Laid by Hon Kasule Robert
12/8/15

PARLIAMENT OF UGANDA

REPORT OF THE COMMITTEE ON FINANCE, PLANNING AND ECONOMIC DEVELOPMENT
ON
THE RETIREMENT BENEFIT SECTOR LIBERALISATION BILL, 2011

OFFICE OF THE CLERK TO PARLIAMENT
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RETIREMENT BENEFITS SECTOR LIBERALISATION BILL, 2011

1.0 INTRODUCTION

The Rt. Hon. Speaker and Hon. Members, permit me to present to the House a report of the Committee on Finance, Planning and Economic Development on the Retirement Benefit Sector Liberalisation Bill 2011. As you will recall, the Bill was read for the first time on the 20th April 2011 in 8th Parliament. However, the term of the 8th Parliament expired before Parliament pronounced itself on the Bill and the Bill consequently lapsed.

However, on the 25th October 2011, Parliament passed a resolution in which the Retirement Benefits Sector Liberalisation Bill was reinstated as part of the business of the 9th Parliament. This was followed by the formality of re-introduction of the Bill to the 9th Parliament for the first reading on the 29th September 2013.

On the 8th October, 2014, the Minister of Finance, Planning and Economic Development informed Parliament that the text of the Bill that had been tabled in the 9th Parliament on the 29th September, 2013 was different from the one that had been tabled in the 8th Parliament. Consequently, the Minister of Finance, Planning and Economic Development requested to withdraw the Bill tabled in the 9th Parliament so that the House and its Committee could consider the older version of the Bill. This request was granted and the said version of the Bill stands withdrawn.

1.1 METHODOLOGY

The Committee held public hearings and extensive consultations with the stakeholders bearing in mind that the matter of pensions and social protection are sensitive in nature. In this regard, the Committee received submissions from;

1. The Ministry of Finance, Planning and Economic Development;
2. The Uganda Retirement Benefits Regulatory Authority;
3. The Uganda Law Society;
4. The Uganda Human Rights Commission;
5. The Ministry of Public Service;
6. The National Social Security Fund (NSSF);
7. The Trade Unions (COFTU and NOTU); and
8. The NGO Forum.

The Committee further undertook several benchmarking visits to the following countries, Nigeria, South Africa, Kenya, Malaysia, Ghana and Namibia to benchmark good practices.

Lastly, Rt. Hon. Speaker and Hon. Members, during the consideration of the Bill, the Committee worked very closely with the Committee on Gender, Labour and Social Development and the Members of Parliament representing Workers in Parliament.

The Committee hereby presents its findings, recommendations and proposed amendments.

1.2. THE POLICY AND THE PRINCIPLES OF THE BILL

The policy behind the Bill is to liberalise the retirement benefits sector; to remove monopoly over mandatory contributions; to provide for fair competition among licensed retirement benefits schemes; to provide for mandatory contributions and benefits; to consolidate and reform the law relating to retirement benefits; to convert the public service pension scheme into a contributory scheme; to repeal the Pensions Act, Cap 286 and the National Social Security Fund Act, Cap 222 and preservation of funds under the NSSF.

The major principles of the Bill include providing for mandatory contributions for all employees and employers in both formal and informal employment to licensed retirement benefits schemes, ensure portability and transfer of retirement savings to a licensed retirement benefit schemes of employee's choice and allowing retirement benefit schemes to compete for mandatory contributions.

2.0 RATIONALE OF THE PROPOSED REFORMS

According to the memorandum of the Bill, (2. Defects in the existing law) the proposed reforms are premised on two grounds. First that the State funded defined non- contributory Public Service Pension Scheme regulated by the Pensions Act, Cap 286 is "fiscally unsustainable and hence the need to rectify the situation by enacting a law that will transform the public service pension scheme into a contributory scheme" .

Secondly, that "there is wide public perception that the National Social Security Fund has not been run on sound governance principles and this could have a negative effect on savings mobilization in the country.

3.0 OBSERVATIONS AND RECOMMENDATIONS

3.1 THE TITLE OF THE BILL

The Bill is entitled the Retirement Benefit Sector Liberalisation Bill, however upon examination of the Bill, the Committee note the Bill seek in reforming the pension sector including liberalising the pension sector

The Committee observed that the Bill is removing the monopoly of over mandatory contributions, providing for fair competition among licensed retirement benefits schemes, providing for mandatory contributions and benefits for all employees in the formal sector, providing for voluntary contributions for those who are self-employed and those in the informal sector, providing for the conversion of the public service pension scheme into a retirement benefits contributory fund, providing for healthcare benefits, consolidating and reforming the legal framework relating to retirement benefits, repealing the Pensions Act, Cap 286 to make it contributory, repealing the National Social Security Fund Act, Cap. 222 to preserve the funds and accrued benefits of members under the NSSF and for related matters.

The Committee recommends that the title of the Bill be amended to read Retirement Benefit Act.

The Committee at the Committee stage shall propose an amendment to change the title of the Bill to reflect the content of the Bill.

3.2 CLAUSE 2 INTERPRETATION

Clause 2 defines "accrued benefit" as the amount of each scheme member's beneficial interest in the retirement benefits scheme at any time, including sums derived from contributions made in respect of that member, together with the income or profits arising from any investments of the scheme, and taking into account any losses of the scheme and any previous distributions from the scheme.

The above definition can summarize as follows:

a) That "accrued benefits" of a member are equal to a member's contribution plus or minus any profits or losses made by the scheme respectively.

b) The workers, Sponsors and Fund managers benefit from profits arising from any investments but workers bear the burden of losses arising from such investment.

c) The amount of a member's savings in a retirement benefits scheme can therefore be legally reduced or completely eroded by losses made by a retirement benefits scheme.

The Committee notes that by providing for the possibility to reduce or completely erode a workers savings due to losses made by a scheme, the Bill diametrically departs from the ILO Social Security standard, which not only protects the benefits due to a worker but also at worst, guarantees a employee's a minimum interest of 2.5 percent per annum..

Furthermore, this definition cushions fund managers and sponsors against any costs arising from their management and investment decisions. One of the things that would make any sponsor or fund manager cautious is the fear to make losses and also bear the brunt of their poor decisions. However, given that losses will be borne by the contributors, sponsors and fund managers may engage in risky investments.

The Committee recommends that a mandatory minimum interest rate should be set to ensure that no employee loses his or her retirement savings.

3.3 CLAUSE 4 MINIMUM REQUIREMENTS FOR OPERATING A RETIREMENT BENEFITS SCHEMES

Clause 4 provides for a capital deposit as one of the minimum requirements for operating a retirement benefits scheme. The fact that capital requirements will enhance security of workers' benefits is not disputable.

The Committee shall propose an amendment at the Committee stage to substitute the entire clause.

3.4 CLAUSE 6 FORMATION OF UMBRELLA RETIREMENT BENEFITS SCHEMES

Clause 6 provides for the formation of Umbrella Schemes. However, the definition of "umbrella scheme "is limited and does not conform to best practices. The provision only relates to situation where two or more retirement benefits scheme may merge to form an umbrella. However best international practices shows that what is termed as umbrella scheme is not only a merger or amalgamation of two schemes. An umbrella scheme may also be composed of several employers or employees who choose to be governed by one umbrella.

The Committee shall propose an amendment at the Committee stage to substitute the entire clause 6.

3.5 CLAUSE 8 VOLUNTARY CONTRIBUTIONS

Clauses 8 and 10 of the Bill provide for voluntary contributions by the informal sector.

Informal" sector refers to production units that engage in legitimate economic activity and are normally operated without organisational structures and with little or no division between labour and capital .

The attempt to reach workers in the informal sector offers such workers the opportunity and freedom to choose whether to save with the retirement benefit schemes or not depending on the rates that are provided in the open market. It is contended that this will be able to develop and secure income for their old age since Uganda as a state has a majority of persons that work in the informal sector and many of these lack the expertise and skills of saving for the future.

The Committee shall propose amendment at the Committee stage to strengthen the clause and also gives it clarity.

3.6 CLAUSE 9 PORTABILITY AND TRANSFER OF RETIREMENT SAVINGS

Clause 9 provides for the transfer of retirement savings within schemes in the East African region. This takes into consideration the right to own and access property and freedom of movement of labour within the East African Community as envisioned under the EAC Treaty Agreement.

The Committee observes that the provision narrows down what is to be transferred and recommends that this should include the accrued benefits.

For clarity and for procedural purpose, the Committee shall proposed an amendment at the Committee stage.

3.7 MANDATORY BENEFITS

Clause 19 of the Bill provides that retirement benefit schemes shall offer mandatory benefits including-

(a) age benefits;
(b) survivor's benefits;
(c) invalidity benefits;
(d) medical and maternity benefits;
(e) unemployment benefit;
(f) education benefit;
(g) home ownership benefit; and
(h) Any other benefits as the Authority may approve .

This provision widens the scope of social security benefits that will cover most of the people in the Country as required by Article 9 of the ICESCR.

However, the committee is concerned that multiple mandatory benefits may erode retirement income. Aware of the debilitating costs of old age poverty due to lack of income.

The Committee therefore recommends that,

a) Mandatory benefits should only be limited to; old age, invalidity, survivor's benefits, home ownership benefits and the emigration grant.

b) The rest of the benefits like health and education should be covered under optional benefits plan in accordance with scheme rules of schemes and any other terms agreed upon between an employee and his or her scheme.

In line with the ILO Convention, the Committee shall propose an amendment at the Committee stage to reduce the number of the mandatory benefits.

3.8 CLAUSE 22 THE MODIFICATION OF CATEGORIES OF BENEFITS

Clause 22 gives the Minister powers to issue a statutory instrument removing, adding a new benefit or moving a benefit from one category to another. The import of this provision is to give the Minister power to remove the age benefit for example from the category of mandatory benefits or to move it to the category of voluntary benefits. Such unfettered powers are subject to abuse and should therefore be checked.

The Committee shall propose an amendment at the Committee stage to delete the entire Clause 22.

3.9 CLAUSE 28 LUMP SUM AND ANNUITY ARRANGEMENT

Clause 28 (1) and (2) provides that an employee who qualifies for the age benefit shall receive one third of accrued benefits as a lump sum and the two thirds shall be used as annuity to guarantee a regular income for the employee. The annuity purchased is meant to guarantee a regular lifetime income for the beneficiary.

The Committee shall propose an amendment at the Committee stage to merge Clause 28 and Clause 16 to prescribe their own internal pension arrangements.

3.10 CLAUSE 33 COMPUTATION OF BENEFITS

The right to social security is not about making profit but sustaining human dignity in difficult times therefore the provision in way opens the workers' savings to market forces that is very risky in a way that would result into a limited earning during periods of economic instability.

The Committee recommends that clause 33 is not necessary and should be deleted. The Committee shall therefore at the Committee stage propose for the deletion of the Clause.

3.11 CLAUSE 36 TAX EXEMPTION

Clause 36 provides for tax exemption on a benefit, mandatory contributions or voluntary contributions up to 30% of the income of a person in the informal sector or a self-employed person. This is an improvement from the current system of TTE.

The Committee observes that there is need to offer more incentives to encourage savings in this sector and also to widen the coverage.

The Committee recommends that;

a) all voluntary contributions not exceeding 30% of the income of a person in the formal sector should be exempt from income tax.

b) income from investments of retirement scheme funds shall not be taxed.

c) all benefits paid out should be liable for income tax.

d) persons over the age of 65 should not pay income tax on their benefits.

The Committee at the Committee stage shall propose a redraft the entire Clause 36 to provide exemption of both tax and stamp duties.

3.13 CLAUSE 37 INDEXATION OF BENEFITS

Clause 37 provides that payment of retirement benefits shall be indexed to wage inflation or any other rate determined by the Minister in consultation with the Authority. Indexation of benefits means that the maturity value of a pension asset and related interest rate is adjusted by the rate of inflation over a given period. This is intended to protect workers savings, especially annuitants, from changes in prices or inflation.

The Committee therefore recommends that;

a) This clause be deleted since schemes investment risks are born by the member, and the member has the option to determine how such benefits are paid out.

The Committee shall propose an amendment at the Committee to delete this clause.

3.14 CLAUSE 38 GUARANTEE ALL RETIREMENT SAVINGS

Clause 38 provides that Government shall guarantee the safety of the basic mandatory contributions to encourage contribution towards retirement savings.

The Committee finds this provision unsustainable and unachievable given that Government has had challenges paying its own pensioners. Imagine Government guaranteeing funds managed by the Private sector!

The Committee recommends that this clause 38 be deleted;

The Committee shall propose an amendment at the Committee stage to delete this Clause.

3.15 CLAUSE 44 REPEAL AND SAVING

Clause 44 1 (b) seeks to repeal the Pension Act, Cap 286 to make it a contributory pension schemes under the new Public Service Pension Scheme with clear defined contribution and defined benefits. The Committee noted that this clause further will enable the new Public Service Pension Scheme operate in a liberalised environment.

3.16 TRANSITION PERIOD

Clause 45, 46, 47, 48, 49, 50, 51 and 52 provide for the transition period for the migration of Public Service Pension Scheme in a contributory scheme. The Committee however noted that the provisions are not implementable.

For clarity and to ensure that the provisions are implementable, the Committee at the Committee stage shall propose amendments.

3.17 REPEAL OF THE NATIONAL SOCIAL SECURITY FUND ACT, CAP 222

Clause 53 of the Bill seeks to repeal the NSSF Act and cease its monopoly for receiving mandatory contributions from employers and employees in the private sector. The Committee observed that upon the repealed Act, NSSF shall cease to be a statutory corporation and shall exist as an irrevocable trust called National Social Security Fund Retirement Benefits Scheme.

3.18 CLAUSE 54, 55, AND 56 TRANSITION PROVISIONS IN THE FIRST 5 YEARS AFTER THE COMMENCEMENT OF THE ACT

Clause 54, 55 and 56 provides for the transition, preservation and gradual liberalisation in the first 5 years after the commandment of the Act. The Committee however noted that for safety and security of employees funds accumulated in NSSF before the commencement of the Act should be differed until due for payment and any funds accumulated after the commencement of the Act can be transferred.

The Committee shall propose amendment at the Committee stage to ensure safety and security of employee's savings.

4.0 COMMITTEE GENERAL RECOMMENDATIONS

a) There is need for a mandatory minimum interest rate to be offered by the schemes to their members. This safety net will encourage reasonable investment and further ensure that no worker loses his or her life savings to any scheme.

b) Additional voluntary contributions of up to 15 percent for workers who have made mandatory contributions and up to 30 percent for those who have not made mandatory contributions should be managed by a scheme freely chosen by a worker but with no liability to the state in case of losses. The additional and voluntary contribution may be used to enhance retirement income, to cater for health, mortgages, education benefits or any other benefit that may be agreed upon between an employee and his or her chosen retirement benefits scheme.

c) With the onset of liberalisation, the market is likely to witness a rapid growth of entities offering retirement benefit services. In order to protect the employees, the Authority needs to standardise key Scheme Rules, so that schemes do not defraud their members.

d) The Public Service Pension Scheme should gradually transform into a contributory one. Measures should be undertaken to improve on governance of the Public Service Pension Scheme.

e) The NSSF Act should be repealed without distorting its progressing operations it achieved in the recent times.

f) There is need to revisit the investment sub limits in the Uganda Retirement Benefits Regulatory Authority Act. Schemes should be able to encourage diversification of investments as opposed to conservative investing. This calls for strict and strong custody regulations.

g) Aware of the debilitating costs of old age poverty due to lack of income, only the old age, invalidity, survivor's benefits and the emigration grant should be mandatory benefits. Therefore, the rest of the benefits like health and education should be covered under optional benefits plan in accordance with scheme rules of voluntary retirement benefit schemes and any other terms agreed upon between an employee and his or her scheme.

h) Professional trustees should be encouraged.

Rt. Hon. Speaker and Hon. Members, the Committee recommends that the Committee pass the Bill subject to proposed amendments.

I beg to report.

MEMBERS ON THE COMMITTEE ON FINANCE, PLANNING & ECON DEV'T

S/N	NAME	SIGNATURE
1.	Hon. Kasule Robert Sebunya	
2.	Hon. Okello Anthony	
3.	Hon. Musasizi Henry Ariganyira	
4.	Hon. Kyooma Xavier Akampurira	
5.	Hon. Akol Rose Okullu	
6.	Hon. Sejjoba Isaac	
7.	Hon. Lwanga Timothy Mutekanga	
8.	Hon. Adong Lilly	
9.	Hon. Ochwa David	
10.	Hon. Amos Lugoloobi	
11.	Hon. Emma Boona	
12.	Hon. Ayepa Michael	
13.	Hon. Capt. Suzan Lakot	
15.	Hon. Katoto Hatwib	
16.	Hon. Ekanya Geoffrey	
17.	Hon. Ssasaga Isaiah Johny	
18.	Hon. Odo Tayebwa	
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20.	Hon. Judith Franca Akello	
21.	Hon. Mugabi Martin Muzaale	
22.	Hon. Akora Maxwell Ebong Patrick	
23.	Hon. Bagoole John	
24.	Hon. Nathan Nandala-Mafabi	
25.	Hon. Ssabiti Jack	
26.	Hon. Taaka Kevin	