elderly, the family is thus the main source of support for poor old people. Adult children play a very important role in the provision of care and support to aging parents. A notable significance among communities in Eastern and Southern Africa is the great value attached to extended families. "Children are viewed as a form of social security both for immediate and future purposes. Large families provide the much needed labour for agricultural activities and this enhances food security. The futuristic orientation centers on the perception that children are a source of social protection at old age. Children feel obliged to fulfill this obligation because it is generally agreed that failure to do so would attract the wrath of the ancestors."²²⁷

The preceding sections have been in effect to serve the purpose of specifically point out not only the risk factors affecting the Ugandan population but also the magnitude of vulnerability. Several studies identify risk and vulnerability as determining factors in poverty.

A report published by the United Nations states that "poverty and vulnerability interact with each other creating a vicious circle in which the two reinforce each other. Poor people are more vulnerable to economic shocks, material losses and losses of wellbeing. These events can easily destroy the ability of the poor to move out of poverty; both in the short and long run by depleting their human and physical assets."²²⁸

Hulme and Shepherd further argue that, "if the poor are more exposed to shocks than other groups, if they have fewer buffers to protect themselves against the realization of

²²⁶ Ibid.

²²⁷ E Kaseke '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* (2002) at 247.

²²⁸ Report on the World Social Situation 2003 by the division for social policy and development of the department

these shocks, and if to achieve short term security they are forced to adopt low return livelihood strategies which further increase their vulnerability over time then their risk and vulnerability will contribute to trapping individuals and households in poverty.”²²⁹

3.8 HIV/AIDS Pandemic

The HIV/AIDS pandemic has also exacerbated poverty hence increasing vulnerability of the poor in Uganda. At the end of 2004, UNAIDS/WHO²³⁰ estimated that globally a total of 39.4 million people were living with HIV. Of these, 37.2 million were adults, 47 per cent women while 2.2 per cent were children under 15 years. At the same time, 4.9 million people got infected with HIV while 3.1 million died.

The global prevalence rate as estimated by UNAIDS at the end of 2003 was 1 per cent, less than 1 per cent elsewhere in the world and for Sub-Saharan Africa 7.6 per cent. Sub-Saharan Africa has just over 10 per cent of the world’s population, but its inhabitants account for 65 per cent of all people living with HIV/AIDS in the world. A total of 3.1 million (63 %) estimated new HIV infections took place in the region while of the 3.1 million AIDS deaths, 2.1 million (74 %) occurred in Sub-Saharan Africa. At the end of 2004, the epidemic left over 15 million children orphaned and sadly still, 81 per cent of these live in Africa.

Uganda’s picture shows progress in the decline of HIV infections where national prevalence fell from an average of 13 per cent in the early 1990s to 4.1 per cent by the end of 2003. Skeptics however assert that “it is much too early to claim that these recent declines herald a definitive reversal in these countries.”²³¹ A recent study on the

²²⁹ A Barrientos, D Hulme & A Shepherd ‘Can Social Protection tackle Chronic Poverty?’ Chronic Poverty Research Centre April 2003 Available at www.chronicpoverty.org/pdfs/conferencepapers/Barrientos.pdf (accessed on 20 March 2006) at 5.

²³⁰ UNAIDS /WHO 2005, AIDS epidemic Update 2004, Geneva, Switzerland cited in Tumwesigye David, “Social Security and HIV/AIDS; the experience of the National Social Security Fund (Uganda) International Social Security Association Regional Conference for Africa, Lusaka, Zambia 9-12th August 2005 at 1.

²³¹ UNAIDS /WHO 2005, AIDS epidemic Update 2004, Geneva, Switzerland cited in Tumwesigye David, “Social Security and HIV/AIDS; the experience of the National Social Security Fund (Uganda) International Social Security Association Regional Conference for Africa, Lusaka, Zambia 9-12th August 2005 at 2.

prevalence of HIV/AIDS in Uganda has shown that declining trends may not continue if there is no renewed focus on the prevention of the epidemic.²³² The struggle against AIDS is thus far from over. Nevertheless Uganda is a beacon of hope to the rest of Sub-Saharan Africa.

The most immediate impact of AIDS on social security is in as far the fact that those most affected by HIV/AIDS are in the most economically active age groups. As a result, there is a serious outflow of resources from social security schemes which is threatening the sustainability of these schemes by reducing the number of contributors.²³³

This scenario is validated by the National Social Security Fund in Uganda. Analysis of NSSF invalidity claims, revealed that 55 per cent of all claims were on account of AIDS-related invalidity. The analysis also noted that the mean age of claiming invalidity is 39.8, with 50 per cent of cases below 40 years. This reinforced the fact that AIDS was the cause of invalidity.²³⁴

The NSSF has been spending between 25 and 40 per cent of total claims payments on invalidity and survivors' claims. In 2004, the NSSF spent Ushs15.4 billion in benefit payments and 26 per cent of this went to pay survivors and invalidity benefits. NSSF will continue to spend USD1.2 million that could have been invested to generate more revenue for the scheme.²³⁵ The amount of funds thus available for investment will dwindle and reduce the total revenue of the scheme.

On another hand, the socio-economic impact of the disease is such that it sets back development.²³⁶ Sick people may be unable to work and therefore may not be able to earn

²³² C Ariko 'Study Warns of HIV Resurgence' The New Vision Available at www.newvision.co.ug/D/13/482757

²³³ E Kaseke The Challenges of Extending Social Security to the Poor: An African Perspective 29th ICSW Conference on Social Welfare Cape Town South Africa 23rd-27 October 2000. Available at www.icsw.org/global-conferences/challenges-extending.htm

²³⁴ D Tumwesigye Social Security and HIV/AIDS; the experience of the National Social Security Fund (Uganda) International Social Security Association Regional Conference for Africa, (Lusaka, Zambia 9-12th August 2005) at 12.

²³⁵ Ibid at 14.

²³⁶ 'Uganda Reverses the Tide of HIV/AIDS' Available at <http://www.who.int/inf-new/aids2.htm>

a living. Consequently, they cannot support their families, children may have to drop out of school to take care of the sick and work to support the family.²³⁷ The levels of absenteeism following sickness, and the associated medical costs and productivity losses to the business world are enormous. A joint UN programme on HIV/AIDS²³⁸ report quotes the gross domestic product (GDP) as estimated to drop by an average of 2.6 percentage points in countries with prevalence rates over 20 per cent. This spells doom for Sub-Saharan Africa, poor as it already is.

As has already been noted, a large part of the population is not covered by formal social security meaning that AIDS is exacerbating the vulnerability of Ugandans. Consequently, people are left to rely on civil society organizations like The AIDS Support Organisation (TASO), People Living with AIDS etc. Unfortunately, such may only go as far as providing medical and psychosocial services. Informal means of social security, more importantly the family, are thus bearing the heavier load and widening the vicious circle of poverty.

The International Labour Organisation recognizes that "...the role played by the family as a safety net is by far the most effective community response to AIDS crisis. Affected households in need of food send their children to live with relatives. Relatives are then responsible for meeting the children's food and other requirements. The preparation of food and agricultural work on the affected household's land and overseeing livestock may well be carried out by another family member or neighbour, in addition to their own tasks."²³⁹

²³⁷ Op cit at 3.

²³⁸ Ibid .

²³⁹ International Labour Organisation HIV/AIDS: A threat to decent work, productivity and development (International Labour Office (2000) at 9.

4 Conclusions

4.1 Observations

The colonial government may have been instrumental in initiating the first laws to do with social security but these did not reflect the situation going on in Britain at the time. The problems that Britain had at the time of the Industrial revolution and prompted the promulgation of the poor laws are only just beginning to surface in Uganda more than a century later. Uganda is only as of the last decade experiencing a steady economic growth and increased industrialization albeit at a slower rate as compared to the industrial revolution.

The aims of social security revolve around providing more than income security when sources of income have failed, they are supposed to lift people out of poverty. The welfare movement in Britain was evolved for precisely this; to counter any form of poverty, want and deprivation. Considering that Uganda is a third world country and one of the least developed countries in the world, poverty is consequently a daunting challenge.

Uganda has numerous social needs and demands by virtue of being a third world country. Consequently, there is a need for a comprehensive social security safety net.²⁴⁰ The implications of these needs are exacerbated by the fact that the government may not be in a financial position to drastically reverse the poverty statistics by far or at the same time mitigate covariant risks.

Owing to the fact that Uganda's social security provisions are modeled on the traditional western concept of social security. It is imperative that in view of the challenges Uganda faces both socially and economically, a broader and more inclusive understanding of social security be considered. It has to be one that is suited to specifically Uganda's needs.

²⁴⁰ GCZ Mhone 'The socio-economic Context and social policy needs in South Africa' in MP Olivier (ed) et al *Social Security: A Legal Analysis (1ed)* (Durban: Lexis Nexis Butterworths, 2003) p.1-21 at 13

Uganda's social security system is one that may not be an exact replica, but is typical, of a third world country in Sub Saharan Africa. The country boasts of a provident fund, public service, pension scheme and private arrangements that are the preserve of only those that are employed formally. As has already been seen; even the benefits provided by these schemes are very inadequate and do not cover covariant risks that are more predominant. There are no social assistance schemes. Consequently, the larger percentage of the population not only remains poor and extremely vulnerable but also lacks any form of social protection. Worse still the organization and administration of social security is in disarray. The several pieces of uncoordinated legislation reflect this. Unfortunately, It is still these very laws and the whole flawed system that perpetuate social exclusion.

Reform should also take into account the dominance, significance and the growth of the informal sector. The implication of this therefore is that informal social security mechanisms need to be given adequate recognition owing to the fact that they play a remarkable role in providing that first line of defence in social risk management.

Properly planned policies enhance social protection thus improving living standards and strengthening livelihoods. This is no doubt a very significant role in a developing country such as Uganda. Norton and Conway note that such policies also improve the productive capacity of the poor and thus contribute towards the increase of their potential to secure employment, improve their productive capacities and increase incomes.²⁴¹

4.2 Recommendations

Literature on social security agrees that the concept of social security is not an albeit fixed one. Indeed Olivier agrees that "recent developments have indicated a new understanding of social security and the purposes which it serves, leading to major conceptual innovations. Therefore (emphasis mine) this serves the purpose of creating a proper foundation whereby adequate protection against human damage can be

²⁴¹ Norton, Conway & Foster, 2001; Kabeer 2002 cited in Patricia Justino 'Social security in developing countries: Myth or necessity? Evidence from India' Poverty research unit at Sussex, University of Sussex September 2003 Working Paper No.20 at 11.

ensured.”²⁴² A reconceptualisation of social security in the context of Uganda is therefore pertinent. It implies that there has to be a deviation from the traditional understanding of social security to embrace the new conceptual framework of social protection.

It has been noted that Uganda lacks a rational social security system. The legal and policy considerations discussed, coupled with employing the broader concept of social protection reform of legal regulations warrant an overhauling of the system. Regulatory reform is absolutely necessary in the nearest future possible to cut back on state perpetuated exclusion.

This reform should begin by reviewing the existing legislation to include those that are excluded expressly by law. Take for instance, those in informal employment ie domestic workers, self employed persons, commissioners, etc. Legislation should furthermore be reviewed to increase the benefits provided, for instance including health packages.

The right of access to social security should be clearly and unequivocally provided for. It is worth noting that this constitutional guarantee has attracted tremendous success in South Africa.²⁴³ This is necessary because it is a basic human right that is clearly given recognition by the Universal Declaration for Human Rights. Secondly, the clause that categorically provides for pensions for the public servant should be scrapped as it serves no particular purpose and also for the reason that it perpetuates discrimination.

Besides reviewing existing legislation, all laws to do with social security should be promulgated into one social protection law to ensure for a coherent approach. To facilitate this several spheres are advocating for a single and independent regulator vested with the duty of registration, ensuring compliance with laws and general administration of the sector.²⁴⁴ Reform of the social security sector should also address the administrative

²⁴² MP Olivier ‘The Concept of Social Security’ in MP Olivier (ed) et al Social Security: A Legal Analysis (1ed) (Durban: Lexis Nexis Butterworths, 2003) p. 23- 47 at 47.

²⁴³ It is provided for under Section 27 of the South African Constitution.

²⁴⁴ The Social Security and Pension Sector Stakeholders Transition Group Report at 116-7.

weaknesses discussed, undertake regular indexation of benefits to facilitate improved conditions of living when the cost of living rises,²⁴⁵ as well as allow for portability.

It is easily discernible that government is in no position to sustain public service pensions that are financed out of the consolidated fund. For this reason therefore, it is only prudent that the public service pension is turned into an insurance scheme in which members contribute monthly. The advantage of this is that government will be relieved of this financial burden.

Another much debated proposition is the liberalization of the pension sector. Although Uganda operates in a liberalized economy, this proposition has been met with mixed reactions. Many see the pension sector as a key source for long-term finance for investment; The Ministry of Finance, Planning and Economic Development agrees that to achieve the objectives of investment, the pension sector should therefore be liberalized.²⁴⁶ Yet still many agree that “the liberalization of the sector should be accompanied with strict policing and regulation given the large amounts of funds the providers would be entrusted with.”²⁴⁷

Some like Jacques Audibert²⁴⁸ insist that “privatization is not a panacea and for Africa it is out of the question for the reasons that first “social protection is a human right and by definition a public service. The state cannot wipe its hands off it and delegate it to market forces. Second, privatization implies that those managing the system can choose to protect the young and healthy instead of those who really need protection.”²⁴⁹

There is no denying the fact that rate of returns on pensions in Uganda is either low or non existent and yet there is in my opinion something that can be done to make the exercise of saving more meaningful. This is the era of globalization in which creation of

²⁴⁵ Ibid at 123.

²⁴⁶ Ministry of Finance, Planning and Economic Development (Uganda) Back Ground to the Budget for Financial Year 2005/06, June 2005 at 28.

²⁴⁷ Op cit at 97.

²⁴⁸ Jacques Audibert is an ILO technical cooperation expert in standards and policies for social protection.

²⁴⁹ Jacques Audibert, “African Pensions: the way to go” Focus on Social Protection. Turin Info. ILO training Centre, June 2004 International training center of the ILO, Turin Italy at 6.

wealth occurs naturally after capital investment. It makes sense therefore that liberalization will create competitiveness, competitiveness create investment and investment result in improved returns on capital if it is done wisely.

It is common knowledge that the traditional approach of social security eliminates significant numbers of the population. It has been observed also that informal social security plays an extremely significant role. In this spirit therefore, the government should seek to facilitate informal social security mechanisms through for example, giving financial incentives to micro finance and mutual support schemes.

It has already been observed that the Uganda's present social security laws exclude many Ugandans from enjoying social protection. It is essential to extend coverage to previously excluded persons. The approach government takes must incorporate the policy considerations and implications discussed in section 3 of this paper. This is an almost insurmountable task no doubt. It is therefore recommended that Government makes the most of the already existent poverty reduction strategies.

In line with the above, it is important to note that the non homogeneity of the poor in Uganda warrants the employment of a multifaceted approach to alleviate poverty. The poverty eradication action plan (PEAP), is the government initiative that has guided policy formulation in enabling this.

Others include; The Plan for the Modernisation of Agriculture which is a strategic framework for eradicating poverty through multisectoral interventions enabling subsistence farmers to improve their natural resource based livelihoods.²⁵⁰ The Education Strategic Investment Plan which is aimed at revitalizing the quality of education service, The Health Sector Strategic Plan for health policy, rural feeder roads to improve the accessibility for markets as well as access to basic social services, water and sanitation, decentralisation and democratisation, the Land Act of 1998 is designed to strengthen the

²⁵⁰P Mijjumbi et al, Review of how, When and Why does Poverty get Priority. Study done by Economic Policy Research Centre for Centre for Aid and Public Expenditure (CAPE) London Occasional paper No.9 at 17.

land rights of the poor and provide for co ownership rights for women and Micro finance to improve accessibility of credit for the poor.²⁵¹

Caution must however be exercised in addressing the needs of particular vulnerable groups. No single group ever has the same characteristics. The Phase 1 report on social protection to the Ministry of Gender, Labour and Social Welfare ably defends this position. The report stipulates that “Any group based classification provides a proxy for need that will inevitably misclassify some individuals as being at risk when in fact they are not. For example, not all female headed households are poor or not all orphans need special care.”²⁵²

It also emphasizes that “A related danger is homogenization of vulnerable groups and recommends that for instance, orphans should be disaggregated or segmented into several sub-categories-Orphans with one parent and those with none, orphans in foster homes, institutions and on the street, those in urban areas, rural areas, conflict zones.”²⁵³ Ideally, it goes on to say, distinct programmes should be designed to meet the specific needs of each sub category although in practice this is extremely difficult.

The role played by Non Governmental Organisations (NGOs) and community based initiatives can not be undermined and should not be. Whereas, NGOs play a significant role in providing services such as medical, water and even roads, it should also be noted that government can not for this reason sit back and let them do the work. Instead, government should create an enabling environment for NGOs whereby they are properly regulated and allocated specific work areas to avoid duplication of services. This will enable better basic social service provision to the communities. Government should simply play a supervisory role without necessarily interfering.

²⁵¹ Ibid at 30.

²⁵² Social Protection in Uganda, Phase 1 Report to the Ministry of Gender, Labour and Social Development at 72.

²⁵³ Social Protection in Uganda, Phase 1 Report to the Ministry of Gender, Labour and Social Development at 72

These are all attempts at reducing, preventing and alleviating poverty and lend credibility to a recent move in social security involving a “shift from curative to preventative social security.”²⁵⁴

University of Cape Town

²⁵⁴ Olivier, *Social Security Reform: Concept and Fundamental Principles*. Except from: *Social Insurance and Social Assistance: Towards a Coherent Approach* (A report to the Department of Welfare, South Africa) (CICLA and FES, December 1999) at 7.

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