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SOCIAL PROTECTION AND REGIONAL INTEGRATION: A STUDY OF EXPERIENCES OF UGANDAN RETURNEES IN ACCESSING NSSF BENEFITS ACCRUED WHILE WORKING IN KENYA

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Abstract: *The purpose of this study is to examine the experiences of Ugandan returnee's who have previously worked Kenya in accessing NSSF benefits accrued. The study sought to examine the current social protection laws at the regional level as well as the national level, find out views of elites and determine member state support. Focus was mainly on Ugandan citizens who have previously worked in Kenya and their experiences in accessing NSSF benefits. The study adopted a case study design utilizing the qualitative method that was most suitable and less costly to undertake. Target was Ugandan citizens who had previously worked in Kenya, NSSF officials who helped establish how the remittance of the benefits is conducted, Scholars and Experts on EAC matters as well as social protection. The study drew a sample size of 30 respondents and received feedback from 25 respondents while applying the purposive sampling technique for selecting respondents. Data was collected from both primary and secondary sources, interviews were specifically used since it enabled the researcher to probe for first-hand information. An introductory letter was issued by the University and NACOSTI authorizing research to be carried out. Since the research was motivated by experiences raw data collected from the respondents was qualitatively analyzed. The study found out that, for social protection to be effective within the East African Community (EAC) member states ought to have a collective responsibility to ensure the laws are harmonized at both levels: this includes having national laws that give clear provisions on proper coverage and sufficient funds for members and ultimately having social protection as an entitlement in the EAC which is in line with ILO Convention 102 of 1952. The study found out that Kenya has taken a leading role in matters related to social protection by allowing portability of funds across member states. The findings show that operationalization of this provision has not been possible due to a pending court case. The study noted that NSSF Kenya and Uganda has a lot of similarities, in terms of structure, the weaknesses in terms of coverage, adequacy and efficiency all which contribute to the overall experiences that returnees are faced with. In addition to pushing for necessary legislation that will entrench social protection laws to be applicable for all EAC partner states, Officials at NSSF pointed on the need for governments to review and update the policies that govern these scheme for better coverage and packages for contributors.*

Key words: *Regional Integration, Social Protection, Portability, East African Community, International Labor Organization.*

1.1 Study background

In the twenty first century, Social protection is a fundamental element of any strategic attempt to diminish the occurrence and severity of poverty within states. As such, it correlates to literature in terms of definition, explanation and identification of what it means to be poor and what contributes to sustainable poverty reduction. This can be achieved through reducing and preventing poverty throughout the life cycle by having in place policies and programs designed to reduce vulnerabilities and share wealth among society (United Nations, 2018). The current international development agenda highlights the need to shift focus from economic growth to inclusive growth that emphasizes distribution and ability of vulnerable groups such as the poor to participate in the growth process (Das, 2018). As a result the main rationale for social protection is; it is a human right. For this reason, social protection seeks to help people meet the immediate basic needs in times of catastrophe. This is similar to what the World Bank defines as; social assistance programs or ‘safety nets’ (Gentilini et al.,2014).

The human right aspect of social protection then entails safeguarding and assisting the poor and most vulnerable and this includes: children, women, the elderly and people living with disabilities. Social protection is an integral part of the vision 2030 Agenda for Sustainable Development. The sustainable development goal number 1 also calls on all countries to provide social security to all as a means to end poverty in all its forms everywhere by 2030. This means that States have the responsibility to ensure a minimum standard of social protection and that all individuals hold the right to social protection. In many countries this right to social protection is enshrined in the Constitution (United Nations, 2018).

Social protection can then be understood as a process provided by the state and is envisaged as the ‘state-citizen’ contract whereby they are both bound by rights and responsibilities to each other and most often recognized as: all public and private undertakings which provide wages or utility transfers to the impoverished by protecting the most vulnerable against life-cycle risks and improve the social standing and rights of the less privileged.

Regional integration on the other hand, has continuously become important among International Relations scholars. With this current inclination, many states have to adjust to keep up with the new trend of labor portability and the benefits associated with such (Opiyo, 2014). This means that, countries have to face another demand for the expansion of social protection benefits to cut across the confines of their boundaries and this cannot be successful if governments do not first create social protection policies. Therefore, this study focuses on the need for implementation of a social protection policy that takes into consideration all citizens of EAC member states.

There are continuous discussions about which initiatives and interventions represent social protection and their classifications, since social protection intertwines with numerous interventions. In the global context, the public character of social protection adopted by the UN General Assembly in December 1948 is contained in the Universal Declaration of Human Rights (UDHR) under Article 22 which guarantees; *“Everyone as a member of society, has the right to social security and realization through national effort and international cooperation and in accordance with the organization and resources of each state, of the economic, social and cultural*

rights indispensable for his dignity and the free development of his personality” (UDHR, 1948). The International Labor Organization (ILO) complies with the declaration and concentrates on employment, specifically acceptable work conditions which include the rights of the informally employed and the formally employed. This initiative facilitates a fundamental set of transfer mechanisms and global access to basic social services. It highlights the necessity to execute comprehensive, rational and harmonized social security and employment policies to warrant services and income security beyond the life-cycle while focusing on the vulnerable groups (ILO, 2012).

In the National Context, in Kenya for instance; *“The Constitution of Kenya (2010) contains a comprehensive Bill of Rights. Article 43 guarantees all Kenyans their economic, social and cultural (ESC) rights. It asserts the “right for every person to social security and binds the state to provide appropriate social security to persons who are unable to support themselves and their dependants”. This right is closely linked to other social protection rights, including, the right to healthcare, human dignity, reasonable working conditions and access to justice. Article 21 establishes the progressive realization of social and economic rights and obligates the state to “observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights” (Constitution of Kenya, 2010).*

At the Regional Level, reference is made to The Treaty Establishing the East African Community (2000). Article 120 of the treaty states: *“The Partner States undertake to closely co-operate amongst themselves in the field of social welfare with respect to: (a) employment, poverty alleviation programs and working conditions; (b) vocational training and the eradication of adult illiteracy in the Community; (c) the development and adoption of a common approach towards the disadvantaged and marginalized groups , including children , the youth, the elderly and persons with disabilities through rehabilitation and provision of, among others foster homes, health care education and training” (East African Community Treaty, 2000).*

Further, *“The Vienna Convention on the Law of Treaties under the pacta sunt servanda rule, Article 26 states: Every treaty in force is binding upon the parties to it and must be performed by them in good faith” (Vienna Convention on the Law of Treaties, 1969).* This emphasizes the responsibility that member states have in the scope of integration and the need for policy that spreads across boundaries both in theory and in practice.

1.2 Statement of the problem

Given the complex nature of social development arena, EAC partner states have usually followed differentiated and sometimes conflicting social policies and programs, favoring some social development issues while disfavoring others. Yet, the goal of social development is to pursue a well-being society in all dimensions of the economic, environmental, cultural and social domains of the community. The primary purpose of East African Community social development policy framework is to provide policy structures that align with Africa’s social policy framework with the aim of empowering human and enhancing development (EAC Social Development Policy Framework, 2013). Since returnees come from countries where the legal framework may differ, there is a discrepancy in understanding the functionality of the NSSF Fund. As (Mkandawire, 2004) puts it: *“Ultimately, the issue is not just ‘health policy’ or ‘education policy’ but ‘social policy’ within which these measures are coherently embedded.”*

Although Kenya's legal framework gives provisions that allow EAC member state citizens to access their benefits upon return to their country of origin, the question remains; how effective has the NSSF system been in this context and what the experiences are?

1.3 Study Objectives

To examine and document on EAC member state support towards policies that support Social Protection

1.4 Justification

The purpose of this research is the need for implementation of a social protection policy that takes into consideration interests of all EAC citizens working in other member countries. The study sheds light on the current state of NSSF social protection policy with a specific focus on its operation outside the country. By looking at Kenya's National Social Security Fund (NSSF) operations, it will be easy to identify the current challenges associated with accessing these benefits for EAC citizens who have formerly worked in Kenya. The study finding will contribute to literature that will inform scholars, academicians and researchers. It will give insight to policy makers on the existing challenges if any, and attempt to suggest possible recommendations.

1.5 Conceptual Framework

Independent Variables

<ul style="list-style-type: none"> Existing Policies Harmonization Level
<ul style="list-style-type: none"> Time Taken Value for members
<ul style="list-style-type: none"> Member state support Citizen participation

Dependent Variables

<ul style="list-style-type: none"> Efficiency
<ul style="list-style-type: none"> Effectiveness
<ul style="list-style-type: none"> Mobility

Intervening Variable (Legal Framework)

1.6 Literature Review

Theoretical Framework

This study is grounded on two sets of theoretical perspectives and highlights the main theories in Regional Integration and Social Protection relevant to this study. Literature on social protection was reviewed in an attempt to look at the appropriate measures being taken by East African States to ensure there is a common standard on social protection. The literature also investigates protocols, treaty provisions and policy documents that may give an accurate position on the state

of social protection in the EAC. Finally, a comparison was done at the member state level with the aim of establishing the connections and misconnections.

Liberal Inter-governmentalism

Developed by Stanley Hoffman a critique of Neo-Functionalist theory; Liberal Intergovernmentalism is a state-based theory that argues interstate procedures are subordinate to state forms in their capacity to influence the direction of integration; this means the state is the key actor that leads the integration process. Based on this idea, states tend to be reluctant to give up their sovereignty, as they feel the need to keep strict control of the integration process (Biira, 2017). According to this theory national governments delegate authority to regional bodies, but retain power to control such bodies (Moravcsik, 1998). Like functionalism, Liberal Intergovernmentalism place states as the central focus in integration and recognizes interests that are either domestic or transnational that is aggregated by political processes while taking into account the role of institutions (Weiner & Diez, 2009). This means integration would only go as far as states allow it to go. This theory assumes that states are rational actors that achieve their objectives through negotiations amongst each other and the decision to cooperate depends entirely on their interests (Moravcsik et al., 2015).

According to Moravcsik, commitment of states to an international regime can only be done as far as it strengthens rather than weaken their control over domestic affairs permitting them to attain goals that are unachievable (Moravcsik, 1993). The relevance of this theory to this study is that the EAC integration process is a state led process and member states will deliberate amongst themselves on what forms the norm as it also stipulated in the EAC treaty under Article 120 in the context of Social Protection. As a result, member states will guard their sovereignty and shall commit to decisions that do not limit their ability to control the integration process. Since the state is defined as the most important actor, the responsibility lie on member states to review their laws and align them to what will allow for portability of funds across the region.

Liberal Intergovernmentalist alludes that states in their capacity can delegate power to functional institutions that will be tasked with the mandate of implementing the agreement. (Moravcsik et al., 2015) argues that to make reliable commitments, the state may delegate power where necessary and allow institutions that are created to take decisions on behalf of all member states and safeguard their overall interest.

Implementation Theory

This theory was developed by Sandeep Baliga and is concerned with creating of procedures that allow an organization to actualize its goals in any given environment where the agent's preference is not known. The interpretation of this theory is that it sees an organization as a social planner that comes up with a method of integrating an agent's preference into social choices. The challenge then is to ensure that the outcome is implemented optimally with regard to the true preference. The procedure or mechanism is structured in a way that its equilibrium unveils the basic information that strives to achieve the objectives, in this case the portability of NSSF funds. This is the idea of implementation that I use.

This theory is relevant to this study since it provides an analytical framework for design of institutions. It explains how administrators and service users behave in order for a scheme to

operate adequately. The relevance of this theory to this study was that it played a role in establishing the operational procedures that facilitate portability of funds across member states. Additionally, the theory assisted me to comprehend the operations within the institution and in understanding the challenges that the returnees were facing during the time they were requesting for their benefits (Maskin & Sjöström, 2002). This theory helped in highlighting some of the challenges that the NSSF officials face during the implementation of the policy allowing for the portability of funds. According to this theory, administrators are supposed to ensure that operation procedures are adhered to at all levels highlighting the responsibilities of beneficiaries and officials. This means, the first condition for one to be eligible is that one has to be a contributor.

1.7 Design and Methodology

This research adopted a case study design utilizing the qualitative method. A case study research involves an empirical inquiry through contemporary phenomenon investigation in a real-life situation (Yin, 2014). (Masters et al., 2015) state that the importance of a case study during a research is to provide a more in-depth perception of a given research problem, which may lead to a deeper inquiry hence more reliable results from the study. Case study research enables the researcher to validate existing theories in real world situations and also review reports from past studies (Shuttleworth, 2008). Case study method enabled the researcher analyze data within the specific context of Kenya and Uganda.

Qualitative method of research helped the researcher classify data and establish patterns between categories (McMillan & Schumacher, 1993). This method enabled the researcher to make observations, interview and conduct reviews in order to develop a holistic narrative description of the findings (Creswell, 2013). This method was valuable to the researcher since it helped in analyzing the process by focusing on experiences by returnees and suggesting interventions.

1.8 Findings and Discussions

Research Instrument response rate: This provides insight on the accuracy and quality of data collected. It shows the number of people who completed the survey divided by the total number of people who make up the sample group multiplied by 100 to derive the exact percentages.

Table 1.0: The Response rate

	Frequency	Percentage (%)
Response	25	83%
Non-response	5	17%
	30	100

Source: Primary Data, 2020

This implies that; there was 83% response rate that is above the preferred 70% (Amin, 2005) and this enabled the researcher draw conclusions on the study area.

The study sought to find out the state of social in the EAC by looking at treaty provisions at the regional level and member state constitution's at the national level.

The researcher observed that EAC states acknowledge the importance of Social Protection but ILO Convention No. 102 of 1952 has not been ratified by EAC partner states. This Convention emphasizes on Social Security coverage which is still low in EAC in comparison to the population of over 200 million. The EAC Treaty does not elaborate exclusively on social protection, 'Article 120 (a) of the EAC treaty attempts to shade light by mandating partner states to: 'closely co-operate among themselves in the field of social welfare with respect to: employment, poverty alleviation programs and working conditions.' The expectation in accordance to this article is that member states are expected to deliberate amongst themselves to formulate and harmonize laws or policies in order to attain a vibrant and efficient Social Protection scheme that cuts across EAC borders as the first step.

The study noted that very few respondents had information on treaty provisions but were better informed on what National law provisions on Social Security stipulate.

One respondent stated: *"I am not quite sure what the EAC Treaty says about social protection... but after having worked in both Kenya and Uganda, I can only make an assumption on what the treaty stipulates, though this may not be accurate."*

A second respondent stated: *"I have no idea what the EAC Treaty says in matters Social Protection..."*

A third respondent stated: *"I am aware of the treaty provision; however, I am not sure if anything meaningful will come out of it simply because our countries are just too political and self-centered to the point that even a good initiative will not be able to materialize. I will not be surprised if this initiative is not implemented by partner member states."*

The study found out the International Labor Organization Convention 102 that pertains to social protection which provides the bear minimum for social security (1952) provides: "the right to social security to include, among others, at least, the right to security with respect to:

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 post-natal care and hospital care where necessary; g) Disability benefits; h) Survivors and orphans benefits; and i) Old age benefits."

While making reference to the EAC Treaty that came into force in the year 2000 and national laws of respective countries that pertains to social protection. The researcher observed that member states have a low harmonization level as far as social protection is concerned bearing in mind that EAC member states operate in the same socio-economic context. The expectation was that, member states would have already taken the necessary steps towards having a common standard on social protection but this has not been the case. The study also noted, the common market protocol of 2010 is also silent on the issue of Social Protection.

Coverage

The study found that Social protection coverage within member states is still low as focus is mainly on persons in the formal sector leaving out those who form a bigger percentage in the informal

sector. To have an effective system all citizens should be covered regardless of the sectors they work in with more emphasis on the most vulnerable and disadvantaged. This can only happen if the policies are incorporated into law although the implementation may be gradual. Social security should be recognized as a right in all member state constitutions and the EAC treaty and other related instruments.

Portability

The study found out that there are no mechanisms that allow for portability from one scheme to another within the EAC borders and that the countries that do, have not operationalized it yet. Member states do not have in place guidelines that ensure all social security schemes are transparent, accountable and accessible to all members of the society. There is also no regulating body that enforces the laws to make sure there is credibility, competence and accountability in member countries to ensure efficient operation.

Since focus in this study was the state of social protection between Kenya and Uganda, the researcher reviewed the NSSF Acts of the respective countries with the view to find out the connections and misconceptions. In Kenya, the NSSF Act of 2013 spells out very clearly the responsibility of the state and the NSSF institution as far as portability of funds within EAC is concerned. However, this initiative has not been put to test due to a court case that was filed in 2014 and the matter has not been resolved to date. It might be expected that such cases could be concluded in the shortest time so that the essence of the Act is not compromised and ultimately question the support by the state.

Uganda since in independence 1962 to 1985, it mainly relied on the colonial style of social security. Passed in 1985 the Act was operationalized in 1986 this was as a result of political instability at the time. The 1995 Constitution that was 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. (Article 8A, Inserted in 2005). The relevant provisions in the National Objectives related to social security and social protection are crafted in the following terms: Uganda has the Public Service Pension Scheme (PSPS), the NSSF and private schemes and most recently deliberation on social protection has brought about proposal for social protection pension, the Uganda Retirement Benefits Authority Bill 2010, the Liberalization of the Retirement Benefits (Draft) Bill 2011 and the (Draft) National Health Insurance Bill 2010 has not yet provided for a law on portability but has a very elaborate system that protects the government officials.

Mismanagement

The study found out that there were inconsistencies in the experiences by returnee's. Mismanagement is a common thing among government agencies in East African region. Most of the respondents were not impressed on how NSSF is managed. According to the returnee's majority of the challenges originate from overall management setbacks which has resulted to some of the respondents interviewed forfeiting the benefits. The reason being they had made the application and didn't bother following up on the claim.

1.9 Conclusion

The study shows that Social Protection needs to be recognized as a right by all member states, the

EAC treaty, Common Market Protocol and all instruments. Social Protection plays a critical role towards addressing poverty among member states within the EAC. To achieve this, it is necessary for member states to agree on a road map towards having a common standard on social protection. More importantly, as a first step member states can purpose to ratify the nine elements of the ILO Convention. Since majority of workers are in the informal sector as opposed to the formal sector that enjoys a better coverage in terms of social security, the informal sector risks vulnerabilities associated to social pressures. The solution for this risk is founded on the establishment of a social security method that covers all members of the society regardless of the sectors they work in. Such interventions tend to reduce the rate of poverty in the long term.

At the regional level, having harmonized policies may tend to longer period due to the procedures involved that are guided by member states as well as the politics of interests. Member states tend to deliberate more conclusively on matters that promote their national interests and tend to drag their feet on those that don't promote their interests. However, in the grand scheme, to have a regional policy on social protection will definitely be a plus meaning: all EAC partner states will incorporate social security and social protection policies which will provide a framework for tackling the issues on a need basis.

2.0 Recommendations

The EAC on its part has made tremendous progress and has managed to conclude on a number of protocols that has advanced the integration agenda in the region. Some of these protocols include cooperation in matters Foreign Policy, Peace and Security, Defense, Common Market and Customs Union. In as much as there is more that needs to be done in terms of harmonization of policies to cater for all areas of cooperation, member states need to be more purposeful and committed towards operationalization. The interpretation of the trend between member states can be argued from two points of view, this is to say, partner states tend to cooperate more on 'high political' issues as opposed to 'low political' issues that majorly touch on social welfare.

For Social Protection mechanisms to succeed member states need to address:

1. **Political will by member states:** This is critical on the part of member states when it comes to making necessary amendments to national laws. At the EAC level, common interventions need to be considered and put in place by all partner states all which will require time, money and resources. These structures can take the form of a social protection system that has a mandatory scheme that is regulated at the regional level and more importantly an awareness campaign run by national governments to sensitize the masses on the initiative and the EAC by extension.
2. **Adjust social protection strategies to address the needs of a growing population:** This can be achieved by closely working with national and local governments to integrate social protection into development strategies.
3. **Enhance social protection schemes:** It is important to have in place monitoring and evaluation mechanisms to aid in understanding the impact of the scheme and inform future design or development. NSSF schemes should have functional procedures that allow feedback on services rendered with the sole purpose of improving service delivery.

4. Ensure Conventions and Treaty provisions are ratified and implemented: This mainly focuses on the 9 elements of the International Labor Organization (ILO).

5. Establish an enabling environment for operationalization: This can be achieved by having in place harmonized laws.

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