

LABOR MIGRATION AND SOCIAL SECURITY IN THE SELECTED REGIONS (EU, CARICOM AND EAC,): A REVIEW

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ABSTRACT

For many years social security has been for nationals and non-nationals being less considered by the legal system of the host state. ILO as responsible organization has issued different instruments regarding protection of migrant workers yet the provision of social security for migrant workers still face challenges. This study analyses labour migration and social security in the selected regions East African Community, European Union and Caribbean Community. It looks on how these selected regions manage to promote, protect and enforce social security to labour migrant. The paper concludes that there has been coordination among states in these integrations but it has not resolved problems facing migrant workers. For the reason that each state determines social security under its law therefore, states should go for harmonization of laws and forming institutions which will be responsible for protection, promotion and enforcement of social security.

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INTRODUCTION

Social security for labour migrants is challenging almost in every country. Countries provide social security to their people either from their contribution or as assistance from their government. Labour migrant being a person's working or looking employment outside their countries faces problems of social security from the receiving country. Labour migrants are dealing with laws and policies that treat them as second class citizens despite they contribute to the host country economy. Labour migrants find themselves in trouble especially when in countries where social security is formalized. Also some countries do not allow portability of benefits or withdrawal of benefits and the period for a person to enjoy or take his/her contribution varies from one country to another. This paper attempts to analyses labour migration and social security in the selected regions EU, CARICOM and EAC.

THE CONCEPT OF LABOUR MIGRATION

Labour migration has been defined to mean the movement of people for the purpose of employment by crossing international recognized borders.¹ The movement may be regular or irregular, where labour migrant on regular migration follow all legal channels, where a migrant possesses work permit and travel documents like passport and visa while under irregular migration the migrants do not follow the required procedures and the movement is illegal.

THE CONCEPT OF SOCIAL SECURITY

From earliest times, when people started to settle and organize themselves in communities, there has been a need for protection against unforeseen life circumstances as Human beings are vulnerable to risks and uncertainties with respect to income as a means of life sustenance. To combat these risks, everyone needs some form of social security and protection guaranteed by the family, community and the society as a whole. Such socioeconomic risks and uncertainties in human life form the basis for the need of social security, social protection and assistance. This is rooted in the need for solidarity and risk pooling by the society given that no individual can guarantee his or her own security without an external aid.²

Social security means the collective measures or activities designed to ensure that members of society meet their basic needs and are

¹ Massey, Douglas S. *Worlds in Motion: Understanding International Migration at the End of the Millennium*, 2005

² Msalangi, H.K.M, *Origins of Social Security in Developing Countries (The case of African Countries)*, The African Journal of Finance and Management Vol 7.

protected from the contingencies and uncertainties to enable them maintain a standard of living consistent with social norms. It is the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or death of a breadwinner.³ Social Security is a fundamental right which should be enjoyed by every person irrespective of the type of economy in which he or she is employed as apparently provided under Article 22, 23(3) and 24 *that every individual is entitled to social protection*.⁴

Social security has also been defined to refer to public and private, or to mixed public and private measures, designed to protect individuals and families against income insecurity caused by contingencies such as unemployment, employment injury, maternity, sickness, invalidity, old age and death. The main objectives of social security are: (a) to maintain income, (b) to provide health care, and (c) to provide benefits to families. Conceptually and for the purposes of this Code, social security includes social insurance, social assistance and social allowances (Article 1 (5)).⁵

Social security benefits can be in the types of long term or short term. Social security has been further categorized into various forms that do include social protection, social assistance and social insurance which are shown below. Article 1(2)⁶ defines Social assistance to mean a form of social security which provides assistance in cash or in kind to persons who lack the means to support themselves and their dependents. Social assistance is means-tested and is funded from government revenues. Normally, the beneficiaries are those who are not covered by any other form of social security. The objective of social assistance is to alleviate poverty through, amongst other things, the provision of minimum income support.

Further article 1(3)⁷ defines Social insurance to mean a form of social security designed to protect income earners and their families against a reduction or loss of income as a result of exposure to risks. These risks impair one's capacity to earn income. Social insurance is contributory with contributions being paid by employers, employees, self-employed persons, or other contributors, depending on the nature of the specific scheme. Social insurance is aimed at achieving a reasonable level of

³http://www.ilo.org/wcmsp5/groups/public/---dgreports/dcomm/documents/publication/wcms_067588.pdf.

⁴ Universal Declaration of Human Rights, 1948

⁵ Code on Social Security in the SADC, 2007

⁶ *Ibid*

⁷ *Ibid*

income maintenance. Also, article 1(4)⁸ Social protection: Social protection is broader than social security. It encompasses social security and social services, as well as developmental social welfare. Social protection thus refers to public and private, or to mixed public and private measures designed to protect individuals against life-cycle crises that curtail their capacity to meet their needs. The objective is to enhance human welfare. Conceptually and for purposes of this Code social protection includes all forms of social security. However, social protection goes beyond the social security concept. It also covers social services and developmental social welfare, and is not restricted to protection against income insecurity caused by particular contingencies. Its objective, therefore, is to enhance human welfare.

THE CONCEPT OF PORTABILITY IS OF GREAT IMPORTANCE TO MIGRANT WORKERS WHILE IN THE STATES OF DESTINY AS REGARDS TO SOCIAL SECURITY.

Portability can be defined to mean the ability of workers to preserve, maintain, and transfer social security rates. Portability is important because it allows the migrant worker to transfer their benefits that would have taken long time and still actual benefits are carried with one retiring. Portability is carried out through the Coordination process, where Coordination is defined to mean the communication of states on social security schemes, relationship of systems and various ways in which migrant workers can benefit on the social security while in the states of destination from their states of origin.

The following are the principles of Coordination;

- i) Equality of treatment which includes nondiscrimination of any kind including of nationality by states of destination to migrant workers.
- ii) Export of benefits is another thing that states should agree upon that migrant workers should be allowed to export to their states of origin.
- iii) Totalisation of periods of insurance in the sense that the insurance schemes should work as one in putting the total period that the migrant worker has worked.
- iv) Mutual assistance in the way that states should agree to contribute to the migrant worker in case of any contingencies.
- v) Data on avaiement is another principle that includes agreement of the states of destination and of origin to exchange and share data of the migrant worker.

⁸ *Ibid*

- vi) The law applicable is another agreement that should be made by states of origin and of destination that in case of any problems especially legal ones the laws to be in use.

Coordination can be done in the form of agreements that the state of origin and the state of destination of migrant workers come together and agree upon some issues as regards to the migrant workers in those states.

Agreements can be bilateral where two states agree on migrant workers social security benefits or multilateral agreements in the sense that more than two states come to a common agreement on how to deal with migrant workers in a certain regional economic integration.

Social security is a universal necessity because all over the World and at all times, the standard of living of people is threatened by risks or uncertainties, also the possibilities of people to protect themselves individually against the consequences of an actual occurrence of a risk or uncertainty are insufficient. With this notion, social security has been seen to be of great importance to migrant workers and that being the case, many instruments have been started to protect migrant workers on social security which include the following;

- a) International Labour Organisation Conventions
- b) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990
- c) European Community Council Regulation number 859 of 2003
- d) Carribean Community Agreement on Social security, 1997
- e) The East African community common market(Free movement of workers) Regulations

The above mentioned instruments have specific Articles providing for Social security for labour migrants which are hereby explained;

International Labour Organization Conventions

The adoption of the Protection Floors Recommendation⁹, by the International Labour Conference on 14th June 2012 as well as the restructuring of the International Labour Office decided that, the former Social Security Department was transformed into the Social Protection Department within the Policy Portfolio of the ILO.

The adoption of Social Protection Floors Recommendation, 2012 (No. 202) constitutes an important milestone for the International Labour Organization (ILO). Since its creation in 1919, the ILO has actively promoted policies and provided assistance to countries to supply adequate levels of social protection to all members of society guided by international social security standards adopted by its tripartite (employer, employee and the government) constituents and in particular its flagship

⁹ 2012 (No. 202)

Convention concerning Minimum standards of social security 1952(No 102). Access to an adequate level of social protection is already recognized in the Declaration of Philadelphia (1944) on the aims and purposes of the ILO, in subsequent ILO declarations and in a number of International labour standards, in particular the Social Protection Floors Recommendation, 2012 (No. 202), as a basic right of all individuals. Furthermore, the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights recognize the right to social security for everyone.

The Social Protection Department, with its long experience in the field of technical cooperation activities, research and policy development on issues dealing with social security, provides ILO member States with tools and assistance to achieve and maintain for its people this right.

Protection of Social security for labour migration under ILO

ILO being the main institution within the United Nations dealing specifically with labour matters in their entirety it has the conventions providing for labour rights social security inclusive.

Convention on Equality of Treatment (Social Security) Convention, 1962 (No. 118)

This Convention concerning Equality of Treatment of Nationals and Non-Nationals in Social Security, The convention requires member states to grant within their territory to the nationals of any other Member for which the Convention is in force equality of treatment under its legislation with its own nationals, both as regards coverage and as regards the right to benefits, in respect of every branch of social security for which it has accepted the obligations of the Convention.¹⁰ Also the convention provides benefits to be enjoyed, method of calculating the benefits.¹¹ The convention requires members to have a bilateral or multilateral agreement on the implementation of these obligations and the basis is reciprocity¹² with exception where the Convention applies to refugees and stateless persons.¹³

Convention on Social Security (Minimum Standards) Convention, 1952 (No. 102)

This is the Convention concerning Minimum Standards of Social Security, as the convention named it calls for member states to provide social

¹⁰Article 3 (1) of Convention .118 (Entry into force: 25 Apr 1964)Adoption: Geneva, 46th ILC session (28 Jun 1962) - Status: Up-to-date instrument (Technical Convention).

¹¹ Article 7 (2) 2. Such schemes shall provide, in particular, for the totalisation of periods of insurance, employment or residence and of assimilated periods for the purpose of the acquisition, maintenance or recovery of rights and for the calculation of benefits.

¹² Ibid article 8

¹³ Article 10 of C. 118

security at a minimum standard to migrant workers. Under its part XII provides equality of treatment of non-national residents, article 68 (1, 2) reads; non-national residents shall have the same rights as national residents: Provided that special rules concerning non-nationals and nationals born outside the territory of the Member may be prescribed in respect of benefits or portions of benefits which are payable wholly or mainly out of public funds and in respect of transitional schemes. It adds, Under contributory social security schemes which protect employees, the persons protected who are nationals of another Member ... shall have, under that Part, the same rights as nationals of the Member concerned: Provided that the application of this paragraph may be made subject to the existence of a bilateral or multilateral agreement providing for reciprocity.¹⁴

The convention on Employment Injury Benefits Convention

This is a specific convention covering the social security benefit for injury persons. It obliges members to avail persons injured at work and members of their families especially dependants, the benefits apply to national and non national as provided under article 27(1) Each Member shall within its territory assure to non-nationals equality of treatment with its own nationals as regards employment injury benefits.¹⁵

The Convention on Maintenance of Social Security Rights

This Convention concerning the Establishment of an International System for the Maintenance of Rights in Social Security, the convention gives the principle on the maintenance of social security benefits in the course of acquisition. Article 4(1, 2) It requires member state to enter into bilateral or multilateral agreement on the obligation of states and conditions to be fulfilled and to determine the categories of persons to be covered.¹⁶

Article 14 specifically provides how member should protect migrant workers. The article reads; Each Member shall promote the development of social services to assist persons covered by this Convention, particularly migrant workers, in their dealings with the authorities, institutions and jurisdictions, particularly with respect to the award and receipt of benefits to which they are entitled and the exercise of their right of appeal, as well as in order to promote their personal and family welfare.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

¹⁴ Convention 102 (Entry into force: 27 Apr 1955) Adoption: Geneva, 35th ILC session (28 Jun 1952) - Status: Up-to-date instrument (Technical Convention).

¹⁵ Convention No. 121 of 1964 [Schedule I amended in 1980] (No. 121)

¹⁶ Article 4 (1,2) of convention 157 (Entry into force: 11 Sep 1986) Adoption: Geneva, 68th ILC session (21 Jun 1982) - Status: Up-to-date instrument (Technical Convention).

This convention applies to migrant workers and members of their families when in the foreign countries. The convention came for the purpose of protecting the social and economic rights of migrants against the exploitation of employers and the local laws which in most cases protects nationals. With the coming of the convention the social security benefits of migrant workers are protected and taken as a right, therefore migrant workers can claim transferability at the time of retirements or when the contract ceases.

Article 1(1)¹⁷ provides that all migrant workers and members of their families should be treated without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status. This shows that migrant workers have been given priority on social security matters equally to the indigenous of the state of destination. Also, article 7¹⁸ provides that States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

This includes the equal provision of the right of social security to the migrant workers in their states of destination without any discrimination. Likewise, article 27(1)¹⁹ provides that With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfill the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm. Through coordination the two states can come up with agreements that will assist the migrant workers on how to benefit on social security.

In addition to that, article 27(2)²⁰ provides that Where the applicable legislation does not allow migrant workers and members of their families a benefit, the States concerned shall examine the possibility of reimbursing interested persons the amount of contributions made by

¹⁷ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990

¹⁸ Ibid

¹⁹ Ibid

²⁰ Ibid

them with respect to that benefit on the basis of the treatment granted to nationals who are in similar circumstances. This still gives opportunity to migrant workers to benefit on the social security as it may be contributory or not. Article 28²¹ provides that Migrant workers and members of their families shall have the right to receive any medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health on the basis of equality of treatment with nationals of the State concerned. Such emergency medical care shall not be refused them by reason of any irregularity with regard to stay or employment. That is an entitlement to a health benefit to migrant workers while in the countries of destination.

Furthermore, article 32²² provides that upon the termination of their stay in the State of employment, migrant workers and members of their families shall have the right to transfer their earnings and savings and, in accordance with the applicable legislation of the States concerned, their personal effects and belongings. This will be upon the coordination agreement between the sending and the receiving states on how to deal with the social security of the migrant workers.

Article 47(1)²³ explains that Migrant workers shall have the right to transfer their earnings and savings, in particular those funds necessary for the support of their families, from the State of employment to their State of origin or any other State. Such transfers shall be made in conformity with procedures established by applicable legislation of the State concerned and in conformity with applicable international agreements. This implies that any state countries with agreements either bilaterally or multilaterally can agree migrant workers to transfer their money that can be of social security that will be of assistance in case there are any contingencies.

States concerned shall take appropriate measures to facilitate such transfers which can be through coordination of the states. This has been provided under article 47(2)²⁴ that the transfer of earnings by migrant workers will be done by the assistance of state countries of both origin and destination on their agreements.

Article 61(3)²⁵ provides that Subject to bilateral or multilateral agreements in force for them, the States Parties concerned shall endeavour to enable project-tied workers to remain adequately protected by the social security systems of their States of origin or habitual residence during their engagement in the project. States Parties concerned shall take appropriate

²¹ *Ibid*

²² *Ibid*

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Ibid*

measures with the aim of avoiding any denial of rights or duplication of payments in this respect. This shows the concern for Social security to migrant workers in whatever states they may be as long as there are coordination processes between those states.

Also article 43(1) (e) provides that migrant workers shall enjoy equality of treatment with nationals of the State of employment in relation to Access to social and health services, provided that the requirements for participation in the respective schemes are met. This is a step towards empowering Social security to migrant workers by supporting the health benefit to migrant workers in the states of destination.

Labour Social Security in the European Union (EU)

European Union is a Regional Economic Integration made up of 27 member states. With regard to social security the European Union is one of the exemplary regional economic integration organizations since it has succeeded in most of its objectives. Looking at Social security on migrant workers, the European Union made agreements with the member states through regulation number 1408/71 and regulation number 574/72.

The Member States of the European Union (EU) have the most comprehensive (and complex) system of portable as well as exportable social security benefits.

EU nationals enjoy full non-discriminatory access to all and portability of most social security benefits. This is reflected in the fact that only a very small share of EU citizens perceive the lack of portability as an obstacle to relocate to another EU member country (d'Addio and Cavalleri, 2014, p. 7). Jousten (2014, p. 11) cautions, though, that the EU legal and administrative framework coordinates national systems rather than harmonizing them. Moreover, EU regulations grant a right to invoke these coordination mechanisms, but not an obligation to do so. As for third-country nationals, they are treated equally only after a certain period of residence²⁶

The EU allows exportability of most cash benefits in Member States, including pensions, survivors' benefits, death allowances, and benefits for work accidents and occupational diseases. Some cash benefits, which generally come under social assistance programmes and are designed to help the recipients in their country of, for example housing benefits, are obviously not exportable. Other cash support such as unemployment benefits may be exported only up to three months (or six months if the paying country extends it).

²⁶Specifically no later than after five years, according to EU Directive 109/2003 (van Ginneken, 2010, p. 3).

The regulation number 1408/71 and regulation number 574/72 provides Social security benefits only to European Union member states. The migrant workers who were nationals of the European Union enjoyed social security benefits as if they were nationals of the state of destination. With these regulations third country nationals who were not members to the European Union were excluded from enjoying the benefits of Social security until in 2003.

The European community providing for the social security to third country nationals was passed in the special meeting in Tampere, October 1999. In the regulation The European Union made sure of equal treatment to third country nationals who reside legally in European Union member states hence non discrimination in Economic, Social and Cultural life and approximate their legal status to that of member states nationals.²⁷

The European Union since 2003 has recognized the third country nationals migrant workers as regards to the social security benefits which was by the incorporation of the European Community Council Regulation number 859/2003. This applies to general and special contributory and non-contributory social security schemes. However, Regulation 859/2003 does not cover benefit schemes for war victims.

Third country nationals in the Regulation number 859/2003 have been covered in various Social security benefits which include the following;

a) Sickness and Maternity benefits, b) Invalidity benefits, c) Old Age benefits, d) Survivals benefits, e) Benefits in relation to Accidents at work and occupational Diseases, f) Un employment benefits, g) Family Benefits and Deaths grants.

Regulation 7²⁸ provides that as regards the conditions of social protection of third country nationals, and in particular the social security scheme applicable to them, the Employment and Social Policy Council argued in its conclusions of 3 December 2001 that the coordination applicable to third-country nationals should grant them a set of uniform rights as near as possible to those enjoyed by European Union citizens. This shows that migrant workers from third country nationals have been included in the social security benefits and without any discrimination since they are to be treated very nearly to those enjoyed by European Union members.

Regulation 8²⁹ provides that Currently, Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes

²⁷ European Community Council Regulation number 859 of 2003

²⁸ *Ibid*

²⁹ *Ibid*

to employed persons and their families moving within the Community, which is the basis for the coordination of the social security schemes of the different Member States, and Council Regulation (EEC) No 574/72 of 21 March 1972, laying down the procedure for implementing Regulation (EEC) No 1408/71, apply only to certain third-country nationals. The number and diversity of legal instruments used is an effort to resolve problems in connection with the coordination of the Member States' social security schemes encountered by nationals of third countries who are in the same situation as Community nationals give rise to legal and administrative complexities. They create major difficulties for the individuals concerned, their employers, and the competent national social security bodies.

With the help of this provision, coordination between third country nationals is encouraged with the European Union so that social security benefits can be enjoyed by the migrant workers in the European Union. Furthermore, regulation 5³⁰ provides that this Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the spirit of its Article 34(2). In this context there is equal treatment by all people within the European Union community.

Also, regulation 6³¹ provides that the promotion of a high level of social protection and the raising of the standard of living and quality of life in the Member States are objectives of the Community. Here the migrant workers from third world nationals can benefit from the European Union Community through social protection benefits provided.

In general, portability of pensions is more challenging at the employment stage of migration, which was recently re-emphasized by the European Commission (EC) in its White Paper on “adequate, safe and sustainable pensions”. MacAuslan and Sabates-Wheeler (2011) also insist that imperfect benefit eligibility and take-up, as well as selective benefit provision to immigrants, are important considerations.

However, some authors have noted that since the type of systems operating in different countries vary along, broadly speaking, Bismarckian or Beveridgean welfare models³² with different entitlement criteria and levels in monetary terms, migrants may lose or gain depending on whether

³⁰ *Ibid*

³¹ *Ibid*

³² Bismarckian systems have a strong role for social insurance and labour market regulation, with pensions that are “strictly contributions-linked”, while Beveridgean pensions give out “purely uniform benefits” (Cremer and Pestieau, 2003, cited in Jousten, 2014, p. 4). However, it should be noted that the Beveridgean plans, at least in its birth place of the United Kingdom, was envisaged as a social insurance programme where the entitlement to and the amount of state pension received have been linked to the number of years of national insurance contributions.

they move to a lower-income or higher-income as well as lower/higher entitlement country. Harmonization of entitlement rules may help to narrow the gap between different countries, but differences in the level of development and income remain a determinant for level of entitlements.

Caribbean Community Agreement on Social security, 1997 (CARICOM)

It is a multilateral agreement organization of 14 members but only 13 members have ratified this agreement. In 1996 is when an agreement was made in social security among the member states then in 1997 it came into force. For the administrative matters there is a committee in the region that is used to administrate.

The objectives among others are to harmonize social security schemes for migrant workers and protect the entitlement of workers to social security, although the harmonization of pensions has been partly effected among the contracting countries.³³ The agreement is after long term benefits incase migrant workers move from one contracting state to another.

CARICOM covers migrant workers and dependants legally registered in one ratifying member state and still a worker will not lose his social security benefits acquired or in the course of acquisition while working in another contracting state. The scope of agreement in the CARICOM is on long term benefits only as shown in part3 of the CARICOM Agreement on Social Security of 1997.

Article 2³⁴ provides on the scope of the coverage of the social security within the region that includes provisions of this agreement shall apply to the following payments of social security;(a) invalidity pensions, (b) disablement pensions, (c) old age or retirement pensions, (d) survivors' pensions, and, (e) death benefits in the form of pensions.

Looking at article 37³⁵ that provides for the determination of invalidity in determining the degree of invalidity the institution of a Contracting Party shall take account of all the medical and administrative information assembled by the institutions of any other Contracting Party, but each institution shall retain the right to have the claimant examined by a doctor of its choice at own expenses.

Further still, article 56(2)³⁶ provides that where under this Agreement a competent institution is required to pay a benefit to a

³³ As quoted by Nurulsyahirah Taha et al in his article " How portable is social security for migrant workers? A review of the literature" 2013

³⁴ CARICOM Agreement on Social security, 1997.

³⁵ *Ibid*

³⁶ *Ibid*

beneficiary resident in the territory of another Contracting Party or to another competent institution in such territory, it shall discharge its obligation in the currency of such other Contracting Party. This gives opportunity to the migrant worker to benefit from the country of destination.

Article 57(1)³⁷ provides that any dispute arising between two or more Contracting Parties concerning the interpretation or application of this Agreement shall first be subject to negotiation between the Contracting Parties concerned. This is a peaceful method of solving disputes where member states benefit smoothly their social security benefits.

Also article 57(2)³⁸ still insists that where the dispute is not settled within three months from the request for commencement of negotiations as set out in paragraph 1, the dispute shall be submitted to arbitration on the written request of any of the Contracting Parties. Such request shall be addressed to the Secretary-General who shall promptly notify the parties to the dispute of the receipt of the request for arbitration. All this is in support of migrant workers to attain social security benefits within the Caribbean region.

Furthermore, article 60(1)³⁹ provides that after the entry into force of this agreement, the Contracting Parties may, by unanimous vote, invite any other country to accede to it. This provides room for bi lateral or multilateral agreements with other third country nationals on migrant workers while in the country of destination.

Article 17⁴⁰ provides totalisation of contribution Periods where the applicable legislation of a Contracting Party makes entitlement to benefits conditional on the completion of a specified number of insurance periods and Article 16 does not apply, the competent institution shall take account of all insurance periods completed under the applicable legislation of other Contracting Parties in determining the fulfillment of the condition at the material time.

This gives the right of migrant workers to have full rights of their social security benefits without the loss of any periods. Likewise the Caribbean Social Security allows for migrant workers to accumulate contribution credits in more than one country to qualify for a pension. However, the agreement only applies in countries in which workers have not completed the minimum years of service required to receive the

³⁷ *Ibid*

³⁸ *Ibid*

³⁹ *Ibid*

⁴⁰ *Ibid*

benefit from the national scheme, which excludes long-staying migrant workers.⁴¹

Part two of the CARICOM agreement, 1997 provides on the law to be applicable in case of any disputes that may have arisen in the Caribbean region where particularly article 6⁴² an insured person shall, at the material time, be subject in relation to that person's employment to the applicable legislation of only one Contracting Party. Therefore this is a signal for migrant workers that the applicable laws for social security in Caribbean community it offers with all mechanisms to make sure that a migrant do not lose his/ her benefits.

However, researchers find that despite being in operation for more than 10 years, the CARICOM agreement has had few applications, mostly due to lack of awareness of the benefits of the agreement that can migrant workers' can have access to social security.

Social Security in East African Community Member States (EAC)

The EAC is a combination of five states within the East African region includes Tanzania, Kenya, Uganda, Rwanda and Burundi⁴³. The documents establishing the EAC under its protocol on free movement of market it covers the concept of labour migration within the region. The EAC common market (free movement of workers) Regulations provides for the implementation of article 10 of the protocol which requires partner states to ensure uniformity, transparent, accountability and consistency in all matters relating to labour movement.⁴⁴

The EAC partner states are required to share employment opportunities by disseminating information on job vacancies which will facilitates access to employment opportunities by citizens of the community.⁴⁵ They should also be able to conclude contracts and take up employment in accordance with the contracts, national laws and administrative actions. Furthermore, the provision allows them to enjoy freedom of association and be part of trade unions allowing for collective bargaining for better working conditions in accordance with the national laws of the host partner state. The provision further allows them the rights and benefits of social security as accorded to the workers of the host partner state. The provision also requires the host partner state to ensure that workers from other partner states do not face discrimination in employment, remuneration and other conditions of work because of their

⁴¹ Nurulsyahira Taha *etal* in his article "How portable is social security for migrant workers? A review of the literature" 2013

⁴² *Op cit*

⁴³ The treaty for the establishment of the East African Community 1999

⁴⁴ Regulation 2 of the East African community common market(Free movement of workers) Regulations

⁴⁵ *Ibid* Regulation 12

citizenship. The issue of social security to workers has been covered within the EAC, as partner states are directed to provide equal treatment in employment by insuring that the same treatment is accorded to the workers from other partner states as is accorded to the nationals.⁴⁶ Under this regulation partner states are required to provide workers with: equal opportunities in employment, occupational health and safety, contribution to a social security scheme...access to disputes settlement mechanisms; and any other right accruing to a worker under the provisions of the national laws of the partner state.⁴⁷

With social security The five East African countries has ratified ILO Convention No. 102 - Social Security (Minimum Standards) Convention 1952. This means that although the EAC countries recognise the importance of social security and social protection and have put in place some legislation to cover aspects of ILO Convention No. 102, the level and extent of coverage and the risks covered by law is still very limited.

Despite the provisions of the protocol and its regulation on the free movement of workers and social security still each state has its own mechanisms of regulating and controlling labour matters. At the community level there is no any establishes institution to deal with labour issues rather the treaty, protocol and regulations therein requires partner states to address labour migration and social security according to their national laws and institutions so established should be responsible to determine the rights and duties of workers.

A problem which is specifically relevant to migrants is the absence of the portability and exportability of social security rights and benefits across different schemes at national level, and also across the member states.⁴⁸ This has a direct impact on the intra-regional mobility of workers, because moving to another country will imply a loss of benefits and rights acquired. These deficiencies prompted members' interest in harmonising their national social security regimes so as to secure protection for workers who exercise their freedom of mobility.⁴⁹

The practice revealed that internal law of each member states are designed to restrict labour movement from other member state and social security is also designed to assist nationals.⁵⁰ In addition, all the five EAC countries have limited social security coverage vis-à-vis the entire population. All of them cover less than 10% of the population except

⁴⁶ Ibid regulation 13

⁴⁷ Regulation 13 of the East African community common market (Free movement of workers)

⁴⁸ As quoted by Dr. Masabo J in her PhD thesis on "The Protection of the Rights of Migrant Workers in Tanzania" University of Cape Town. August 2012 (pg 88-89)

⁴⁹ Ibid (pg 88-89)

⁵⁰ Example the Tanzania social assistance policy provides protection for old age, pregnant women and children under 5 year to nationals

Kenya where coverage is relatively high compared to the others. There it is estimated at 15%.⁵¹ Despite the ratification of ILO Convention No. 102 the Constitutions of some EAC Member states are not acknowledging the social security. The constitutional provisions related to social security and social protection is quite different. The Ugandan, Burundian and Rwandese constitutions are not so explicit on the protection of social security while the Tanzanian constitution is framed within the ideological context of socialism. At the same time, in Tanzania, the Fundamental Objectives and Directive Principles of State policy that contain the relevant principles are not enforceable by any court.⁵² The same Objectives, underpinned by the desire to create a socialist society specifically refer to elements of social security. The Objectives state clearly that: ...the state authority shall make appropriate provisions for the realization of a person's right to work, to self-education and social welfare at times of old age, sickness or disability and in other cases of incapacity...the state authority shall make provisions to ensure that every person earns his livelihood (Art.11(1)). The above is a general statement about certain elements, related to social security. The Tanzanian state also clearly recognizes every person's right to self-education (Art.11 (2) and related to this end the government:...shall endeavour to ensure that there are equal and adequate opportunities to all persons to enable them to acquire education and vocational training at all levels of schools and other institutions of learning (Article 11(3)).

However, in spite of the above provisions in Tanzania's constitution, the same constitution, goes ahead to undermine their importance. According to the constitution, the relevant provisions, that is, Objectives and Principles, stated above, these "are not enforceable by any court". And no court: shall be competent to determine the question whether or not any action or omission by any person or any court, or any law or judgment complies with the provisions of this Part of this Chapter (Article 7(2))⁵³

In Tanzania, therefore, at a constitutional level, the issue of social security although recognized as important, is clearly not justiciable. The recently enacted Kenya constitution of 2010 is understandably the most progressive on the issues of social security. It recognizes the right to health, including reproductive health care, as well as rights to housing, food, safe water, education and social security, specifically. The constitution also recognizes rights of children and youth, persons with

⁵¹ John-Jean Barya, Social Security and Social Protection in the East African Community (2011) accessed on 19/04/2015

⁵² Article 7(2) of the Tanzania Constitution of 1977 as amended from time to time

⁵³ The Constitution of the United Republic of Tanzania 1977 as amended from time to time

disabilities and those of the elderly (Articles 43, 53-57) also quoted by (barya, 2011).⁵⁴

With the EAC social security is recognized by the treaty establishing the community under its protocol on free movement of market and The EAC common market (free movement of workers) Regulations however local law of each member state still restricts entry of non national and protects the available opportunities to its nationals. Members from these countries find difficulty to enjoy social security when working in the country of destination because most of them work in the informal sector which is not well covered compared to formal sector.

THE POINT OF DISTINCTION AND SIMILARITIES BETWEEN EU, CARICOM AND EAC IN LABOUR MIGRATION AND SOCIAL SECURITY COVERAGE

- EU covers both long term benefits and short time benefits while CARICOM and EAC covers only longtime benefits.
- EU provides benefits to third parties nationals who are not EU members while CARICOM invites a non member interested to join but the decision is by way of votes from member countries and EAC is silent on the social security protection of a third party who is a non member to the EAC.
- All regions go for coordination rather than harmonization of law also recognizes the local law of each state to be used in determine the social security rights of a worker

CONCLUSION

To summarize, the majority of countries provide for the equality of treatment between national and non-national workers regarding social security coverage. Many of them, however, make the maintenance of migrant workers' acquired social security rights and their rights during the course of acquisition dependent on the existence of social security agreements with the worker's country of origin. In practice, few migrant sending countries, which are usually developing countries, have concluded such agreements or are bound by social security conventions. In the absence of social security agreements, only a small minority of migrant workers are able to realize their entitlement to social security benefits upon returning to their country of origin.

Social security should therefore be considered to all migrant workers in countries of destination without *the* consideration of whether one is a documented or undocumented migrant. There should be the

⁵⁴ John-Jean Barya, Social Security and Social Protection in the East African Community (2011) accessed on 19/04/2015

encouragement of bilateral and multilateral agreements on social security that will lead to the harmonization and coordination of the laws of the state of origin and states of destination that will make the world a more secure place to live in.

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