Advancing Social Protection in Uganda

An Examination of the Uganda Retirement Benefits Sector Legal Regime, Challenges and Opportunities

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I. Introduction

Uganda has four main retirement benefits schemes. These include; the armed forces pension scheme, public service pension scheme, the national social security scheme and the parliamentary pension scheme. Of these, the armed forces pension scheme is the oldest having been introduced in 1939 for the benefit of the former World War II fighters. The scheme has since been transformed to benefit officers and men of the Uganda Peoples Defence Forces (UPDF). The public service pension scheme on the other hand was set up to benefit public servants such as police and prison officers, teachers and nurses. The Parliament pension fund was more recently established for the benefit of members of parliament.[1] Under all these three schemes i.e. the armed forces scheme, public service pension scheme and the parliament pension fund, a beneficiary receives what is referred to as a defined benefit which comprises of gratuity and a life pension.

The National Social Security Fund (NSSF) on the other hand was established by law in 1985. Under the law, workers and employers are required to contribute a percentage of the salary to the fund. Presently workers contribute 5% while employers contribute 10% making a total contribution of 15%. On retirement or in the circumstances that the worker is incapacitated, he/she receives a lump sum payment from the fund.

In addition to these four main retirement benefit schemes, there are a number of other informal schemes set up to benefit workers on retirement. Some of these include the National Agricultural Research Organisation (NARO) provident fund and the Makerere University Retirement Benefits Scheme (MURBS). It should be noted that for long such schemes were unregulated creating serious risks for contributors. This is however beginning to be resolved following the passing of the Uganda Retirement Benefits Regulatory Authority Act which puts in a place a regulatory body.[2] Under the law, all existing schemes are required to register and to comply with all requirements set by the regulator.[3]

[1] The Parliamentary Pensions Act No. 6 of 2007.
[2] Uganda Retirement Benefits Regulatory Authority Act, 2011.
[3] Section 96 of the Act.

II. Existing Gaps in the Retirement Benefits Sector

Notwithstanding the existence of several schemes as enumerated above, there are a number of glaring loopholes in the current retirement benefits sector.

First and foremost, a significant number of workers are not covered under any form of recognised retirement benefits schemes. As of 2010, Uganda's total work force was estimated to be 15.2 million.[4] The greatest number of these workers (12.7 million) is employed in the informal sector while the formal sector employs just about 2.5 million people. This means that the greatest part of the workforce (about 12.7million) is expressly excluded when it comes to provision of social security in form of old age replacement income since almost all schemes concentrate entirely on the formal sector.

Even then, a significant part of those employed in the formal sector is not covered either. Of the 2.5 million workers in the formal sector, only 725,000 are covered.[5] This is partly because most workplaces employ less than five persons and are not mandated to make contributions to the NSSF under the law. Secondly there is no strong enforcement mechanism to compel qualifying workplaces to remit workers savings to the NSSF as required by law. This exposes such workers to old age vulnerability and is a blatant violation of their right to social security guaranteed under international human rights law as well as the international labour conventions to which Uganda is a party.[6] Further, it is a manifestation of the state's failure to ensure that Ugandan employees receive pensions and retirements benefits as required by the Constitution.[7]

In addition to limited coverage explained above, the current retirement benefits sector faces a serious governance crisis. Corruption in both the public service pension scheme and the private NSSF continues to manifest in various ways. For example, most recently over UGX 165 Billion pension funds meant for former workers of the East African Community was lost in the hands of unscrupulous officials in the Ministry of Public Service. Initial steps to have the suspects tried and convicted were frustrated by alleged lack of evidence and although parliament has taken interest in the matter, no bold steps have been taken to reinstate criminal proceedings against the suspects. The NSSF has also been hit by a number of corruption scandals in the past such as those surrounding the Temangalo and Nsimbe land purchases. All

[4] Uganda National House Hold Survey, 2010.

[5] Rachel Kaggwa Sebudde, *Reducing Old Age and Economic Vulnerabilities, Why Uganda Should Improve its Pension System*, *Uganda Economic Update*, World Bank Group, June 2014. pp. 30 and 31

[6] Articles 22 and 25 (1) of the Universal Declaration of Human Rights (UDHR). See also Article 9, International Covenant on Economic, Social and Cultural Rights and General Comment No. 19, UN Committee on Economic, Social and Cultural Rights (CESCR).

[7] National Objective and Directive Principle of State Policy No. XIV

these point towards a lack of transparency and total breakdown of governance which if not fixed poses a serious risk to workers savings.

The other concern with the current arrangement especially in regard to the armed forces pension scheme and public service pension scheme is the issue of sustainability. As already indicated earlier, these schemes guarantee workers a defined benefit. As opposed to the arrangement under the NSSF where workers and employers are expected to contribute 5% and 10% of gross salary to the fund respectively, under the two schemes workers are not obliged to make any contribution but rather receive gratuity and a life pension upon retirement. These are directly funded under the national budget and depend on collections from tax payers and other funds generated from donors and development partners. Presently, pension payments are estimated to take up 0.4% of the country's GDP and the country needs approximately 2.6 trillion shillings to pay current pensioners till death. This is bound to increase with improvements in the health sector and life expectancy.

III. Recent Reforms in the Retirement Benefits Sector- Establishment & Role of URBRA

In a bid to reform Uganda's retirement benefits sector, Parliament passed the Retirement Benefits Regulatory Authority Act in 2011.[8] The law introduces a number of reforms but the most significant of these is the establishment of the Uganda Retirement Benefits Regulatory Authority (URBRA).[9] Under the law, URBRA is granted a semi-autonomous status and is not subject to the direction or control of any person or authority.[10]

In terms of governance, URBRA is governed by a Board of directors drawn from both government and the public. Those from government include; permanent secretaries in the Ministries of finance, labour and public service. In addition to this, the responsible minister is required to appoint four other members knowledgeable in the areas of administration of retirement benefit schemes, banking, insurance, finance law and accounting taking into consideration the level of skills, experience and gender.[11] The Chief Executive Officer of URBRA also seats on the Board of Directors and is in charge of the day to day operations of the Authority.[12]

[8] Uganda Retirement Benefits Authority Act, 2011.
[9] Long Title to the Act.
[10] Section 7 of the Act.
[11] Sections 8(1) and 8(5)
[12] Section 17 of the Act.

URBRA's major role is to improve supervision and regulation in the establishment and operation of retirement benefits schemes and to better protect the interests of members and beneficiaries of such schemes.[13] In order to achieve this broad role, URBRA is tasked with the responsibility to; license all retirement benefits schemes in the country; license custodians, trustees, administrators and fund managers; approve auditors and actuaries of all schemes; promote transparency in the interests of scheme members and to promote public awareness of the retirement benefits sector.[14]

The activities of URBRA are to be funded from monies appropriated by parliament to the authority, license fees, grants from government and other sources as well as any other fees levied by the authority.[15] Importantly, all these monies are required to be deposited into the created Uganda Retirement Benefits Authority Fund for purposes of defraying expenses of the Authority.[16]

In addition to the establishment of URBRA as a regulatory authority, the other major reform in the law is the introduction of an appeals mechanism in respect of disputes that may arise in the sector. Under the law, any person aggrieved by the decision of the administrator, trustee, fund manager and custodian of any scheme may appeal to the authority for review.[17] If such person is dissatisfied by the decision of the Authority, he/she may appeal to the Retirement Benefits Appeals Tribunal.[18] Appeals from decisions of the Tribunal may be lodged before the High Court.[19]

It should be noted that under the National Social Security Fund Act, a tribunal similar to the one above could only be appointed on an adhoc basis. The retirement benefits appeals tribunal on the other hand is a permanent dispute resolution structure and is expected to conclude retirement benefits disputes more expeditiously by reducing on the bureaucracy involved in appointment of a similar tribunal whenever there is a dispute as is the case under the NSSF Act.

[13] Section 4 of the Act.
[14] Section 5 of the Act.
[15] Section 19 of the Act.
[16] Section 20 of the Act.
[17] Section 82 of the Act.
[18] Section 83 of the Act.
[19] Section 85 of the Act.

IV. An Overview of the Proposed Liberalisation Bill

It should be noted that the enactment of the Uganda Retirement Benefits Regulatory Authority Act marked the beginning of the controversial journey towards liberalisation of the retirement benefits sector. The law puts in place the legal infrastructure necessary for operation of private retirement benefit schemes outside the traditional public service pension scheme and the National Social Security Fund (NSSF).

The proposed Retirement Benefits Sector Liberalisation Bill 2011 contains even more comprehensive proposals for liberalisation of the retirement benefits sector. The objectives of the Bill are to among others provide for; liberalisation of the retirement benefits sector; fair competition among licenced retirement benefits schemes and mandatory contribution and benefits.[20] It is also the objective of the Bill to establish umbrella schemes, voluntary schemes and contributions and to facilitate the innovation of new retirement products and services.[21] Finally, the Bill seeks to repeal the National Social Security Fund Act cap.222.

From the listed objectives the overriding objective of the Bill appears to be the liberalisation of the retirement benefits sector and ending the monopoly of the National Social Security Fund to receive mandatory contributions. This has a number of implications as explained below many of which do not favour workers. A close scrutiny of the Bill also raises a number of serious concerns that are equally examine.

a) Definition of Accrued benefits

Under the Bill, accrued benefits are defined to mean the amount of each scheme member's beneficial interest in the scheme including contributions made in respect of the member and all income and profits that arise from the investments of the scheme less any losses incurred by the scheme as well as any previous distributions.

Under this provision, the member's benefit which is essentially what he or she is entitled to on retirement is subject to losses made by the scheme. It should be noted that under provisions of the National Social Security Fund Act, a fund member is entitled to benefit from all contributions and interest on such contributions.[22] Any losses incurred are borne by the NSSF and not the fund member as is proposed under the Liberalisation Bill.

[20] Long Title, Retirement Benefits Sector Liberalisation Bill, 2011.
[21] Ibid.
[22] Section 34, National Social Security Fund Act, cap. 222

The inclusion of losses in the definition of accrued benefits is problematic to the extent that it presents a huge moral hazard for fund managers who in their quest for profit are bound to engage in very risky ventures with full confidence that in the event of any losses these will be borne by the workers and not shareholders to whom they are accountable to. Huge losses as have been commonly reported in this sector can easily wipe out the entire workers savings if they are offset from the accrued benefit as is proposed under the Liberalisation Bill.

b) Liberalisation of the Retirement Benefits Sector

Part II of the Bill is dedicated to opening up the retirement benefits sector to private players. Under that part, every retirement benefits scheme licenced to receive mandatory contributions may compete for such contributions in the open market.[23] The licence is subject to compliance with stated minimum requirements which include a minimum deposit, submission of a trust deed and governance structure, possession of valid insurance cover, compliance and business plans.

Under the current law as contained in the National Social Security Fund Act, mandatory contributions are the monopoly of the NSSF a state corporation under direct supervision of the Minister of finance and a Board of Directors appointed by the Minister. The state is therefore directly involved in management of the fund.

On the other hand once the Liberalisation Bill is passed into law, there will no longer be any room for state involvement in the sector save through regulation. It should be noted that as opposed to mere regulation, direct state involvement in a sector like the retirement befits sector has several benefits. As is the case today, beyond internal oversight, the NSSF is subject to scrutiny by different government institutions that include Parliament, the Inspectorate of Government (IGG) and the Auditor General (AG) among others. All this oversight will be lost once the sector is liberalised.

Secondly, as emphasized above social security which includes provision of retirement benefits is a fundamental human right whose enforcement majorly falls on the state. Most importantly, social security is an issue of national pride and concern which if not well handled poses a huge threat to national security. This calls for more involvement of the state as opposed to mere regulation which is by far inadequate in protecting such national interests. Indeed lessons from other sectors that have been liberalised such as the banking sector prove that regulation however strong is ineffective is safeguarding national interests. A state scheme such as the

[23] Clause 3 of the Bill

NSSF is therefore the most effective way of guaranteeing such interests as opposed to liberalisation and regulation.

Thirdly notwithstanding the challenges currently faced by the NSSF such as corruption, for the last 48 years that it has been in place the fund has enjoyed numerous successes. First and foremost for the 48 years the NSSF has been in position to provide benefits to workers who qualify and there has not been a case where the government has had to bail the fund out. In fact for every other year, in addition to a members accrued benefit the fund guarantees a minimum of 2.5% annual interest for each member. This is a legal requirement under the NSSF Act and no similar provision is contained under the proposed Liberalisation Bill. This means that once the law takes effect, retirement benefit schemes have the discretion on whether or not to pay interest to their members.

NSSF is also the largest local investor in the Ugandan economy and has the biggest capital pool from which the government can borrow cheaply to finance public projects such as infrastructure and provision of basic social services.

The successes of the NSSF are largely attributable to the huge economies of scale that the fund enjoys. It follows that once the sector is liberalised the fund will not be in position to realise this benefit and instead contributions will be spread among several players whose primary interest is maximising shareholder value. In the circumstances, it is extremely unwise to trade off the successes that the NSSF has enjoyed over the years in pursuit for better returns on investment that may never be realised as has been the case in majority of countries where the retirement benefits sector has been liberalised.

In this regard, it is recommended that stronger efforts should be placed in the reform of the National Social Security Fund to among others strengthen governance and improve on transparency and accountability rather than have it dismantled through liberalisation of the sector.

c) Inadequate Protection for ordinary workers.

A number of proposals contained in the Bill assume that Uganda has a very sophisticated and highly knowledgeable workforce and in so doing fall short of protecting the ordinary Ugandan worker who is most vulnerable on retirement. The Bill provides workers with a number of choices that seem easy on the outlook but have huge implications in the long run. As an example, under the Bill the choice of retirement benefits scheme lies with the employee.[24] He/she can select a scheme from those licenced by URBRA. As a second example, once a

[24] Clause 9

member of any retirement benefits scheme, the employee can transfer his/her benefits from one scheme to another licenced scheme in Uganda or the East African Community.[25]

The assumption here is that every employee is in the best position to make a meaningful decision that they will not regret in the future. It is expected for example that any worker has the competence to determine whether a scheme is licenced or not and if licenced that it is fully compliant. Again experiences from the banking sector are instructive in this regard. Following liberalisation of the sector a number of customers have fallen prey of unlicensed deposit taking institutions notwithstanding Bank of Uganda (BOU) oversight.

The retirement benefits sector is even more sophisticated and in the absence of strong oversight and timely and accurate information the worker is exposed to manipulation at the hands of vendors whose supreme interest is profit. The proposed law not only uses very technical terms but also lacks sufficient guarantees for protection of the ordinary Ugandan worker who is now expected to look out for themselves in absence of scrutiny from other government institutions such as parliament, the IGG and the office of the AG.

d) Mid-term access of benefits

Under the Bill, a member who has contributed to a scheme for at least ten years is eligible for mid-term access of benefits for the purpose of securing a mortgage or a loan for acquiring a residential house from any institution.[26] A member may also access a midterm benefit upon attaining 45 years of age provided that he/she has made contributions for at least ten years. In all cases, midterm access should not exceed 30% of the available accrued benefits.

Much as this may look attractive to workers on the face of it, it defeats the whole essence of saving for retirement. The purpose of retirement benefits is to provide a replacement income to workers upon retirement. Midterm access to benefits eats into the workers savings prematurely and makes it difficult to achieve this objective. It is proposed that a midterm access benefit should only be paid out of voluntary contributions and not mandatory contributions as is proposed in the Bill.

[25] Clause 11
[26] Clause 22

e) Uncertain future for the National Social Security Fund (NSSF)

The Bill also seeks to repeal the National Social Security Act cap.222 upon which the fund shall cease to be a statutory corporation but will instead take the shape of an irrevocable trust i.e. the National Social Security Fund Retirement Benefits Scheme.[27] All accumulated funds are to be vested into this new scheme for a period of five years before it can be transferred to any other scheme of the employee's choice.[28]

Secondly, existing members are required to maintain mandatory contributions of 5% to the National Social Security Fund retirement benefits scheme and 10% to a retirement benefits scheme of the employee's choice.[29]

Thirdly, it's only upon the expiry of five years that an existing member of the NSSF retirement benefits scheme can transfer all accrued benefits to any other licenced retirement benefits scheme of their choice.

These provisions raise a number of concerns. First it is implied under the Bill that the NSSF will remain in effective operation on more or less the same terms as it is currently operating for a period of five years. The challenge is that upon coming into force of the Bill, much of the NSSF Act cap 222 will be repealed. It is not clear how NSSF will operate in absence of a comprehensive legal framework once the NSSF Act is repealed.

Secondly, while the law grants existing members the option of transferring their accrued benefits to a scheme of their choice, it is not very clear on whether such members can instead choose to maintain their contributions with the National Social Security Fund retirement benefits scheme.

The proposed Bill should therefore provide further clear guidance on the future of the National Social Security Fund and clarify on how best the NSSF should be governed during the five year transition in the event that Parliament votes to enact the Bill into law.

f) Some Positive Elements in the Bill

Notwithstanding the gaps above, the Bill has some positive elements. First, the Bill expands on the breadth of tax exemptions in regard to retirement benefits and contributions. The proposed law suggests an income tax exemption on all mandatory contributions. In addition to this, voluntary contributions of up to 30% of wages made by members in both the formal and informal sectors are exempted from income tax.

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[27] Clause 48

[28] Clause 49

[29] Clause 50

It should be recalled that under the National Social Security Fund Act, income tax exemptions are restricted to benefits.[30]

The exemption of all mandatory contributions and in the case of voluntary contributions up to 30% of wages is laudable. The move will greatly encourage workers to make voluntary savings and at the same time improve welfare as workers will be left with more disposable income after the exemption.

The Bill also makes it mandatory for every employee in the formal sector to register with a licenced retirement benefits scheme of their choice and to make regular contributions to such a scheme.[31] This is a departure from the current law which only restricts mandatory contributions to persons in workplaces with a minimum of five employees. The proposal for every employee to make mandatory contributions is welcome to the extent that it will increase coverage at least in the formal sector. As noted earlier, of the 2.5 million people employed in the formal sector, only 725,000 are covered under any form of recognised scheme.

V. Conclusion & Recommendations

The Uganda retirement benefits sector reform is long overdue. Despite constitutional guarantees of a pension or retirement benefit for every Ugandan worker, a significant portion of workers in both the formal and informal sectors are not covered under any recognised retirement benefits scheme exposing them to old age vulnerabilities. This is breach of the state's obligation to guarantee social security for its citizens under international human rights law and international labour conventions to which Uganda subscribes.

Currently there are two major retirement benefit schemes i.e. public service pension scheme and the National Social Security Fund. These are faced with challenges of corruption and poor governance that has resulted into loss of workers savings. In addition to this, the public service pension scheme is rather unstainable considering that it is fully funded by the government under the national budget. On the other hand the NSSF restricts coverage to only those work places with five employees and above which effectively locks out a significant number of workers.

In a bid to fix these challenges, the government of Uganda embarked on a campaign to reform the sector in the 1990's. These efforts only came to bear fruit in the year 2011 with the enactment of the Uganda Retirement Benefits Sector Regulatory Authority Act. The law establishes the Uganda Retirements Benefits Authority (URBRA) whose mandate is to regulate the retirement benefits sector. This is an important step considering that for long a number of

[30] Section 38 of the NSSF Act.
[31] Clause 9 of the Bill.

retirement benefits schemes especially those established informally by employees at their workplaces were unregulated.

Importantly, the 2011 Act sets in motion the process of full scale liberalisation of the retirement benefits sector. Under the law, the Authority is vested with the mandate to among others licence retirement benefits schemes.

The proposed Retirement Benefits Sector Liberalisation Bill seeks to open up the sector to private players even more widely. In permitting licenced retirement benefits schemes to compete for mandatory contributions from employees, the Bill aims at breaking the monopoly of the NSSF which to date is the only body authorised to collect such contributions. The Bill also offers employees more choices to the extent that they can register with any licenced scheme. In addition it introduces midterm access to benefits by employees who meet certain requirements. In effect, the proposed law seeks to complete the process of liberalisation in the retirement benefits sector.

It is emphasized that notwithstanding the fact that the current retirement benefits sector faces a deep governance crisis, liberalisation can never be a panacea out of the crisis. The right to receive benefits on retirement is a fundamental right and an issue of national security and concern and cannot be left entirely to private actors. Experience from countries that have in the past attempted to liberalise their sectors shows that workers savings are at more risk with the private sector whose central motivation is profit rather than the wellbeing of citizens.

Liberalisation where it has been undertaken has among others led to reduced coverage and in many cases has resulted into workers savings being wiped out as a result of the high administrative costs involved. Secondly, private players place increasing shareholder value above workers interests and as a result engage in more risky ventures for profit which in most of these countries has led to workers losing their savings or a significant part thereof. Uganda does not need to look far for these lessons. In neighbouring Kenya the sector has been renationalised soon after liberalisation due to the challenges posed by private players as outlined. Renationalisation of the retirement benefits sector has also been undertaken in Latin America, Eastern and Central Europe. In light of this, the paper makes the following recommendations;

- The National Social Security Fund (NSSF) should retain its monopoly over collection of mandatory contributions. Private schemes should only be able to compete for employees voluntary contributions.

- The proposed Retirement Benefits Sector Liberalisation Bill should altogether be restricted to voluntary contribution schemes and the NSSF Act reviewed to incorporate modern governance standards.

- The National Social Security Fund (NSSF) should be overhauled to improve on governance and reduce opportunities for corruption instead of being decimated. A more stronger and competent board should be put in place to improve on decision making and oversight.

- Mandatory contributions should be solicited from all employers in the formal and informal sectors and the current threshold of five employees done away with.

- Mid-term access to benefits should be restricted to voluntary contributions and not mandatory contributions as this poses the risk of depleting workers savings and hence defeating the whole purpose of saving for retirement.

- The definition of accrued benefits as in under the Bill should be revised and the aspect of losses excluded. Losses are and should be made the responsibility of the retirement benefits scheme and not that of contributors.

- A comprehensive policy on social security should be developed to guide the proposed legal reforms. The policy should specifically speak to retirement benefits as part of the broader intervention in the social security sector.