

Harmonization of Pension Legislation in the Countries of the East African Community: An Urgent Necessity?

Richard Ndikumana

Ecole Doctorale, Université du Burundi, Bujumbura, Burundi
Email: richardndiku76@gmail.com

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Abstract

Pension funds are the main source of income for retired workers in the East African Community, as in the rest of the world. The aim of this article is to analyze the means of implementing the pension rights of retired workers in the East African Community, who are free to move and work anywhere within the community. We used documentary techniques to collect data, and legal criticism of the legal texts of the seven member countries of the Community to analyze the data. The results reveal that the legislative systems of these different Community member states, despite the will expressed in the treaty establishing this Community to grant freedom of movement within the Community, are not uniformly clear-cut on the work of Community nationals. As a result, the enforcement of their pension rights is called into question. Among the 7 countries, Kenyan legislation provides for equality of opportunity in the recruitment of workers, and organizes retirement in such a way as to protect the interests of the worker going into retirement. In Rwanda, retiring workers receive their retirement benefits in full, while in other countries, they receive periodic contributions from other members of the social security institution of which they are a member.

Keywords

East African Community, Pension Rights, Portability of Rights, Social Legislation

1. Introduction

The East African Community (EAC), as a regional intergovernmental organization of the Republics of Burundi, Kenya, Rwanda, Uganda, and the United Republic of Tanzania, headquartered in Arusha, Tanzania, adopted the Protocol on

Privileges and Immunities in April 2015 in Arusha in the United Republic of Tanzania. This protocol uniformly manages the status of senior officials who are nationals of its member states (Manirakiza, 2022; Ndericimpaye & Sindayigaya, 2023). This organization, which has been in existence since 1967 and brings together Kenya, Tanzania, and Uganda, did not survive the political tribulations of 1977 (Révillon, 2015: p. 70) and was rethought for its re-establishment treaty in 1999 and adapted in 2000. Burundi and Rwanda joined on July 1st 2007 (Ndereyahaga, 2010: pp. 4-5). Sudan was admitted in 2016 (“South Sudan admitted to the EAC”, 2016), and the Democratic Republic of Congo in 2022 (Gras, 2022). Among the many principles of the East African Community is the creation of an export-oriented economy for member states, allowing the free movement of goods, people, labor, services, capital, information, and technology, and the equitable distribution of profits from Community operations and measures to correct economic imbalances resulting from such operations (*Treaty for the Establishment of the East African Community (as amended on December 14, 2006 and August 20, 2007)*, art. 7 lit.c) and e)).

The movement of people and labor opens up the right of establishment for nationals of the 7 member countries, who are constantly working in these other countries, and some of these countries have set up institutions to safeguard their diaspora (Ngoie & Lelu, 2010: pp. 86-87). But its role seems to make sense for the currently functional diaspora. Other countries no longer consider citizens of any of the EAC member states as foreigners if they are established on their territory. This is the case in Burundi, which defines a foreigner as any person who is neither a Burundian national nor a citizen of a member state of the East African Community (*Loi No. 1/25 du 5 novembre 2021 portant réglementation des migrations au Burundi*, art. 4 Para 11). This consideration is likely to cause confusion when compared with the term migrant worker in the sense of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The latter considers a migrant worker to be a person who goes to engage, engages or has engaged in a remunerated activity in a State of which he or she is not a national (*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*). (*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, art. 2 Para 1) except persons sent or employed by international organizations and bodies, and persons sent or employed by a State outside its territory to perform official functions, whose admission and status are governed by general international law or by international agreements or specific international conventions (*International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, art. 3).

At United Nations level, the plight of migrant workers has been the subject of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. This Convention aims to unify international legal standards for the protection of migrant workers and members of their families and protects the rights of all migrants. Yet, apart from Rwanda, it

has not been ratified by the member countries of the East African Community. It has already been confirmed that the ratification of this Convention faces obstacles such as market forces, security and sovereignty, inextricably linked themes that dominate migration policies, creating a context unfavorable to the respect of migrants' rights (de Guchteneire & Pécoud, 2010: p. 445).

In Africa, the African Charter on Human and Peoples' Rights was adopted in 1981 in Nairobi to determine the way forward for all human rights issues in Africa. Without specifying whether migrant or national workers are concerned, this Charter enshrines the right of every person to work under equitable and satisfactory conditions, and to receive equal pay for equal work (*Charte africaine des droits de l'homme et des peuples*, 1986, art. 15). The same Charter also specifies that everyone has the right to work to the extent of his abilities and possibilities, and to pay the contributions laid down by law to safeguard the fundamental interests of society (*Charte africaine des droits de l'homme et des peuples*, 1986, art. 29, al.6).

This article analyses the situation of migrant workers' pension rights in this region of East Africa after the consolidation of the Community, which is expanding from time to time and granting customs union, free movement of people and workers, taking their nationals in common. In addition to the non-ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, this article aims to analyze the plurality of pension schemes, the example of the Convention systems in the 3 member countries of the East African Community that form the Community of Great Lakes Countries (CPGL), namely Burundi, the DRC and Rwanda, and finally to propose a way out such as the standardization of pension systems throughout the community.

2. Methods and Methodology

For the purposes of the methodological procedure, this article is the result of the documentary technique used in data collection. This enabled us to gain an insight into the various pension schemes described in the different labor and social security laws in the different member countries of the Community, as well as the different calculation methods applied.

The results were analyzed using legal methods. These combine the deductive and inductive methods. The deductive method is based on a comparison of the facts and contents of legal texts in general, to deduce a conclusion on the state of implementation of a rule of international and regional instruments for the protection of the rights of migrant workers and members of their families, especially as regards pensions. In the inductive technique, the starting point is a few isolated cases, from which a generality can be deduced for all similar cases.

References within the text and in the bibliography are the result of "Zotero" software and the format "Université du Québec à Montréal—APA—prénoms (Français-Canada)".

3. Results

Within the East African Community, each member country has its own labor and social security legislation governing the employment of foreigners on its territory. There is no single legal text or agreement specific to all member countries. There are two pension schemes applied in the member countries of the East African Community:

- ✓ The capitalization system (totalization of insurance periods) enables workers to receive full social security benefits. Pensions are calculated on the basis of contributions paid during working life (contributory principle). It is the workers themselves who make the contributions for their own retirement.
- ✓ The pay-as-you-go system (also known as intergenerational participation or solidarity) between working people and retirees, with contributions treated as a deferred salary (Davanne & Pujol, 1997; *Quelles sont les caractéristiques du système français de retraite*, 2022).

Even the concept of “social majority” to indicate the age of majority at which employer and employee contributions to the latter’s pension begin, differs.

In the consideration that “the quip about economists is that they are unable to predict almost anything, except the future” (Hindriks et al., 2017: p. 5) the East African Community faces problems linked to adjustment mechanisms when workers leave one country and enter another to work, which involves changing legislation and pension schemes.

It is necessary to analyze the considerations in the positive laws of every country in relation to pension entitlement on the one hand, and the difference in pension calculation methods within the member states of the East African Community on the other.

4. Discussion of the Results

Results The pension entitlements of foreign nationals living in any of the East African countries are affected by the diversity of national legislation within each country (4.1), as well as by the different systems for calculating pensions (4.2).

4.1. Diversification of National Pension Legislation within Each Country

It is worth analyzing the situation of foreigners professionally located in an East African Community state (Burundi, Kenya, DRC, Rwanda, Republic of South Sudan and the United Republic of Tanzania) other than their own, of which they are natives.

4.1.1. Burundi

In the absence of an East African Community convention or pact governing the portability of pension rights within it, each country has its own labor laws granting foreigners the right to work on its territory, and deserving the employer’s and employee’s shares of the workers’ pension contribution.

In the Burundi context, the right to social security (Sindayigaya & Toyi, 2023b, 2023a) requires affiliation to a body that undertakes to pay the pension according to the person's liability (*Law n° 1/12 of May 12, 2020, on Burundi's Social Protection Code*, art. 9 al. 1, 2 and 4). In the case of Burundi, the government is responsible for setting up a body to coordinate the implementation of national social protection policy (Nyabenda & Sindayigaya, 2023; Sindayigaya, 2022, 2023; Sindayigaya & Nyabenda, 2022), as well as a regulatory authority for social protection programs and systems (Ciza & Sindayigaya, 2023; Niyongabo & Sindayigaya, 2023; Sindayigaya et al., 2016), in accordance with articles 12 and 13 of Law no. 1/12 of May 12, 2020 on the Burundi Social Protection Code.

Under the terms of article 22 of the aforementioned law, the contributory basic pension scheme in Burundi comprises:

- ✓ health insurance, such as medical care and sick pay;
- ✓ occupational risks in the event of work-related accident or illness;
- ✓ the pension scheme in the event of old age, disability and death, providing old-age allowance, early pension, disability pension and survivors' pension (*Loi No. 1/12 du 12 mai 2020 portant Code de la protection sociale au Burundi*, art. 71);
- ✓ family benefits and maternity allowances;
- ✓ unemployment insurance scheme.

Entitlement to any of the pensions referred to in point 3 requires the following conditions:

- Have reached retirement age (which may differ depending on legislation);
- At least 15 years of contributions;
- Have ceased professional activity—pension cannot be combined with salary (*Law no. 1/12 of May 12, 2020 on Burundi's Social Protection Code*, art. 73).

Senility is almost universally taken as the key to pension entitlement (Conrad, 1985: pp. 39-51). Burundian legislators and the East African Community as a whole must consider social policy issues (Sindayigaya, 2020b, 2022, 2023) such as demographic change, the poverty (Mperejimana & Sindayigaya, 2023; Nyabenda & Sindayigaya, 2023; Sindayigaya, 2020a; Sindayigaya & Nyabenda, 2022) to which the elderly are exposed, raising the retirement age, flexible retirement, the level of the pension, the minimum pension, improving disability pensions, old-age insurance for all working people, company occupational pensions and optional supplementary pensions (Kress-del Bondio, 2018: p. 609).

The pension system provided for in Burundian legislation gives nationals of the East African Community the same protection as Burundian citizens (Jonja et al., 2023; Niyongabo & Sindayigaya, 2023; Toyi & Sindayigaya, 2023), even in the event of secondment following employment by a company located in Burundi (Jonja et al., 2023; Nduwimana & Sindayigaya, 2023a, 2023b), although working on its behalf in Burundi or abroad (*Loi No. 1/12 du 12 mai 2020 portant Code de la protection sociale au Burundi*, art. 23 al. 9). A common convention for the East African Community will regulate the right to portability of pension rights after old age or disability for workers (Jonja et al., 2023; Mpere-

jimana & Sindayigaya, 2023; Toyi & Sindayigaya, 2023) who wish to retire in a country other than the one to which they made their contributions (Mpabansi, 2023).

4.1.2. In Kenya

In the social sphere, Kenyan lawmakers have taken the lead among East African Community countries in the fight against discrimination. Unlike its Tanzanian counterpart, which emphasizes protectionism in recruitment putting Tanzanian citizens first, Kenya rules out all discriminatory practices. The Kenyan law of 2014 states in paragraph 4 that “employers are required to implement policies in every workplace to promote equal employment opportunities in order to eliminate discrimination in employment and to promote and ensure equal employment opportunities for all employees, including migrant workers lawfully employed in Kenya” (*Employment (General) Rules, Labour codes, general labour and employment acts of Kenya (L.N. No. 28 of 2014)*, para. 4). With regard to pensions, the same Kenyan legislator ordered that “the board of trustees shall endeavor to collaborate with the foreign scheme of the member state to ensure that records relating to the member are retained until all rights of the member in the foreign scheme are fully exhausted in favor of the member and there is no liability in the foreign scheme to the member” (*Kenya—National Social Security Fund Act, 2013 (No. 45 of 2013)*, para. 64. 3. i) in respect of the member of any of the member states of the East African Community. Where the employee resides outside Kenya but in an East African Community member state, the Commission will coordinate with the member state’s social security scheme.

4.1.3. In DRC

According to article 22 of Law no. 23-96 of June 6, 1996, the employment rights of residents (foreigners) apply in the context that foreigners may only hold a job or carry out an activity in the Republic of Congo if they have satisfied the immigration requirements laid down in the provisions relating to conditions of entry into the country. This justifies the fact that the provisions of the Labor Code require foreign workers to be in possession of an employment contract, and may not exercise a profession other than that for which the contract was signed (United Nations High Commissioner for Refugees, 2016, art. 9 al. 3). In any case, this is a sign that foreigners legally resident in the Democratic Republic of Congo are working there and have the same pension rights as nationals (Buhendwa et al., 2023).

In the DR Congo, any worker subject to the provisions of the Labour Code, as well as boatmen and other seagoing personnel, without distinction as to race, nationality, sex, marital status, religion, political opinion or origin, is subject to the general social security scheme for all branches of employment, when they are principally engaged in a professional activity on national territory on behalf of one or more employers, regardless of the nature, form or validity of the contract or the amount of remuneration.

Notwithstanding this concept, the right to a retirement pension begins at the age of sixty for insured persons who meet the following conditions:

- have completed at least 180 months, i.e. 15 years of insurance;
- have ceased all salaried activity (*Loi No. 16/009 du 15 juillet 2016 fixant les règles relatives au régime général de la sécurité sociale en République démocratique du Congo*, art. 82).

Insured persons who reach the age of sixty and who effectively cease all salaried activity, without being able to justify a minimum insurance period of one hundred and eighty months, benefit from a single allowance (*Loi No. 16/009 du 15 juillet 2016 fixant les règles relatives au régime général de la sécurité sociale en République démocratique du Congo*, art. 83) with the possibility of buying back the missing years of contributions for a period not exceeding five years of contributions taking into account the last monthly remuneration of the person concerned at the date of the request (*Loi No. 16/009 du 15 juillet 2016 fixant les règles relatives au régime général de la sécurité sociale en République démocratique du Congo*, art. 84).

4.1.4. In Rwanda

In Rwanda, in compliance with articles 31 and 32 of Law no. 66/2018 of August 30, 2018, regulating labor in Rwanda, the pension also known as “retirement indemnity” is compulsorily paid to the worker’s account within 7 days following the cessation of professional activity is calculated as follows:

- ✓ twice the average monthly wage for a worker with less than five years seniority in the same company;
- ✓ three times the average monthly wage for a worker with between five and ten years’ seniority in the same company;
- ✓ four times the average monthly wage for a worker with ten to fifteen years’ seniority in the same company;
- ✓ five times the average monthly wage for a worker with between fifteen and twenty years seniority in the same company;
- ✓ six times the average monthly wage for a worker with between twenty and twenty-five years’ seniority in the same company;
- ✓ seven times the average monthly wage for a worker with more than twenty-five years’ seniority in the same company.

In Rwanda, the employment relationship between the employer and the foreign worker is governed by the law, which requires a written employment contract (*Law No. 66/2018 of August 30, 2018 on Labor Regulations in Rwanda*, art. 12 §1 and 2). A foreigner, in Rwanda, in the opposite conception to that of Burundi but similar to that of Tanzania is any person who is not of Rwandan nationality (*Law No. 66/2018 of August 30, 2018 on Labor Regulations in Rwanda*, art. 2 §12) with employers obliged to hire them only on the basis of a permit allowing them to carry out the work covered by the contract in Rwanda (*Law No. 04/2011 of March 21, 2011 on Immigration and Emigration in Rwanda*, art. 18 §1). Law n° 009/2021 of February 16, 2021 creating the Rwandan Social Security

Office does not contain specific provisions on retirement and pension rights for foreign workers. There is reason to believe the law Law n° 66/2018 of August 30, 2018, regulating labor in Rwanda which prohibits discrimination (although not specifying that based on nationality) (*Law no. 66/2018 of August 30, 2018, regulating labor in Rwanda*, art. 9) regulated the matter in the provisions on retirement indemnities for all.

4.1.5. Southern Sudan

In Southern Sudan, the pension system shows a number of irregularities because, as in Uganda, pension systems often exclude most workers. By way of example, shortages of health personnel are said to have been exacerbated by the absence of a pension system, with health workers remaining on the Ministry of Health payroll until they die. Most people don't retire, they continue to work until they die. It would be better to retire them, which would create vacancies that would be filled (Jones et al., 2015: p. 4). To the extent possible the manager instructs and authorizes fund employees to exercise specific powers in connection with the maintenance of fund records, including records of pensionable employees, pensionable persons, and survivors, to enable the fund to calculate, collect contributions, and pay pensions and other benefits in accordance with this Act and other applicable laws (*The Pension Funds Act, 2012-12-27 of the Republic of South Sudan*, paragr. 20 and 21).

South Sudanese lawmakers don't say much about the pensions of nationals of other countries, not even those of the East African Community. However, for nationals, "the policy for the payment of retirement benefits consists of lump-sum payments and continuous monthly pensions after retirement, with the retirement age set at 65 for the civilian sector and 60 for the armed forces, based on grades ranging from 47 to 60 for the lowest to the highest grades. The pension contribution rates were 5% and 11% of the employee's pensionable salary with a pensionable contribution period of at least 15 years." (Momo & Mogga, 2023; Sabiraguha et al., 2023).

4.1.6. United Republic of Tanzania

The Tanzanian legislator has not provided for the fate of workers who are neither foreigners nor nationals of East African Community member states in "The Employment and Labour Relations Act [CAP. 366 R.E. 2019]" or even in "The social security (regulatory authority) act revised edition of 2018". This leaves it unclear how the Tanzanian or East African Community judge at the East African Court of Justice will rule when it comes to the pension rights of an East African Community national.

This is all the more opportune to think about in that this legislator prohibits discrimination based on nationality in the social milieu (*The Employment and Labour Relations Act of Tanzania [CAP. 366 R.E. 2019]*, para. 7. (4) (b)). Tanzania's labor law gives first and foremost place to the Tanzanian citizen and confirms that this does not constitute discrimination (*The Employment and Labour*

Relations Act of Tanzania [CAP. 366 R.E. 2019], para. 7. (6) (c)).

It's worth remembering that his definition of a foreigner is different from that of his Burundian counterpart. In Tanzania, a foreigner is any person who is not a citizen of the United Republic of Tanzania. (*United Republic of Tanzania—National Employment Promotion Service Act, 1999 (No. 9 of 1999)*, para. 2) when the national of the East African Community is not a foreigner in Burundi (*Loi No. 1/25 du 5 novembre 2021 portant réglementation des migrations au Burundi* art. 4 Para 11). Nationals of the East African Community (Burundi, Kenya, DR Congo, Rwanda, Uganda, and South Sudan) are obliged to apply for a work permit in the same way as any foreigner to work in Tanzania unless there is an agreement. To be more categorical, “no employer shall employ any foreigner in any employment or class of employment which the Minister may from time to time, by notice published in the Official Gazette, declare to be an employment or class of employment in which only citizens may be employed” (*United Republic of Tanzania—National Employment Promotion Service Act, 1999 (No. 9 of 1999)*, para. 25 (1)).

4.1.7. Uganda

The Ugandan legislator has not provided any details on the fate of the foreign worker's pension entitlement. Research by John-Jean Barya, Associate Professor of Law and former Head of the Department of Public and Cooperative Law at Makerere University's Faculty of Law, and former Executive Director of the Center for Basic Research (CBR), Kampala (1997-1999). He believes that the right to social security and social protection in Uganda needs to be transformed from the pathetic Ugandan social protection system that excludes 95% of the population, to the launch of a process of inclusion (Barya, 2009: p. 23). In this hypothesis, it is logical that the pension rights of foreign workers or nationals of other East African Community member countries should be ignored. Yet it has been positively proven that social pensions contribute to economic growth. Therefore, “there is strong evidence that investment in inclusive, tax-financed old-age pensions is an essential component of a prosperous market economy. What's more, the impact on growth is manifold. If Uganda increased its investment in the old-age allowance by extending it to all older people, the cost would be relatively low—no more than 0.4% of GDP—but the impact on labor productivity and economic growth would be very significant (Kidd & Tran, 2017: p. 13).

4.2. Diversification of Calculation Methods

Among the countries of the East African Community, there are former Belgian and British colonies. The two groups of countries came together for the community, but have remained with different pension systems. The capitalization system, which seems to be converging towards a middle position, a panacea but a means of guarding against the demographic and economic uncertainties of the next century (Blanchet & Villeneuve, 1997: pp. 157-158) is dominant in the Common Wealth countries (Kenya, Uganda, Tanzania and Rwanda). The exam-

ple we have developed on the by referring to Articles 30 and 31 Law No. 66/2018 of August 30, 2018 regulating labor in Rwanda is an illustration. In the capitalization system, the employee, on retirement takes his allowances/indemnities in a single, fixed amount calculated on the basis of his contributions during the working period. The World Bank has issued the message that “we need to move away from pay-as-you-go, benefit-based pension schemes to fully funded, privately managed, contribution-based schemes” (Merrien, 2001: p. 594). In this hypothesis, the World Bank defends an extremely precise position, taking the complete opposite view to that traditionally defended by social security specialists.

Capitalization, as implemented in certain industrialized countries, involves savings invested by an individual in a pension fund, which constitutes a capital sum that can be used to pay a pension when the individual ceases working. Capitalization responds to the demographic concern that, if births fall, there will be a shortage of people to pay the pensions of those currently contributing. This funded system is ahead of the pay-as-you-go system, which can be threatened by economic crises as well as demographic problems.

5. Conclusion

Seven countries, including Burundi, Kenya, the Republic of South Sudan, the United Republic of Tanzania, the Democratic Republic of Congo, Rwanda, and Uganda, are united by a treaty that stipulates freedom of movement for people and goods. This implies the movement of workers who leave one country to work in another. Since retirement is both a consequence and a palliative of old age for the worker, the Community should put in place a standardized pension management instrument and regime to meet the expectations of retired workers in the Community in a uniform way. As some of these countries have not even ratified the United Nations Convention on the Protection of the Rights of All Migrant Workers, and others have entered reservations, the situation is left to the discretion of each country’s legislators. As a result, the solution that emerges from the diversified references (positive laws in each member country of the East African Community) may be welcomed by workers who see their pension rights facing obstacles linked to their portability. The possible solution to this situation will come from the political will to make freedom of movement effective for workers, by putting in place a convention to manage their pensions, setting out a single scheme and uniform calculation methods. Otherwise, we would be faced with the situation of old people, former workers who would not benefit from their pension rights during their old age.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

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