INTERROGATING THE RIGHT TO SOCIAL SECURITY AND SOCIAL PROTECTION IN UGANDA

JOHN-JEAN BARYA
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ABSTRACT

This paper is aimed at interrogating the current state of social security as a right and its more encompassing variant social protection in Uganda. The paper therefore looks at the law, policy and practice on social security with a view to establishing the current status of social security and social protection in the country. It also seeks to establish the levels of social exclusion from social security and social protection.

The paper relies on secondary literature, government publications, newspaper records and selected interviews.

The paper finds that social security coverage is limited to only about 5% of the working population in Uganda of about 11 million. This is the case both for the Public Service Pension Scheme (PSPS), the National Social Security Fund (NSSF) and private in-house voluntary pension schemes. Otherwise, the limited social protection that exists from government covers basic education and provision of water to some citizens while most of the social goods like housing, food and clothing are only available at the initiative of private citizens and not via assistance from the state.

The proposed reforms of the sector as recommended by the Stakeholders’ Transition Group (STG) if implemented will go a long way in providing social protection to those in formal employment, but will hardly assist the informal sector and the majority of the people who are a peasantry that is self-employed, illiterate, unskilled, poor, and rural. What needs to be done to ensure social protection for all lies beyond the most positive and progressive reform of the current social security system. The development agenda of the country must be approached in a manner that ensures economic growth and development in a democratic and pro-people political framework.

An underdeveloped country cannot ensure social protection for all its citizens while remaining underdeveloped. The development agenda must therefore be addressed together with whatever immediate, medium and long-term reforms of the social security system in the country being contemplated or effected.
I. INTRODUCTION

This paper is a critical reflection on the state of social security and its more encompassing variant, social protection as a right in Uganda’s political economy. Social security has not been a much discussed area in Uganda until the Ministry of Gender, Labour and Social Development set up a Social Security and Pensions Sector Stakeholders Transition Group (STG) in 2002. The STG—whose mandate was to advise on necessary reforms in the sector—produced a report in November 2003 in which it made several recommendations. Beyond the Ministry of Labour, the Ministry of Finance and Government generally have also developed an interest in the area for various reasons. To this effect, via policy statements in the 2007/8 and 2008/9 Budgets, the government has sought to effect some reforms in this sector. Equally, both Kenya and Tanzania have recently sought to reform the social security sector to achieve certain objectives. In the case of Uganda, in November 2007, in order to partly effect some of the STG recommendations and also introduce some new elements, the Minister of Finance presented a cabinet paper on the Reform of Ugandan Social Security Sector.

Until recently, social security has not been a subject of study, debate or concern by both government and academia, nor have the more directly concerned social groups, (i.e. workers and employers), been passionately concerned with the issue. The only exception has been discussions around the issue of the mismanagement and inadequacy of the two major formal social security providers, the National Social Security Fund (NSSF) and the Public Service Pension Scheme (PSPS). However, from 2002, as a result of different pressures from workers and the Ministry responsible for labour, on the one hand, and the Government and particularly the Ministry of Finance on the other, a number of actors have become interested in social security for different reasons and from different vantage points. Indeed, on 31 December 2004 the NSSF responsibility/oversight was transferred from the Ministry of Labour to the Ministry responsible for Finance.

The main reasons for the transfer had little to do with the adequacy, coverage or equity of the NSSF, but rather the fear (real or imagined) that the Minister responsible for labour affairs had no capacity and experience to manage enormous amounts of

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1 Republic of Uganda 2003
2 Republic of Uganda 2007
3 See for instance, E. Anyoli & F. Osike “Ex – NSSF Boss Pleads Guilty” New Vision 29, March 2008. Here former Managing Director of NSSF, Leonard Mpuuma pleaded guilty to causing financial loss to NSSF, abusing his office and inflating the Nsimbe Estates Housing Project causing a (U) Shs. 8 billion loss. The Minister in charge of NSSF then, Ms. Bakoko Bakoru fled the country to USA over the same issue. See also Edvis Kiggundu “I told you so, says Bakoko on NSSF Saga The Weekly Observer, 24 September, 2008.
money. Nonetheless, there is a fear that the transfer of the fund to Finance exposed workers’ savings to government-favoured individuals and firms to access and abuse the fund. Beyond the above, both the PSPS and the NSSF, the social security situation in the country remains characterized mainly by exclusion of the majority from this internationally recognised right. The PSPS is run by the Ministry of Public Service, catering for civil servants (central and local government), the army and to some extent police and prisons. The extent of coverage will be detailed as well as elements of exclusion even at this level. The second one is the scheme run by NSSF set up by the National Social Security Fund Act. Together, the two give protection to about 5% coverage of Uganda’s working population. On the other hand there are several private pension, provident fund and other types of savings maintained either in addition to NSSF or separate from it.

In addition to the above, a number of private social protection schemes are operated by some insurance companies and large companies. According to the STG Report, these schemes include private pension schemes, health insurance and education service. Insurance companies have exclusively managed insurance for injury at work as required by the Workers’ Compensation Act 2000, which obligates employers to insure against it. Apart from the PSPS and NSSF, the formal private social protection arrangements are for individuals whose incomes and standard of living allow them to afford additional contributions for supplementary benefits over and above what is being provided under the basic mandatory arrangement. In a number of organizations they are provided to senior staff only.

What all the above therefore means is that the rest of society stands generally excluded from social protection and this is estimated at 95% of the population. While traditional family systems (so-called extended family) provided social protection generally and social security in particular for the rural and peasant population, today this is hardly the case. Therefore, it is important for this work not only to ascertain the level and extent of exclusion but also to outline the forms of social protection arrangements for the urban informal sector, the rural self-employed or unemployed population, and the unemployed, as well as various categories of disadvantaged social groups, such as IDPs (Internally Displaced People), widows and orphans, PWDs (People with Disabilities) and so on.

It is against the above background that this paper sets out to broadly interrogate the status of social security and social protection in Uganda. This is undertaken within

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6 Cap 222
8 STG Report: 34
9 Id., 35 - 36
10 Id., 37
the context of the country’s international obligations, the national Constitution and relevant legislation. The paper seeks to locate the search and provision for social security in Uganda’s status as an undeveloped country. This is against the country’s wholesale embrace of the neoliberal economic policy framework that is predicated on market forces and minimal state intervention in the economy and the social sector. In specific terms, it is intended that Uganda’s PRSP (Poverty Reduction Strategy Paper), the PEAP be examined in so far as it advances or hinders the cause of social security to Ugandan citizens.

Given the above contexts, the paper will also state and discuss the current law, policy and practice on social security and point out their limitations and strengths, if any. Thereafter, a discussion of the proposed reforms and status of the progress towards achieving those reforms will be looked at with a view to ascertaining their likely impact.

The paper is divided into five sections. Section I introduces the problem of social security and social protection and also deals with the objectives and research questions of the paper. Section II is the literature review and raises some conceptual issues. Section III is the substantive part dealing with the state of social security and social protection in Uganda. Section IV deals with the proposed reforms to the sector, and Section V is the Conclusion. The major objective of the research is to survey and assess the right to social security and social protection in Uganda. The research establishes the status of social security and social protection vis-a-vis the whole of society. To this end, the study was guided by the following questions:

1. What is the current status of social security and social protection as a right in Uganda?

2. What is the level of exclusion from social security and protection and how do the excluded deal with issues that are supposed to be covered by the formal social security systems?

3. To what extent do the proposed reforms by the STG and the Cabinet Paper on the Reform of the Uganda Social Security Sector deal with the shortcomings of the current system?, and

4. What needs to be done in order to ensure the progressive realization of the right to social security and social protection for the people of Uganda?

The research relied on secondary literature, government publications and selected interviews. The major sources of law are relevant international covenants and conventions, the Ugandan Constitution, local legislation and some cases that have come before the courts and the Uganda Human Rights Commission.
Interrogating the Right to Social Security and Social Protection in Uganda

The laws and international instruments consulted include the following: the Constitution of Uganda (1995) as amended; The Pensions Act (Cap 286) and Pensions Regulations; The National Social Security Fund Act (Cap 222); Several laws related to gratuities and pensions for local government, the army, police and prisons; Treaty for the East African Community; Draft Protocol on the Establishment of East African Common Market; Universal Declaration of Human Rights (UDHR); International Covenant on Economic, Social and Cultural Rights (ICESCR); African Charter on Human and Peoples’ Rights; Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention on the Rights of the Child; African Charter on the Rights and Welfare of the Child; ILO Convention 102 on Minimum Standards in Social Security; Several ILO Conventions on Workers’ Compensation, Occupational Health and Safety and Unemployment; and reference is made to the Workers Compensation Act\textsuperscript{11} and the Occupational Safety and Health Act 2006.

The relevant government reports include the STG Report, the Cabinet Paper on the Reform of the Uganda Social Security Sector Proposal, the proposed health insurance scheme and several position papers by the Federation of Uganda Employers (FUE), National Organisation of Trade Unions (NOTU), Private Sector Foundation (PSF), Uganda Insurance Commission, Uganda Insurers’ Association, the Draft Tripartite Charter among others.

\textsuperscript{11} Cap 225
II. BROAD CONCEPTUAL ISSUES ON SOCIAL SECURITY

2.1 Conceptual Issues

In order to deal with the subject of social security we need to look at related concepts that are at times used interchangeably. **Social security** refers to a formal arrangement concerned with protection against socially recognized conditions, including poverty, old age, disability, unemployment and others.\(^\text{12}\) It is essentially a concept developed in Europe in the 19\(^{\text{th}}\) Century mainly aimed at protecting workers in the formal economy in a clear labour-capital relation in capitalist society.\(^\text{13}\) The focus here was on the worker because unemployment was hardly an issue. Accordingly, social insurance schemes evolved as the dominant form of social protection”.\(^\text{14}\) **Social insurance** refers to arrangements, usually defined and prescribed by statute, where people receive benefits or services in recognition of their contributions to an insurance scheme. These typically include provision for retirement pensions, disability insurance, survivors’ benefits and unemployment insurance.\(^\text{15}\)

On the other hand, **social protection** is seen as a more comprehensive concept being a reference to a set of benefits available (or not available but considered necessary) from the state, the market, civil society and households or through a combination of these agencies to individuals and households to reduce or deal with multidimensional deprivation.\(^\text{16}\) This deprivation may be affecting all sorts of people and situations: the elderly, disabled, unemployed, orphans, and the poor generally. This concept seems to be more acceptable and relevant to underdeveloped countries like Uganda, because formal social security is more applicable in conditions where large numbers of citizens depend on the formal capitalist economy for their livelihood. However, within the context of an underdeveloped essentially rural peasant economy with a big informal economy in the urban centres, the vast majority of the working population is necessarily excluded from formal social security arrangements modeled on the advanced capitalist economies of Europe and North America.

In the situation of underdeveloped societies, the state’s capacity to cater for the majority of the poor people is limited due to limited resources, mismanagement of existing resources and undemocratic politics that are generally non-responsive to citizen demands and interests. It is also because of the above that underdeveloped countries then talk of social assistance or social aid. **Social assistance** refers to government social protection programmes designed to protect the destitute with no other means of adequate support and incapable of contributing adequately for their social protection.


\(^{13}\) Kaseke, 2006, at 1.

\(^{14}\) Id., 1

\(^{15}\) Wikipedia, supra.

\(^{16}\) Id.
benefits. This therefore means that social security should be viewed in a broader sense of social protection, while social protection itself may include several aspects ranging from health and education provision to dealing with poverty and all its consequences including suffering from natural disasters and new risks such as HIV/AIDS.

2.2 A Look at the Literature

There is a dearth of literature on social security in Uganda. However, issues akin to those relevant to Uganda have been dealt with rather extensively elsewhere. In 1991—when the NSSF was only five years old—the author dealt with its nature and character in general terms. Even then it was observed that:

Uganda being essentially a peasant economy the provision of social security generally is still essentially a preserve of the family and may be the clan. The protection of workers after retirement, if any, is covered legally only for a few in form of pensions, in the public service and the National Social Security Fund in the private sector. But in reality especially since the mid-1970s, due to inflation, these schemes have generally not amounted to any post-employment security.

At that time, the major complaints about both the PSPS and NSSF were that they were based on a very low wage base, while inflation between the 1970s and late 1980s had made both public service pension and NSSF benefits practically meaningless. In the case of NSSF, workers complained that their savings were borrowed by government companies and the UPC to build Uganda House but the borrowed monies had not been repaid or paid without interest. While some of these problems continue and others have been ameliorated, new managerial and conceptual problems with respect to both schemes persist.

A number of writers have observed that traditional systems of social protection in Africa based on the traditional (so-called extended) family and the clan have collapsed or are under great strain. As a result, traditional social security systems have been replaced with new systems in the rural areas and others in the urban so-called informal economy. The traditional social security systems in Africa depended upon the social structure of a particular community. The structure was defined by for instance whether the members of the community were settled agriculturalists or pastoralists, or whether they were already organized in a state (as in Buganda and Bunyoro - Kitara) or stateless (for instance the Bakiga and Acholi). The social security system in these communities was based mainly on the traditional (extended) family and kinship relationships. For

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19 Id., at 74.
20 Id.
instance, while writing about Uganda in 1995, Steven Ouma observed that:

*Traditional authority exercised through a system of clan elders and heads of household, was very effective in maintaining social control and order in a situation where there was no distinction between home and place of work... clan organisation and authority were reinforced by the system of extended families in ensuring area-based development through the exercise of collective responsibility in areas such as housing, creating and maintaining access roads, farming, food harvesting and its storage, hunting down wild animals and destroying vermin that were a potential danger to both human security and food crops, caring for the elderly and the sick, consoling and assisting the clan/family members in bereavement to mention only a few of the instances based on mutual aid assistance and reciprocity.*

However, colonization gradually eroded these systems and transformed society but without putting in place any replacement. The formal social security systems put in place were indeed initially meant only for the (white) settler community or colonial officials and employees. While after independence most African Countries sought to extend coverage, this has not been very successful to date. As a result, “…the poor particularly the rural people, the self-employed and informal sector workers experience social exclusion.”

Indeed, by adopting the ILO tradition focusing on individual risks, the collective risks such as droughts and floods or other collective dangers have been neglected.

Consequently, the above levels and extent of exclusion are reflected in the national legal regimes both in constitutions and legislations dealing with social security and pension in particular. Different constitutions in Africa accord the right to social security different emphases. In some Southern African Development Community (SADC) countries for instance, “…there is no reference whatsoever to socio-economic rights” while others provide directly or indirectly for the protection of socio-economic rights. In the case of Uganda, as is illustrated later, there is still contestation as to the nature and extent of provision for social security for all in the 1995 Constitution as amended and relevant legislation.

The relationship between the international Conventions and the agreements pertaining to social security with Uganda’s constitutional and legal obligations needs to be made. Uganda is signatory to a number of international conventions and instruments directly related to social security and these include: The Universal Declaration of Human
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The Universal Declaration of Human Rights 1948 (Article 25); the ICESCR 1966, (Article 9); the African Charter on Human and Peoples’ Rights (Article 15, 16 and 17), and ILO Convention 102, Social Security (Minimum Standards) Convention 1952. The ILO has several other conventions on specific areas of social security: employment injury benefits (121), invalidity, old age and survivors (128), employment promotion and protection against unemployment (168). Uganda has not ratified these ILO Conventions.

Because Uganda has committed itself to recognizing international treaties and obligations and to respect human rights not specified in the Constitution, it may be argued that it is obliged to take into account—particularly when the courts are enforcing rights—obligations under international human rights instruments. This issue will be further discussed in the course of this paper. Indeed, the importance of considering international law in discussing the nature and character of social security especially in Africa has been emphasized by various authors.

To understand the significance of social security and its status in contemporary Uganda, one must take cognisance of the economic and political environment in which seeking the enforcement or progressive realization of this right should be located. Social security must necessarily be studied within the context of undermined or non-existent traditional systems of protection as seen above, while at the same time recognizing the serious limitations of the existing formal social security systems guaranteed by the state under the PSPS and the NSSF. Above all, however, the role of neoliberal economic policies adopted by most African countries including Uganda may prove to be more critical in excluding the majority from social protection. Most African countries have of recent been relying on Poverty Reduction Strategy Papers (PRSPs) as the main development framework. These papers seek to achieve high levels of economic growth and higher levels of social development with a view to reducing poverty. However, social protection has not been recognized in these “development” frameworks as having a role in poverty reduction in as much as it would allow vulnerable people to maintain or improve their living standards. What is evident is that social protection has not been given priority or adequate coverage in the PRSPs. It is within the above context that the status in Uganda of social security and social protection is examined.

27 Art. 286 1995 Constitution
28 Art. 45
30 ROU 2004/5
31 Ould el Hadj & Diakhate, 2007, at 1-2.
32 Id.,2.
III. THE STATUS OF SOCIAL SECURITY AND SOCIAL PROTECTION TODAY

To understand the status of social security and more generally social protection in contemporary Uganda, one needs to examine the social structure and demographics of the country. In particular, we need to know the size and structure of the labour force (working people), the so-called informal sector, the poor (working and not working) as well as the levels of unemployment and underemployment. It is these demographics that then provide us with the background and context within which to locate the status of social security and protection as a right or legal category.

3.1 Uganda’s Social Structure and Social Protection

3.1.1 The General Situation
In the 2002 Population and Housing Census, Uganda’s population was estimated at 25.3 million. Among these, only 9.8 million constituted the economically active population or labour force aged 14-64 years. Out of the 9.8 million, 0.3 million or 3% are unemployed. The majority of the people constituting the labour force are in the rural areas, a whole 85% and close to 77% of this labour force or working people had either no formal education at all or only primary education. The majority of the working people therefore have no skills; they are unskilled labour. 75% of the working people are below 40 years. Accordingly, the majority working people of Uganda are: “young, untrained and rural…” And yet, as the table below shows, the biggest percentage of the so-called employed are self-employed.

TABLE 1 - DISTRIBUTION OF EMPLOYED PERSONS (WORKING PEOPLE) BY EMPLOYMENT STATUS

<table>
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<th></th>
<th>2002 CENSUS</th>
<th>UNHS 2002/3</th>
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<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
</tr>
<tr>
<td>1. Wage &amp; salaried workers</td>
<td>21.4</td>
<td>9.7</td>
</tr>
<tr>
<td>2. Self - Employed</td>
<td>59.8</td>
<td>23.9</td>
</tr>
<tr>
<td>3. Unpaid Family Workers</td>
<td>18.8</td>
<td>66.4</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100</td>
<td>100</td>
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33 UBOS, 2006, at 5 and 68.
34 Id., at 5.
35 Id.
36 Id.
Equally interesting is the fact that because most working people are in agriculture and the rural areas (therefore a peasantry), the share of wage and salary in non-agricultural employment is very small, only 27%. But most people work in agriculture, mainly as self-employed (77%), a few others in service industry (18.8%) while manufacturing has only 3.2%. The small share of wage employment in non-agriculture employment signifies that there are very few employment opportunities. Yet the share of women in non-agricultural employment is small. Women constitute only 28% of persons in the non-agricultural employment. There clearly shows that there is “gender inequality in wage and salary non-agricultural employment.”

In terms of earning, the least earners by industry and/or occupation are those in agriculture and mining and quarrying with a median salary wage of (U) Shs. 20,000/= per month (= US $ 12). The highest paid working people are in financial intermediation or legislators, senior officials and managers, with the median monthly wage being about (U) Shs. 500,000 (or = US $ 310). In short, the highest proportion of the labour force (working people) who are self-employed (57.4%) shows a low growth in the formal sector and high rate of job creation in the informal economy. In addition a high proportion of the labour force working as unpaid workers (27.4%) indicates “…low development, little job growth, widespread poverty and a largely rural economy.”

3.1.2 Unemployment, Underemployment and the Working Poor

Employment and unemployment statistics are quite controversial, with statistics from the Uganda Bureau of Statistics (UBOS) being the only ones available. However, even UBOS admits that, “…a great deal of controversy exists concerning the reliability of available data and therefore the real level of unemployment in Uganda.” The official unemployment rate in Uganda is 3.5%—that is of people actively looking for a job and who are not in any type of employment. Accordingly, unemployment is mainly an urban phenomenon with 12.2% unemployment rate compared to 2% in the rural areas. What is interesting, however, is that though unemployment is low, poverty is high and what may explain this is the phenomenon of under-employment, poor returns on self-employment and low wages in employment. Accordingly to UBOS,

… it is not surprising to find that overall unemployment rates are low. Very few people can afford to be unemployed for any period, and the bulk of the population must engage at all times in some economic activity, however little or inadequate it may be. Although at the same time they may be seeking other or additional work they will not be considered as unemployed.

37 Id.; at 11.
38 Id., at 12.
39 Id., at 11.
40 Id., at 13.
41 UBOS 2006:42.
42 Id.
43 Id., at 46.
Underemployment in the country is estimated at 16.9%, with rural underemployment being 17.9% and urban underemployment being 10.7%. By 2003, about 38% or 8.9 million people lived below the official poverty line; out of these about 3.5 million were classified as the “working poor” individuals who are part of the working people (labour force), are actually working but whose incomes fall below the official poverty line. The majority of the working poor, about 44% thereof are employed in agriculture in the rural areas. Given the above social situation with regard to employment, unemployment, under-employment, and the dominance of the rural economy and informal sector, it becomes clear that formal social security systems do not apply to the majority of the population as they deal only with public service employees and employees in the formal private sector.

3.2 The Law on Social Security and Levels of Social Exclusion in Uganda

Social security (or more broadly conceived social protection) is covered by Uganda’s 1995 Constitution as well as several international Conventions to which Uganda is signatory or which, if not ratified, should at least provide us with inspiration to deal with social security and social protection requirements. We shall therefore look at the legal framework in three parts: the Constitutional provisions, international treaty/Convention obligations and finally Uganda’s own legislation.

3.2.1 Constitutional Provisions

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

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

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

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44 Id., at 41.
45 Id., at 41.
46 Article 8A(1)
47 Objective VII.
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, decent shelter, adequate clothing, food security and pension and retirement benefits.

XVIII. Educational objectives

(i) The state shall promote free and compulsory basic education.

(ii) The state shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.

XIX. Protection of the family

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

XX. Medical services

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

XXI. Clean and safe water

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

XXI. Food security and nutrition

The state shall:

(a) take appropriate steps to encourage people to grow and store adequate food;

(b) establish national food reserves; and

(c) encourage and promote proper nutrition through mass education and other appropriate means in order to build a healthy state” (Article XXII).

XXIII. Natural disasters

The state shall institute an effective machinery for dealing with any hazard or disaster arising out of natural calamities or any situation resulting in general displacement of people or services disruption of their normal life.
The above National Objectives and Directive Principles of State policy seek to deal with most aspects of social protection that require that attention be paid to: old age, education, health, water, shelter, clothing, food, pension (or retirement benefits) and the family itself. However, when it comes to the substantive part of the Constitution, the provisions are quite narrow and disappointing. The only direct substantive part which is clearly justiciable is with respect only to public servants or government employees. Under Article 254 “…a public officer, shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service.” In addition, “…the pension payable to any person shall be exempt from tax and shall be subject to periodic review to take account of changes in the value of money.” Finally, “…the payment of pension shall be prompt and regular and easily accessible to pensioners.”

In addition, some areas in the Constitution that may be said to deal with aspects of social protection are those dealing with education, women and workers’ rights. Article 30 states that “…all persons have a right to education,” while Article 34(2) provides that “…a child is entitled to basic education which shall be the responsibility of the state and the parents of the child.” Then in vague terms, Article 33(2) provides, regarding women, that “…the state shall provide the facilities and opportunities necessary to enhance the welfare of women to enable them realise their full potential and advancement.” Article 33 (3) provides that “…the state shall protect women and their rights, taking into account their unique status and natural maternal functions in society.”

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

In light of the above, it may be argued that while the National Objectives and Directive Principles of State Policy clearly recognize the right to social security and social protection with regard to almost all aspects including: old age, education, health, water, shelter, clothing, food, pension and retirement benefits as well as protection of the

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48 Article 254 (1,2 & 3)
49 See Article 29(l)(e) and 40(3) (a).
50 Article 40(3)(b) 85 (c).
51 Article 40(1)
52 Article 40(4)
family and preparedness to deal with disasters and natural calamities, the substantive part of the Constitution only clearly guarantees one aspect of social protection - that is pension and only for public officers. It therefore still remains necessary to examine the extent to which the current social security system provides protection to citizens other than public service officers. Yet, even in respect of the latter, it is necessary to examine the extent of their protection.

3.2.2 International Conventions on Social Security and Social Protection

Uganda’s constitutional provisions (and the lack thereof) should be analysed in light of international and regional treaties and conventions to which we are party or where we are not signatories which still provide important benchmarks for the interrogation of the state of social security and social protection in the country. There are five major international and regional instruments that provide for “social security.” The 1948 Universal Declaration of Human Rights provides that everyone has a right to a standard of living adequate for health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack livelihood in circumstances beyond his control. The instrument also provides that motherhood and childhood are entitled to special care and assistance; while all children whether born in or out of wedlock, shall enjoy the same social protection.

The ICESCR recognizes “…the right of everyone to social security including social insurance.” The Convention on the Rights of the Child, guarantees the rights of children to:

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

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

- To work under equitable and satisfactory conditions.

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53 Article 254
54 Article 25
55 Article 9
56 Article 24
57 Article 26
58 Article 27
59 Article 27
60 Article 15
There are several general and specific ILO Conventions dealing with the right to social security. The following Conventions for instance deal with different aspects of social security including:

- **Convention 121** - Employment Inquiry Benefits Convention 1964;
- **Convention 128** Invalidity, Old Age and Survivors’ Benefits Convention 1967;
- **Convention 168** Employment Promotion and Protection Against Unemployment Convention 1988;
- **Convention 118** Equality of Treatment (Social Security);

However, the above Conventions are too specific and piecemeal. Convention 102, Social Security (Minimum Standards), Convention 1952, provides the main benchmarks and standards on social security worldwide as stipulated by the ILO as a UN specialized agency on labour and industrial relations issues. ILO Convention 102 on Social Security provides for the right to social security to include among others, at least, the right to security regarding:

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

Uganda has not ratified Convention 102. It has also not ratified related Conventions such as those on employment injury benefits (No. 121), invalidity, old age and survivors (No. 128), employment and unemployment (No. 168) and Conventions 118 and 157. However, as we shall see later, aspects of these conventions are embedded in the PSPS and the National Social Security Fund Act.

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61 Article 16  
62 Article 17
The United Nations Committee on Economic, Social and Cultural Rights in its General Comment (No. 19) on the Right to Social Security outlines a number of elements that constitute the right to social security. These include the following:

1. **Availability** of the social security system. The system must exist whether composed of a single scheme or a variety of schemes, and should be established under domestic law.\(^\text{64}\)

2. The social risks and contingencies covered should include the nine (9) branches or elements of social security stipulated in ILO Convention 102, the Social Security (Minimum Standards Convention) 1952 outlined above.\(^\text{65}\)

3. **Adequacy:** Benefits whether in cash or in kind, must be adequate in amount and duration in order that everyone may realise his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care as contained in articles 10, 11 and 12 of the ICESCR. And where a person makes contributions to a social security scheme that provides benefits to cover lack of income, there should be a reasonable relationship between earnings, paid contributions and the amount of relevant benefit.\(^\text{66}\)

4. **Accessibility (or Coverage):** All persons should be covered by the social security system especially individuals belonging to the most disadvantaged and marginalized groups, without discrimination on any of the grounds prohibited under Article 2, paragraph 2 of ICESCR.\(^\text{67}\) In order to ensure universal coverage, non-contributory schemes are therefore necessary.\(^\text{68}\) In addition, qualifying conditions for benefits should be reasonable, proportionate and transparent.\(^\text{69}\) Where contributions are required, they should be stipulated in advance and be affordable.\(^\text{70}\) Beneficiaries of social security schemes must be able to participate in the administration of the social security system,\(^\text{71}\) and benefits should be easily accessible in a timely manner without bureaucratic hurdles.\(^\text{72}\)

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\(^{63}\) Adopted on 23 November 2007

\(^{64}\) Par. 11.

\(^{65}\) Par. 12-21.

\(^{66}\) Par. 22.

\(^{67}\) That is race, colour, sex, religion, political or other opinion, national or social origin, property, birth or other status.

\(^{68}\) Par. 23.

\(^{69}\) Par. 24.

\(^{70}\) Par. 25.

\(^{71}\) Par. 26.

\(^{72}\) Par. 27.
5. **Relationship with other rights.** The right to social security plays an important role in supporting the realization of many of the rights in the ICESCR but other measures are necessary to complement the realization of the right to social security. For instance, measures to rehabilitate injured persons or persons with disabilities, child care and welfare, and family planning are needed from the state. In the context of underdeveloped countries, the state should “…take measures to combat poverty and social exclusion and provide supporting social services.” States should also “…consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups, for example, crop or natural disaster insurance for small farmers or livelihood protection for self-employed persons in the informal economy.” However, the General Comment notes that “…the adoption of measures to realise other rights in the Covenant will not in itself act as a substitute for the creation of social security schemes.”

The UN Committee recognizes that some countries may not be able to fulfill all the requirements of a good social security system and has therefore recommended minimum and core obligations.

### 3.2.3 Core Obligations

In its General Comment, the Committee advises that state parties have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enunciated in the ICESCR. They require the state to:

1. Ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families that will enable them to have at least essential **health** care, basic **shelter** and housing, **water** and sanitation, **food stuffs** and basic **education**. If a state cannot provide this minimum level for all risks and contingencies within its **maximum available resources**, the state, after a wide process of consultation should select a core of social risks and contingencies.

2. Ensure the right of access to social security on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups.

3. Respect existing social security schemes and protect them from unreasonable interference.

4. Adopt and implement a national social security strategy and plan of action; that is by legislation, strategies, policies and programmes.

5. Take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups, and

6. Monitor the extent of the realization of the right to social security.

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73 Par 28.
74 Id.
75 Paras 59 8s 67 – 72.
76 Par 59.
In order for any state to claim and attribute its failure to meet at least its minimum core obligations to a lack of available resources, it must demonstrate that every effort has been made to use all resources that are at its disposal in an effort to satisfy as a matter of priority these minimum core obligations.77

3.2.4 The Law on Social Security and Pension in Uganda
As already mentioned, Uganda operates a public pension scheme, the NSSF for the private sector and purely private schemes not underpinned by any law. These two schemes will be analysed separately.

(a) The Public Service Pension Scheme (PSPS)
The Public Service Pension Scheme run by the Ministry of Public Service covers a number of public servants and excludes others. The Pensions Act78 covers public servants of central and local governments. S.9 in particular provides that “…every officer employed in the public service who has qualified for a pension shall be entitled to it.” The minimum qualifying age is 45, having worked for at least 10 years,79 or compulsory retirement at the age of 60.80 Provision has now also been made for pension and gratuities for the army,81 the Police82 and Prison officers.83

All the pension and gratuity schemes for central government public officers, some local government staff, the teachers, army, police and prisons are managed and operated by the Ministry of Public Service. However, due to decentralization, all the personnel that have been recruited by District Service Commissions are a responsibility of those districts. Under the Constitution “the terms and conditions of local government staff shall conform with those prescribed by the Public Service Commission for the public service generally.” 84

As of 2007, Uganda’s working population was estimated at 11 million people. Out of these, the PSPS covers only 2.8% while the NSSF covers only 2.3%.85 In short, both the PSPS and NSSF cover only 5.1% of the entire working population. About 95% of Uganda’s population is therefore not covered by the formal social security schemes. This is so even when one takes into account the private arrangements outside the NSSF scheme. Even if one stretched the coverage to include these private schemes, formal social security cannot go beyond 7% of the population.

77 Par 60.
78 Cap 281.
79 SS. 10(2)
80 S.12(l).
81 UPDF Act.
82 Police Act, Cap 303.
83 Prisons Act, Cap 304.
84 Article 200 (2).
85 ROU, 2007, at l.
In addition to the PSPS, members and staff of parliament are now provided with pension and gratuity under the Parliamentary Pensions Act 2007.86 The scheme covers all members of Parliament whether elected or ex-officio except the Prime Minister and Vice–President.87 What is interesting is that both current and former 7th Parliament Members of Parliament are members.88 The membership of the 7th Parliament (2001 - 2006) was made retrospectively. Contribution by MPs is 15% of their pensionable emoluments while government contributes 30% monthly.89 In addition, the government has to guarantee the solvency of the scheme (Parliamentary Pension Scheme) “…for any payment that may be required under it” in the short and medium term.90

The public service pension scheme has a number of shortcomings that render it unsatisfactory. First of all, it excludes a number of public servants such as support staff in local governments, commissioners of various commissions under the Constitution, Resident District Commissioners, and employees of intelligence services. Secondly, it is non-contributory and relies on monies from the Consolidated Fund. As a result, pensions have been in arrears beyond Shs. 300 billion (by 2007).91 Thirdly, the scheme has a limited range of products/benefits. It does not cover health, education, insurance or invalidity benefits.92 In addition, the scheme has no mid-term or work life benefits. One must wait till old age to qualify unless retrenched or going for voluntary early retirement.93 Above all, accessibility to the benefits is difficult with many bureaucratic hurdles. As such, although most public servants are entitled to pension, it is not conceived and managed in a manner that meets the internationally acceptable standards of a good social security system as enumerated above.

(b) The National Social Security Fund (NSSF)

NSSF was established in 1985 by the National Social Security Fund Act.94 (Compulsory membership is for all employees in any firm, establishment or workplace that has 5 (five) or more employees.95 And equally, any employer with five or more employees must register as a contributing employer. NSSF has about 300,000 members out of a working population of 11 million people.96 Thus, even most eligible employees and employers are not registered with NSSF. The NSSF provides only five benefits:

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87 S.5(1).
88 S.5(3).
89 S.6 (1) 8s (2).
90 S.21.
93 Id, at 31.
94 No. 8/1985 (now Cap 222).
95 See National Social Security Fund (Registration of Employers and Employee) Order S.I 222-1.
96 See ROU, 2007, at 1.
(i) **Age benefit** - attaining 55 years or 50 years and retiring from regular employment;

(ii) **Withdrawal benefit** - attaining 50 years and not being employed for a period of at least one year;\(^97\)

(iii) **Invalidity benefit** - as a result of physical or mental disability of a permanent nature rendering the worker incapable of earning a reasonable livelihood;\(^98\)

(iv) **Emigration grant** - for employees migrating permanently from Uganda;\(^99\) and

(v) **Survivors’ benefit** - for dependent relatives and family members of a deceased employee that was a member of the fund.\(^100\)

The NSSF makes lump sum payments at old age or in any of the above situations. Workers contribute 5% and employers 10% of monthly emoluments.\(^101\)

There are several conceptual and practical problems with the NSSF scheme. In the first instance, the lump sum payment may run out quickly and the beneficiary slides into destitution. This tends to defeat the purpose for which social protection arrangements are normally intended, ensuring income security in old age.\(^102\) Secondly, the benefits available are too limited. Well known risks and social needs like sickness, unemployment and problems such as HIV/AIDS were not anticipated and thus not cared for. Thirdly, the scheme deals with employees working for employers with 5 or more workers. This leaves out many firms and workplaces which are the majority in the country.

Finally, there is excessive government control. For instance, no investment can be made by the Fund before consulting the Minister.\(^103\)

The Minister also determines the rate of interest on contributors’ accounts.\(^104\) Declared interest rates have been too low since 1985. It is only recently (July 2008) that the Fund declared it would now grant interest at 14% per annum.\(^105\)

As the fund continued to grow from a few billion shillings to now over a trillion shillings, misuse and mismanagement have increased. In practical terms, both management and

\(^97\) Section 21.
\(^98\) S.22.
\(^99\) Section 23.
\(^100\) S.24.
\(^101\) Ss. 11 & 12.
\(^102\) ROU, 2003, at 34.
\(^103\) Ss. 28 – 34.
\(^104\) S.35.
government have abused the Fund, misusing and/or misappropriating workers’ savings. There have been many dubious and questionable investments and the management and administrative costs of the Fund are unacceptably high. The removal of the Fund’s mandate from the Ministry of Gender, Labour and Social Development to that of Finance has irked both employers and employee members as it is suspected that government would like to use the money for political purposes or patronage.

For instance, in early 2008 the Fund bought land from Minister Amama–Mbabazi (who is also the Secretary–General of the ruling NRM) at an inflated price with political assistance and/or the patronage of Ezra Suruma (Minister of Finance), yet both benefited from the sale as they invested the money in their private Bank, National Bank of Commerce. The Parliamentary Committee on State Enterprises, Commissions and Authorities probed the matter and issued a report. However, the Speaker of Parliament refused debate on the report, arguing that it should be handled by the IGG under the Leadership Code Act. The NRM is also reported as planning to borrow money from NSSF to build a party house. URA has also borrowed billions of shillings from the Fund. Many projects (like the computerisation of NSSF records) have been shoddy and management also continues to mismanage the fund and incur heavy administrative costs. Trade Unions and workers of all shades of political opinion are opposed to this misuse of their savings by the regime. At the end of the day, neither the PSPS nor the NSSF adhere to the internationally recommended principles especially on availability, adequacy, coverage and actual accessibility.

(c) Private Social Protection Schemes
There are a number of private non-statutory social protection schemes managed by insurers and some large companies. These include private pension schemes, health insurance and education insurance. Among the existing schemes are those at Makerere University, Makerere University Academic Staff Association, British American Tobacco Staff Pension Scheme, Stanbic Bank Staff Pension Fund and Bank of Uganda Staff Pension Scheme. These schemes are also problematic because they are unregulated. There are no minimum standards governing eligibility and conditions. More interestingly, the schemes usually operate side by side with the statutory NSSF arrangements. They therefore cover “… individuals whose incomes and standard of living allow them to afford additional contributions for supplementary benefits over and above what is being provided under the basic mandatory arrangement. In a number of organizations, they are provided to senior staff only”.

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107 For instance the Fund itself acknowledges that in 2004 administrative costs were 46% of contributions in that year while in 2005 the costs were 16% of the contributions. See NSSF Website http://www.nssfug.org

108 This is for Makerere University academic staff.

IV. THE PROPOSED REFORMS OF SOCIAL SECURITY SCHEMES IN UGANDA

4.1 The STG Recommendations

The STG which was set up in 2002 and studied the social security and social protection situation in Uganda made a number of recommendations intended to deal with the shortcomings in the entire system. If implemented, those recommendations will go a long way in making the social security and social protection system available to many if not most, adequate in terms of benefits, available and accessible. They include the following:

1. A review of existing legislation to provide constitutional protection of social security and pension rights to all Ugandans regardless of where they are employed and consolidating all pieces of legislation on retirement schemes/social security institutions and pensions into a single social protection law;

2. Establishment of a competent and independent regulator for the entire social protection sector to register, licence, set standards and enforce the law;

3. Make social protection contribution mandatory for all persons in a formal employer–employee relationship and the self–employed; in other words for all working people.

4. All social security and pension arrangements should be funded. In other words, the PSPS should no longer be funded from the Consolidated Fund but all public service employees would make contributions as well as government as employer on a monthly basis;

5. A three-tier system be set up constituting:
   a) First tier for social assistance;
   b) Second tier for basic mandatory benefits; and
   c) Third tier - consisting of additional mandatory and voluntary benefits

The basic mandatory benefits should include: age, survivors, invalidity, major medical and maternity, mid-term access for unemployment, self-education and home ownership, and burial. Additional mandatory benefits would include child education and injury at work, while the voluntary benefits would include; additional age benefits, basic health care, home-ownership, self-education and any other benefit approved by the regulator. Social assistance would be considered a basic mandatory benefit to be administered by National Providers only but to be funded exclusively by the State. Social assistance should also include a minimum pension whenever it is implemented.
6. Have a mandatory contribution for persons in formal employment of 20% split equally between employer and employee.

7. Make provision for mid-term benefits up to 30% of the contributors’ fund. The contributor should have made contributions for at least 120 months (10 years) and the benefit should be used only for: self or child’s education, short-term unemployment, acquisition or erection of own residence.

8. The basic age benefit should be both a lump sum (on qualification) and an annuity (or periodic/monthly pension).

9. There should be a regular indexation of benefits, to maintain the value of the benefits vis-a-vis inflation-or other circumstances that may erode their value.

10. The regulatory body should provide for comprehensive and clear investment guidelines.

11. The NSSF should not be privatized but reformed to make it market responsive, become a pension provider (rather than the current provident fund) and comply with all requirements as presented in a new all-embracing legal framework.

12. Minimum standards be set for In-House Schemes

13. Extend social protection coverage to the informal sector on the basis of mutuality being voluntary in character, with no minimum contribution. The arrangements should be demand-led, tailor-made products and incentives should be introduced to attract informal sector workers, including tax incentives.

14. Finally, as an administrative measure, a National Social Security Number system should be introduced to all adult Ugandan citizens or residents which should be a basis for contribution to the social security schemes (including informal ones) as well as access to the benefits.

### 4.2 The Developments So Far

Since 2003, there have been a number of developments regarding attempts to implement the STG recommendations. First, as a negative and controversial development, the NSSF Board was disbanded over allegations of corruption and the former Minister Zoe Bakoko Bakoru fled to the USA where she is still a fugitive. Second, the Fund was transferred from the Ministry responsible for labour to that of Finance, and recent (2008) developments show that even more mismanagement, abuse of the Fund and use for political patronage may be afoot. Third, workers and employers’ representatives
have not been nominated to the Fund and non-stakeholders continue to be fully in control together with government (a non-contributor) to the chagrin of both workers and employers.

Fourth, government undertook to use the period between 2007 and 2009 to clear all the pension arrears, starting with the 2007/8 Budget and continued with the 2008/9 Budget.\textsuperscript{112} In February 2008, a Pension Regulatory Framework was approved by Cabinet and Pensions Regulatory Authority Bill 2008 is being drafted.\textsuperscript{113} It had been expected that by the end of 2008 a Regulatory Authority would be in place. Equally, the Ministry of Public Service has drafted a Policy Paper to convert the present non-contributory pensions system to a contributory scheme.\textsuperscript{114} At the end of 2007, the Minister of Finance in a Cabinet Paper had proposed reform of social security with a view to:

\begin{itemize}
  \item[a)] Providing adequate social security for all Ugandan workers in both the formal and informal sectors to include pension, medical insurance, disability and death/dependants’ benefits;
  \item[b)] Precipitating a significantly increased national savings rate that would support Uganda’s economic independence and bolster investment, long-term growth and transformation of the economy;
  \item[c)] Consolidating all existing mandatory public savings schemes into a single, effective, well-managed, well-supervised national savings vehicle; and
  \item[d)] Putting in place adequate, appropriate and relevant legislation (a regulator and regulatory framework) covering all areas of savings and investment management sub-section of Uganda’s financial sector.\textsuperscript{115}
\end{itemize}

It is therefore hoped that within two years the framework for transforming Uganda’s pathetic social protection system which excludes 95% of the population will be in place and that a process of social inclusion will have began.

\textsuperscript{112} See Republic of Uganda, 2007(a), at 85.
\textsuperscript{113} ROU, 2008, at 10-11.
\textsuperscript{114} Id., 11.
\textsuperscript{115} The Republic of Uganda 2007
V. CONCLUSION

A number of conclusions may be drawn from the above survey of the state of social security and social protection in Uganda. In a formal sense, Social Security is limited to only about 5% of the working population of about 11 million. Thus, only between 550,000 to about 700,000 working people are covered by the Public Service Pension Scheme (PSPS), the NSSF and in-house voluntary schemes. Social protection more broadly conceived covers more people but this is not possible in an unplanned, chaotic and uneven manner that has no regard for social protection, even at the minimum, for all citizens and residents. Some level of social provision exists in that basic education, water, shelter and clothing are available to the majority of the population. But the quality of all these social goods is suspect particularly of Universal Primary Education (UPE). On the other hand, most of the other social goods like housing, water and clothing are only available at the initiative of private citizens and not with assistance from the state.

The majority of the population is self-employed, in agriculture, is illiterate, unskilled, poor and rural. Existing social security schemes totally exclude them. This means that even with the best attempts to reform the sector with the STG recommendations, the whole problematique of underdevelopment must be addressed. A very poor country cannot provide good social security for all its citizens. The proposed reforms can only more appropriately address the social security of those in formal employment. Those in the rural areas, self-employed, unpaid family labour and the so-called informal sector will still be problematic. What needs to be done therefore should involve a multifaceted approach to the problem of social exclusion. The whole issue of ensuring economic growth and development in a democratic and pro-people political framework remains basic. The development agenda therefore must be addressed together with whatever immediate, medium term and long term reforms of the social security system in the country are being contemplated or effected. Social security and social protection cannot be isolated from the level of development of the country and the character of its political system.
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