

STRIKING THE WITHDRAWAL BENEFIT OFF THE SOCIAL SECURITY STATUTES AND ITS REMEDIES IN SOCIAL SECURITY INDUSTRY OF TANZANIA

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ABSTRACT

The withdrawal benefit is one of the social security benefits that was payable in Tanzanian social security scheme before 2018 amendment .the recent amendment in social security law of the country. It is the benefit peculiar of other common benefits in the world of social security which stood the legal statutes of the country for a quite long period of time in the state history. Despite its black knowledge in international law perspectives, in practical aspect, this benefit served a lot to the employees especially those employed on non-pensionable employment schemes, before its recent removal from the social security laws of Tanzania. This is because, payments of small salaries; un-secured employment tenure and limited chance of securing new job after a loss of one's' employment ; are some of serious challenges relating to private sector employment to which most of employees belong in Tanzania . The withdrawal benefit in that special purpose therefore, remedied the employment uncertainty and contingency in Tanzania before its burn. Despite the reflective value of the withdrawal benefit in the social security legal context of Tanzania, the same benefit has been removed from the laws of the state via the recently enacted law, which is the Public Service Social Security Fund Act, 2018.

The academic call that is behind this paper therefore is an examination of the social security purpose and functions saved by the withdrawal benefit; its justification in the social security

industry and replacement that has been brought by its complimentary legislative initiatives in the Tanzanian social security industry.

Key Words: *Social Security, the Employment Withdrawal Benefit, Social Security Purpose, Unemployment Benefit*

INTRODUCTION

Social security is generally defined as the community joint initiatives that are applied to safeguard its members against the contingencies likely to happen in future and affecting its members, which if not addressed would cause the damage on the lives of the individuals as they affect the individual earnings and health soundness, as these contingencies may result into stoppage or reduction of earnings or instable mental or physical health.ⁱ

These contingencies may be in various forms of unemployment, death, diseases, poverty, ignorance, squatter and other related social and economic distresses.

The initiatives which are deployed by the individuals or society to safeguard themselves against these social and economic distresses are what generally became known as social security. As an aspect of socio-economic life social security arrangements are backed up with legal mechanisms and initiatives at both international and domestic levels. At International arena social security administration and provision are governed by a number of legal instruments but the famous and the most influential one is the International Labour Organization Convention (The Social Security Minimum Standards).ⁱⁱThis instrument sets the legal standards upon which social security provision in member states should reflect. The convention lists nine social security benefits which state parties must consider and provide at least three of them in their domestic laws and social security industryⁱⁱⁱ,the employment withdrawal benefit however, is not among those nine social security benefits. The close related benefit to the social security employment withdrawal benefit at international social security platform, is unemployment benefit, which in one way or another, has been made and designed to function as an attempt to cater for the same purpose of the former though with different relevancy to the Tanzanian socio-economic context and components. The withdrawal benefit therefore, is the legal social security mechanism formerly known to the country social security system only while remains unknown and identified within international perspectives.

The Provision of social security is always done through various tier systems each carrying different category of individuals depending on the nature and kind of contingency to which each group is likely to be exposed to. State policies and arrangements on provision of the same social security have been cutting across these tiers which expressly are tier **one**, tier **two** and subsequently tier **three**. The tier systems are designed to cover different category of people differentiated with possible contingencies and ability to address the same contingencies **wherefore**;

Tier one caters for the social destitute within the country. Through this tier system states lay down various programmes aimed at making sure that every person is aided to meet at least certain basic social services especially education, shelter and health facilities the provision which may leave a significant number of the poor if state intervention is not adopted in that particular arrangements and setups. The state initiatives to make sure that every child gets an access to a primary education and health facilities is made at the back of this social security tier. The Children **fostering** and **assistance** programmes in the Republic of South Africa stands in this important social security legal trait.^{iv}The **MMEM**^v, **MMES**^{vi}, and **TASAF**^{vii} programs in Tanzania have been effected and implemented under this tier system of social security. The formal genesis of this tier is the English Poor Laws of 1601^{viii}. Tier one is the non-contributory Universal tier standing as the Social Safety Net(SSN) to the people in a need majority of whom are always destitute who need support to meet certain basics of life. The other names for this social security tier system are the Social Assistance Program; Non- Contributory Social Security Program and the Universal Social Security Program.

Tier two covers the employees in formal sector cutting across all the employees in both private and public sectors. The purpose behind this social security category is to make sure that employees are assisted to protect themselves against the employment related risks or contingencies which commonly include unemployment contingencies; the old age; professional injuries and diseases which cant not be easily realized or covered by a single employee in his individual capacity without social security joint efforts. Unlike the universal social security tier, it is the contributory tier where members are required to remit their contributions through their employment salaries and the same contribution is extended to their employers who contribute for their employees' social security contributions on a certain legal rate of contribution. In Tanzania for example the employees are required to contribute 20% of their salaries as the social security contributions where for employees in public sector are

required to remit 5% of their basic salaries at the same time their employer contributing 15% of the employees' salaries as the social security contributions. The Private sector employees are required to make a remittance of 10% of their basic salaries the same contribution rate that is made by their employers to whoop at 20% of the social security contribution. The genesis of this social security type is the **chancellor Von Otto Bismarck** arrangements on his move of creating employment conducive working environment in Germany.^{ix}This social security tier system is also referred to as the Compulsory Social Security Tier System and Social Insurance Program.

Tier three is the Social security Supplementary tier system which is not compulsory and remained to be effected subject to the capacity and wishes of the individuals alone or in collaboration with others. In actual sense this tier system is there to supplement the shortfalls of the packages paid from other tiers. The private insurance programs that individual take to address various risks by paying premium are included and covered under this social security arrangement and setup.

SOCIAL SECURITY SYSTEM IN TANZANIA AND THE PLACE OF THE WITHDRAWAL BENEFIT

The modern social security system of Tanzania is the product of the historical evolution especially the colonialism episode in the history of Tanzania. Tanganyika has had her African ways of giving support to the people facing problems which could not be faced and addressed by the individuals in the individual capacity without a community or family support. This mechanism was built on the customary practice of the people in their relative localities. The same mechanisms varied from one community to others and this is what later came to be named as a traditional social security as an aspect of the modern social security context and contents.^x Collective participation in funerals upon the death of a community or society members, community collective engagements in weddings, collective measures in natural and un natural calamities such as floods, famine, earthquake and sickness the effects of which could not reasonably be born on the individual person shoulders, attracted the so called informal social security as it later came to be so called in the modern formalized and westernized social security system literatures.

The informal social security system however doesn't articulate on the withdrawal benefit which is the work or employment related concept. This is because unlike the formal social security system which is built on employment existence, the informal social security is built on the African philosophy of humanity famously known as *motho ke motho ka batho babang*^{xi}. This good African principle view social security in a humanity and human dignity approach by supporting a colleague regardless of his economic and social status. It is the concept from which the African paradigm on social security draws its justification. Therefore the withdrawal benefit was not and has never been part to this informal arrangement. The fact that informal social security is a non-contributory mechanism makes another possibility of being ignorant of the withdrawal benefit.

Formal social security was introduced in colonial Tanganyika by the colonial masters and it wasn't known before among the natives of the country. The purpose of introducing the formal social security in the colonial Tanganyika was to cover the colonial government employees to meet the formal employment requirements where the employees were assisted to keep part of their earnings for the future where they could be no more working^{xii}. The main concern for social security provision to the employees in Tanganyika at these initial times therefore was a reserve for unemployment and old age times as far as this context is concerned. It is from this trend that, formal social security was introduced as the employment-based initiatives and arrangements the position that has so remained even today. Formal social security in Tanzania therefore, is a product of colonialism.^{xiii} The employment is the primary consideration in the context and purpose of formal social security. Close to the employment requirements and consideration stand other factors including the amount of earnings, number of contributions, nature of employment and scheme membership requirements before a person can be identified within the same formal social security provision and arrangements.

From there and onwards, formalization of employment, monetary economy and changes in life style necessitated the dominance of formal social security over the traditional social security in Tanzania to the same level colonial traits and values did in colonial Africa ways of living and life in general. The employment withdrawal benefit also like other social security benefits and considerations owes its existence and development to this trend where other social security related benefits are employment injury benefit; Medicare benefit; the old age benefit; the Survivors benefit; Maternity benefit; invalidity benefit; sickness benefit and unemployment

benefit which has recently been introduced in the Tanzanian social security schemes via the social security recent amendment and reforms in the recent year of 2018.

The social security benefits at International level are nine and from which a state party is compelled to implement at least three benefits payable to its citizens subject to the arrangement and extent bearing its economic capacity. In Tanzania social security is not a constitutional right in terms of the true interpretation of the Constitution. This is because under Article 11(1) of the Constitution of The United Republic of Tanzania^{xiv} social security is stipulated as the right that every person is entitled to the legal flavour which is distorted by Article 7(2) of the same Constitution^{xv} ousting the enforcement of the same right before any court of law under this sun. In the point of assessment therefore there is a big legal weakness of social security enforcement in the country.

Formal social security in Tanzania used to be regulated by the proliferation of laws before the enactment of the Public Service Social Security Fund Act^{xvi} though the regulation and control of those various social security schemes was placed under the autonomous national body called the Social Security Regulatory Authority^{xvii}. The social security services and provision were to be run on the competitive basis as a need and order to attract the members from the labour mainstreams this is simply because unlike before, the members who were employees in both public and private sectors were given freedom to opt for the social security schemes of their preferences. Before these changes, social security scheme, members were to be subscribed to the social security schemes which were introduced for their categories of employment. These schemes in their specification^{xviii} before these changes therefore, were established for the purpose of offering social security services in the country each covering a certain category of employees.^{xix} It is within this competition impetus among the social security schemes that the withdrawal was offered as an attractive package to the new employees who would opt for this scheme. The employment withdrawal benefit in Tanzania was welcomed in the social security statutes by the Local Authorities Provident Fund by the parliamentary law in 2006^{xx} and later on the same employment withdrawal benefit was adopted by other social security schemes. For example the GEPF adopted the same benefit somewhere in 2013^{xxi}. The withdrawal benefit therefore though not recognised by the international minimum standards on social security benefits was incorporated in the social security industry functioning in the events where the employee lost his employment. As there was no unemployment benefits issues in the Tanzanian social security industry, the withdrawal benefit remained functioning as the constructive

unemployment benefits in the social security laws of Tanzania. Neither of these schemes had stipulated the provision of unemployment benefit where the employment withdrawal benefit was recognized and provided in lieu of unemployment benefit until the most recent amendment brought by the Public Service Social Security Fund Act^{xxii}. Even the National Social Security which is said to provide more benefits if compared with others which provide below seven benefits, did not managed to provide the unemployment benefit in the country before the new changes in the social security laws of Tanzania^{xxiii}

The withdrawal benefit in these schemes had been covered under the circumstances where the employee would leave a job because of various factors including marriage, immigration and miscarriage of the employment. The practical reason for withdrawal benefit application in normal circumstance would be allowed to the employees whose employments have been futile and that the employment cannot be renewed.^{xxiv}

As an aspect of formal social security, the withdrawal benefit was akin to some different features common to the social security arrangements. It was a work related benefit payable to the employee upon the termination of the employment contract because of some different factors including a refusal to renew the contract by the employer. It was covered under tier two of three tiers relating to the social security industry in Tanzania which are tier one, tier two and tier three^{xxv}. Falling under tier one, the withdrawal benefit was available for the contributors in either of the above elaborated schemes. This is because the distinguishing features of tier two are that of being contributory and compulsory for the employees. The active players in this tier are the employers who are compelled to deduct certain percentage of their employees' salaries as remittance that are deposited monthly in the schemes accounts. Besides the deduction from the employees' salaries, the employers are required to contribute from their deep pockets certain percentage to the schemes account as the contribution to their employees 'social security contributions. This also is a monthly arrangement failure of which seduces the criminal liabilities.^{xxvi} The percentage of the employee's salary remittance and the employers' rate of contribution vary from one scheme to another.^{xxvii}

RELEVANCY OF THE WITHDRAWAL BENEFIT TO THE TANZANIAN SOCIAL SECURITY INDUSTRY

There is an agreement that, the withdrawal benefit carried within itself some important values relating to the socio-economic aspect of Tanzanian employment and employees lives as well. As there is a significant possibility that most of the employees especially those employed in the private sectors, lack the reliable employment tenure; plus an idea that most of these employments are of a significant short period, with some uncertainties to be renewed by the employers^{xxviii}, the employment withdrawal benefit was of positive significance in the country.

The employment withdrawal benefits used to meet the purpose of social security arrangement in the time of unemployment. The purpose of social security in respect of the employment is to make sure that the contingencies effects are cured when the earnings or health soundness of a person can't properly function. The purpose is to retain a victim (a social security beneficiary) with his previous life status and flavor in the difficulty time before an occurrence of a particular contingency. The withdrawal benefit was issued in a lieu of unemployment benefit before the introduction of the latter in the Tanzanian social security law and industry. As the same benefit was paid to the social security member who had been stopped working under his employment for the purpose of assisting his life subsistence by facing and addressing the socio-economic hardship which would affect him, his family and his dependants entirely, in his post lost job life, the same benefit in fact stood and functioned as unemployment benefit. To this end therefore the employment withdrawal benefit played a golden game to the employee who had been stopped working for various reasons especially in the country where social security circumstances do not recognize and subsequently not provide unemployment benefit. The importance of the employment withdrawal benefit in the Tanzanian social security laws and subsequently industry would be more promoted by the statistics and fact that ,provision of unemployment benefit is said to be a difficult one to meet even by the developed state.^{xxix}

The withdrawal benefit stood as a substitution of employment platform where some employees would decide changing from employment dependence into a self-employment arrangement device.^{xxx} This entails that some employees got tired of being employed on the regular and unpredictable employment basis which lacks strong legal protection in the country, by deciding to launch their private economic projects using the money they got from the employment withdrawal benefit as their capitals to those new private projects. This is because in ordinary

dealings, the employees, especially in private sector, are employed on contractual basis ending to three years or other related periods below or a bit above it. These are expressly renewable contracts although their renewal is subject to a list of factors falling into legal, economic, moral and social parameters, things which make it unpredictable. Lack of assurance on the renewal of employment contracts cause unnecessary stress and psychological hardships. The situation has compelled some employees in private sector which is a common providence of these employment distresses, to think out of box, including self-employment arrangement. The only goal to do away with these hectic employment mechanism and meeting the substitution, is the accumulation of capital which may be met through the payment of the withdrawal benefit accompanied with the gratuity and interest accruing from the employment contracts. The withdrawal benefit therefore makes possible the substitution and shifting of employment dependence paradigm into the self-employment paradigm.

The employment withdrawal benefit created a conception of the property worthiness within the employment opportunities and contracts. This would be another important role played by issuance of the employment withdrawal benefit in Tanzania. As noted above security of employment in non-pensionable and private sector employments is relatively weak. Employment is a property from which life rests. Property gives hope, hope gives trust on property, trust gives health which is the engine of production. Continuation of property cements the meaning of it and lack of it, underestimates its meaning and application. Lack of reliable employment security undermines the existence and purpose of employment the defect which used to rests on the heart of the employment withdrawal benefit in those times of its subsistence in the country. Meaning more that a fear to a loose of job which is the employee's property was addressed by a hope of receiving the employment withdrawal benefit by a person in such a fear. The employees on non-pensionable employment contracts lack confidence in their employment continuation but the understanding and assurance of access to the withdrawal benefit sounded as condolence in times of such employment difficulties hence a motivation in their working providences regardless of their employment contracts challenges. The employment withdrawal benefit therefore, stood as a condolence to the employment difficulties in terms of its stoppage hence very important and useful in the employment and social security industry of Tanzania.

The employment withdrawal benefit acted as employment creation and extension in the country. This takes into account the fact that, the need to be employed is very high while the

employment opportunities are so limited. ^{xxxii}The need to allow the expansion of employment would entail or involve allowing the employed persons to create some more jobs in which other people might be employed. The mechanism would consider producing the prospective employers from the employees. The effective device to meet this requirement would be effected through a provision of the employment withdrawal benefit from which the stopped working persons would create other self-employed business allowing the employment of unemployed people as business expands more. ^{xxxiii} The mechanism therefore, was more productive by allowing the generation of employment opportunities which is a challenge to the labour markets worldwide ^{xxxiii}. This is evidenced by a number of the previous employees who had been working with private sectors before stoppage of their employment on contractual basis and later became the businessmen running different business enterprises from which some other more people have been employed.

The withdrawal benefit acted as the working retirement package for some group of workers or employees who because of their employment nature as a matter of fact cannot keep on working with the anticipation of retiring at the retirement age of fifty five or sixty years. ^{xxxiv} People employed in the mining and related companies can't easily extend the working period beyond ten years ^{xxxv}. So they just work for ten years from which they retired earlier and engage in other substituted business enterprises using the withdrawal benefit as the capital for that other arrangement as established and discussed before above.

From the above trend therefore, it can generally be concluded that, the employment withdrawal benefit was an important arrangement in the employment and social security industry of Tanzania. These could have been some of the reasons of establishing the employment withdrawal benefit in the Tanzanian social security legal framework in all period of social security in the country before the movement to remove it in the 2012 and 2016 without a success and its subsequent successful removal in 2018. The withdrawal benefit had has been playing both socio-economic and psychological roles in the employment and social security industry in the country. The above significances can neither be underrated nor substituted with any other any social security benefit without causing negative implications on the social security industry in the country.

THE LEGAL WEIGHT ATTACHED TO THE EMPLOYMENT WITHDRAWAL BENEFIT

Because of the importance attached to the withdrawal benefit it would have been expected that the benefit as an aspect of social security could attract legal recognizance in the country. But a misfortune reveals that neither it (the withdrawal benefit) nor her mother (social security industry) has managed to marry legal statute on strong and viable legal terms. This is because from the constitutional point of view social security in its generality has not been yielded as the legal creation attracting all the legal features including legal enforcement features. It is a big misfortune however to point out that, this important social security setup has not qualified and attracted legal features from both the constitution of the country and its subsequent social security laws and practices.^{xxxvi} This being the case, the employment withdrawal benefit as an aspect of social security industry in Tanzania was not among the constitutional demands a person could enforce in the country.

The misfortune with the withdrawal and social security industry starts with the International law itself. At the international community level, social security is the product of Declaration of Human Rights.^{xxxvii} This means that, social security itself is a human rights package viewed in human rights philosophical foundation. The concept of human rights however, has been akin to some critiques from positivists like Jeremy Bentham^{xxxviii} who attacks it as a weak concept prone to the enactment of positivist laws of her majesty. This also stands as a criticism at the early stage of its conception.

The International covenant on Economic, Social and Cultural Rights^{xxxix} recognizes social security as the economic rights which in actual sense is provided prone to the economic capacity of each individual state^{xl} This means that, provision and arrangement relating to social security facilities must conform to the economic stability of a country as stated under the ordinary and common concept of "you cannot give what you don't have", could not be forced unless by taking into account the economic stability and soundness of the state. Even in the countries with a very sound economic power like The Republic of South Africa, the social security arrangements have not been extended beyond the state economic capacity consideration.^{xli} The concept here is that, the state with sound economy would be expected to provide sound social security facilities and the vice versa is true. While the stability and provision of social security depends on the economic level of the individual state, although in

some circumstances the facilities have been provided below the economic capacity of the states, the pains accruing from the lack of stable social security facilities do not depend on the economic capacity of the state of its beneficiaries; A pain remains a pain which cannot be measured in the economic capacity of a particular state rather in the human bones, flesh and feelings of an individual person..

The strong and most sound international legal instrument regulating social security provision is called The International Labour Organization (ILO) [Minimum Standards] Convention^{xlii} and it provides nine benefits^{xliii} that are social security internationally recognized benefits. In this international legal instrument list, the employment withdrawal benefit is not there. This is another notable serious challenge with this social security benefit which is very meaningful in the country. It is not well and exactly stated if this benefit was adopted instead of unemployment benefit, which although, being in the list of the ILO Convention^{xliiv} had not yet been legally recognized through in the country until in the recent times where the employment withdrawal benefit replaced unemployment benefit in the Tanzanian social security industry. This is where confusion with the withdrawal benefit in Tanzania starts. *Where was it borrowed? Why not unemployment benefit but the withdrawal benefit?* These questions may extend discussion hence distortion of what this paper tries to discuss. But at International level the withdrawal benefit is not one of the social security agenda.

The minimum requirement of social security benefit provided in the ILO Convention^{xliv} is three benefits out of nine from which the withdrawal benefit is not inclusive. This could justify the fact that, the withdrawal benefit in the country is provided in extra. It doesn't affect the social security at international providence. Whether it is or not there, the withdrawal benefit in the international law aspect is not a deal of concern. The causes and factors from which the withdrawal benefit was established in Tanzania as a matter of law can be used to justify its burn and perhaps the autonomy used to create it is the same power used to enact the law abolishing it.^{xlvi}

THE REASONS FOR WITHDRAWING THE EMPLOYMENT WITHDRAWAL BENEFIT

While the withdrawal benefit was considered to be a bed of hope to the employees especially those whose employments are non pensionable in nature, it is a sword to the state economy. This is because, one of the obligations of the social security industry owes to the government is the contribution to the prosperity of state economy. In Tanzania, social security industry is used as the important economic partner by investing into various economic projects directly^{xlvii} and lenders to the government as well^{xlviii}. This important function may be interrupted negatively if the same social security industry issues money more than it uses to collect. Allowing the employment withdrawal benefit to any employee without necessary limitations had a serious get out-way of the schemes' money, hence disturbed the monetary investment in the scheme; this was the situation with the employment withdrawal benefit and the state economy was not happy with it^{xlix}. It is upon realization of this fact, perhaps that, the government decided to abolish the same government withdrawal benefit in the social security statutory books in the country¹. The impact of the withdrawal benefit was a to jeopardize to the public use of fund on the cost of following and meeting the individual employees' interest upon a loose of job without a reasonable limitation in that particular arrangement. This might also affect the underlying spirit and general purposes of "*Motho ke motho ka batho babang* (A person cannot be a person except through others) the reflective of African philosophy on social security.

Another negative perception of the same employment withdrawal benefit is that [it] the employment withdrawal benefit did abuse the important employment social security foundation and purpose. The employment social security at the initial stages in Tanzania as pointed before was more concerned with an address to the old age and the contingencies that would come because of the employee's incapacity to work. To serve this purpose therefore, the employees' access to their social security benefits were to be limited and issued with the same benefits in a way that could not disturb these noble social security purposes and initiatives. Issuance of the employment withdrawal benefits in the Tanzanian social security industry involved the circumstances in which social security scheme members who were still productive and aspired to work withdrew and spent their social security contributions which would have been useful in the times where the same scheme member could not produce because of serious

reasons including an extreme old age. The accumulations deposited during working and member's energetic period would be conveniently spent in the moment where the old employee cannot manage to work anymore. In a long run this would leave the retired employees with no sound means of meeting life costs and requirement at their retirement age something that might not only be a torture in their old days but a serious burdensome to their relatives and the government as well.^{li} Under this trend therefore, the withdrawal benefit could not count to be effective and subsequently irrelevant when measured in the sprite and underlying purpose of employment social security arrangements and the same trend justifies the withdrawal of the employment withdrawal benefits in the social security industry and setups of Tanzania.

THE EMPLOYMENT WITHDRAWAL BENEFIT BURNING INITIATIVES IN TANZANIA

The efforts and the subsequent move to make sure that employment withdrawal benefit is abolished in the country didn't come successful very easily. These efforts were deployed and employed by the government at different period of time starting manifested in differing government regimes of Tanzania. On the first attempt this was so adopted under the fourth government regime led by his Excellence Jakaya Mrisho Kikwete as the head of the government, state and the by then commander in chief^{lii}. The move was justified under this so called social security improvement in Tanzania. These initiatives however, didn't stand the criticism and attacks from the social security beneficiaries especially the employees under various Trade unions.^{liii} The move was silently stopped but not buried there was a sense of understanding among the political analyst that the move was withdrawn from the table of design in a fear of election defeat in the general election that was about coming^{liv}.

It was another big misfortune however that, despite being the sensitive agenda that was left hanging in the middle of air by the same fourth government regime until its quitting out of power, the successor government didn't raise the employment withdrawal benefit within its political campaigns. Neither the opposition parties nor the ruling party did attempt to address their political policies and strategies on the same employment withdrawal benefit. This didn't look like the big deal that had occupied the employees' minds within the country as there was no any sense of its reflection in the same political campaign. The New government was sworn in and one of its priorities was its initiatives to abolish the same employment withdrawal benefit

in the social security law and its subsequent arrangements. The same movement became another surprising agenda which made the verbal battle among the government, social security schemes on the first side and the employees on the second side.^{lv}The government came up with several grounds to justify why its intention was of public good and some assertions that were raised were inter alia that;

The employment withdrawal benefit is not recognized by the international instruments relating to the social security minimum standards .It was argued therefore that, it doesn't make sense to keep on providing the same social security benefit which does not respond to the international minimum standards neither provided in other countries including the East African countries.^{lvi} Lack of international recognition made the employment withdrawal benefit akin to the wishes and decision of the government to hold or to drop it. It was said that, the employees in the country should learn how to forget about this internationally unrecognized social security benefit. The idea was further cemented by the intention of replacing the withdrawal benefit with unemployment benefit in order to marry the social security benefits in the auspices of the international form and standards. The replacement would be that, upon a termination of employment the terminated employee would enjoy unemployment benefit payment until he secures another job^{lvii}Therefore it was said that the need for the withdrawal benefit could not rise in the existence of unemployment benefit.^{lviii}

The above government justification however, was not given in a support to the challenges of the purpose for having the employment withdrawal benefit in Tanzania. The withdrawal benefit is not recognized in the international instrument and this undisputed fact, but some questions would remain unanswered including that;, why was the same employment withdrawal benefit was introduced in the country? Were there any special compelling circumstances for its introduction in the country? Are the same circumstances still prevailing in the country? None of these considerations, was expressly addressed when justifying the abolishment of the employment withdrawal benefit in the country by the government .Another incidental response to this point is that, if the employment withdrawal benefit is the commitment that the state does not have in the international arena; therefore it was argued that; the existence of the withdrawal benefit had nothing to affect the introduction of unemployment benefit in the country proposing that, both of the two social security benefits in this line therefore, would have a coexistence in the country to meet both the socio-economic context of the country

without an usurp to the international formalization and standardization of the social security arrangements in the country as well.^{lix}

The withdrawal benefit has been encouraging some of the employees to forge the employment termination letters to be paid the withdrawal benefit.^{lx}This statement is uttered without any reference to any record and even if records were provided, still wouldn't have been genuine. Forgery is the offence against the state therefore a crime frequency of crime doesn't justify the abolition of right from which the crime is committed rather having the initiatives to stop the crime would be more appropriate and genuine solution.

From the above trend therefore, sounds wise to draw an inference that, the abolition of the withdrawal benefit had not been sufficiently and effectively addressed to justify it. The reasons that have been given do not hold water tightly. The reasons create more questions instead of clearing the doubts. The true reasons have not been provided because of political fear and lack of confidence in the reasons. The true reasons would have been the state desire to use the contributions of the employees in running different state projects as observed in some paragraphs before in this work and the pressure that was put by the International Labour Organization session which was held in Myanmar (also known as Burma) which emphasized on provision of unemployment benefit by the state parties as discussed above.

Finally with the enactment of the public Service Social Security Act^{lxi} the Minister was authorized to make the relevant regulation for implementing the same newly enacted law where the same regulation brought removed the employment withdrawal benefit by introducing a new social security benefit in a lieu of it and this is unemployment social security benefit^{lxii}.With unemployment benefit an employee who loses his job because of any reason other than his wishes he is entitled to a payment of 33% of his gross salary for a period of six months. The idea behind this new position being an assumption that within a period of six months period the employee in a loss of his employment will have secured a new one hence proceeding with contributions to his social security scheme. This new legal position has brought a significant number of questions in respect of its applicability and relevancy in the country including the following.

Small salaries payable to the working and employment forces of Tanzania leaves a lot of questions when it comes to the payment of 33% of these small salaries to the same employees in a loss of his job may have something less to address the employment contingency in that

particular social security arrangement. This is because from normal consultations and information it has been severally revealed out that most of the employees in Tanzania receive salaries that do not meet their monthly subsistence.^{lxiii} Now in respect of the salary satisfaction it seems unemployment benefit has nothing significant to replace the employment withdrawal benefit by which the employee had an opportunity to receive all of his money that he had in his social security scheme. This would play different roles including an ability of the same member to launch his private economic project something that would be helpful in all the times he had not been secured a new employment. The employment withdrawal benefit in these circumstances therefore played a more significant social economic role than the unemployment benefit.

Securing a new job in a period of six months after a loss of an employment would be something more imaginary than the life practical experience in the social economic aspect of Tanzania. All the studies and research have indicated that the labour market in Tanzania is too trivial compared to the unemployed population that enters into the labour market every year. Jobs are so limited and take a number of years to secure a job in Tanzania. Unemployment rate in Tanzania and other parts of world including the economically giant states is very high and a monster in social economic setups and prosperity.

WHAT WOULD HAVE BEEN DONE?

Social security has different principles coined under the common pool features where people jointly support each other in fighting the contingencies. It is true that the withdrawal benefit allows the frequent taking back of the employees' contributions hence affecting the financial stability of the schemes. In Tanzania as much as practices reveal, the government has been using the social security schemes' money by borrowing. It is not well settled however whether the government returns the interest in repaying the money so borrowed^{lxiv}. The government invests in various development schemes which benefits the public in general. The government from the ordinary contemplation would always, like the contributions paid in the schemes to be upheld for a quite long period of time to give it an ample time for utilization of the fund so paid. This would have been the compelling force for abolition of the withdrawal benefit in Tanzania.

It is a common practice that the social security industry plays not only the contingency meeting role, but also acts as the catalyst for economic prosperity in each particular country although the former is the primary objective as to why social security industry should exist in a country. The latter (economic prosperity) in no way, has to be conducted in the manner that would jeopardize the former. The government has been hesitating to reveal this painful concept in justification of its intention to abolish the withdrawal benefit. The intention under the international legal standards may be justifiable as the withdrawal benefit doesn't fall categorically in the list of the social security benefit to which state parties are not committed to. This heat has been expanded by the International Labour Organization Session conducted in 2012 from which it was agreed that member states must start issuing the unemployment benefit. What has been a problem and perhaps stimulates more speculations is the government shyness to expressly state the economic position of the contributions payable to the social security schemes by the employees and employers in as much as the state economic programs and projects are concerned and valued in running various government economic projects.

The removal of the withdrawal benefit is not justified by the introduction of unemployment benefit. This is because if the introduction of the withdrawal benefit came in lieu of unemployment benefit the introduction of the latter would have been introduced before an attempt to burn the former. From there the government would majestically have come out with its good intention to remove the withdrawal benefit cementing its ground on how the unemployment benefit can fully address the challenges that would come out in relation with such a removal. The removal would have not affected either of international obligations on the state in respect of the social security and the country environment in respect of the social security purpose and efficiency. So if the government was in need to introduce unemployment benefit in lieu of the withdrawal benefit, the prudent practice would have needed the government to introduce the former before an attempt to remove the latter.

The extension of the employment contract periods may be another method through which the government would have met its intention to strengthen and stringent the provision of social security in Tanzania without a need to usurp the withdrawal benefits. This entails that the short period employment such as a year or three years based contract would have been extended to a long period like ten years as a minimal period, subject to its renewal upon the agreement between the employer and employee. This would make the long period stay of the fund so deposited in the social security scheme while maintaining the assurance of the employee's

earnings for a quite long period of time at the same time. This mechanism in its final analysis would have been give an ample time for the social security scheme and the government to use the money so deposited and this would subsequently enable the social security industry to be more advantageous to the state economic prosperity and development.

Changing the social security attitude towards the investments is another mechanism which would also help retaining of the withdrawal benefit without difficulties. As it was noted before somewhere in this treatise, social security schemes have been dealing with the economic investment, this has made this important social security industry overwhelmingly overburdened. The schemes would still be more efficient and effective by acting as the lenders to the bankers as the reliable and competent agencies in monetary investment and interest generators. These bankers should be duty bound to return money so lent with some interests. The ideal would have created another important role of true economic prosperity in the country hence the withdrawal benefit would have remained there without causing unnecessary difficulties on the state economy. This has been in practice in several states including the U.S.A where the social security schemes have been playing the roles of being bank to the bankers. This has many benefits within it including the monetary and banking business stability some arrangements making the social security industry playing both social security and economic functions in the country and it is something which is healthy to the state development.

CONCLUDING REMARKS

The employment withdrawal benefit was important and still an important aspect of social security in Tanzania. It was the country's own innovation suitable to Tanzanian social and economic environment. The absence of other important social security benefits including unemployment benefit wasn't really felt because of the withdrawal benefit existence in the social security laws of the country. Being characterized by various factors including the short period employment contracts, lack of reliable employment tenure and inadequate salaries, the employment circumstances of Tanzania needed the relevant social security arrangements addressing these employment challenges and this is the provision of employment withdrawal benefit. The government had two options of improving the social security standards and quality in the country. The options were either retaining the employment withdrawal benefit in the Tanzanian laws as the proper reaction to the employment circumstances and contexts or

introducing social security unemployment benefit in the same Tanzanian laws. This is was so because both of the fact that both of the two play the same role as far as social security purpose and functions are concerned. In the final analysis however it was the government decision to quit the employment withdrawal benefit while replacing the same with the unemployment benefit in the Tanzanian social security laws and industry in general. The country's movement to harmonize social security benefit to the international standards and forms has been a successful initiative while leaving some more socio-economic challenges brought by a removal of the withdrawal benefit at that rate and demand.

The voice that is raised through this piece of writing and academic discussion is that while it is good and logical to have the social security arrangement and business compatible to the international standards and forms it is a far better and more convenient to have the social security initiative friendly and responsive to the socio-economic demand and needs. The government needs not ignore the socio-economic technical approach technical approach for the betterment of the Tanzanian employee majority whom are employed in private sector. Unemployment benefit which has been introduced in the Tanzanian social security law should be coached into socio-economic technical approach by extending the time framework within which can a person reasonably acquire a new employment when the former one has become futile at the same time extending and increasing the unemployment benefit rate more than 33.3% of the employee which is practically inadequate and ineffective as discussed before. The extension of time and the payment rate will subsequently help the social security members to address unemployment contingent upon which the same unemployment benefit and social security initiatives are found and established otherwise the recently introduced social security unemployment benefit will not have effectively and adequately replaced the employment withdrawal benefit in Tanzania.

ENDNOTES

ⁱThe Ministry of Labour ,Youth Development and Sports ;*The National Social Security Policy* (2003) p.2

ⁱⁱ No 102 of 1952

ⁱⁱⁱ The Convention lays down nine social security benefits which are Sickness, unemployment, maternity , Employment injury ; Survivors , Disability, the old age, Medical care and Family benefits.

^{iv} The Republic of South Africa is the role model to African social programmes in Africa and some parts of Europe as different programmes have been designed to assist the children of South Africa realizing and living their dreams.

^v This is an abbreviation for swahili language theme of “Mpango wa Maendeleo ya Elimu ya Msingi” meaning a special programme for basic education offcourse carrying within itself a notion of the Universal Primary Education. The programme was designed to make sure that every Tanzanian child gets a free access to a primary education in the country. Ever since its inception in 2000’s the programme has always been directed to lay down various primary school education infrastructures such as the classrooms buildings, teachers’ houses buildings, availability of teaching and learning resources including teachers recruiting by the government in the country. It is from this programme that most of the children got a free access to education and subsequently the secondary education was affected to the extent that a comprehensive administrative reform was needed in the provision of secondary education in the country.

^{vi} This is an abbreviation for Mpango wa Maendeleo ya Elimu ya Sekondary which in literal English meaning could imply the Special Programme for Secondary Education that was adopted in Tanzania as the government initiative and move towards its mission to accommodate every child that had passed the primary education certificate examination into secondary education spaces. The programme was caused by a successful Universal Primary Education Programme that was launched in the country some few years before. The programme is association with building of education infrastructures such as class rooms, teachers houses, Laboratories; recruitments of teachers; supplying of learning resources including books and stationaries and subsequently abolition of education fees to the secondary school students. The programme has stood as important bridge between secondary school education and higher learning academic platform.

^{vii} TASAF is an abbreviation for Tanzania Action Fund, the programme that was initiated into three phases of TASAFI; TASAFII and TASAF III which is still operational to date. The programme was firstly introduced in Tanzania way back in the year of 2000 with the aim of increasing household capacity to meet basic life needs and community opportunity to have access to the basic social services including health facilities and services. At the initial stage of its inception therefore TASAF was more associated with building of health facility infrastructures such as dispensaries and hospitals and later the programme directed itself to the household economic empowerment where people in need were paid with cash for a purpose of meeting their life basics and introducing economic projects that would enable them capable of addressing poverty and its incidental effect in the country. The programme has been successful tool in enabling the community access to social services and capacity to alleviate poverty.

^{viii} <https://socialwelfare.library.vcu.edu/programs/poor-laws> accessed on 13th June 2021 around 1422hrs.

^{ix} The remarkable genesis of the employment social security related initiative was that of Germany under chancellor Otto Von Bismark where the government of the day came up with the Old Age Insurance Programme of 1889 providing old age, and other related benefits to the employees

^x See the National Social Security Policy p.5 *ibid*

^{xi} This is a famous African concept of Ubuntu (humanity) entailing that a person is not a real person except through others. It further entails that a single person cannot have his life assurance in absence of his fellow men. In this contemplation therefore the fact that one is a human, he is, by a virtue of his humanity entitled to be supported by his fellow men where he is exposed to the circumstances that he cannot address alone in his individual capacity; at the same time by the same virtue of being a human stands obliged to help his fellow men when they are individually exposed to some life risks and contingent circumstances.

^{xii} Juma Venerando Milinga (*Kuunganishwa kwa Mifuko ya Pansheni, Je Mafao Yameboreshwa? Kitabu Chenye Majibu Chanya Kuhusu Ubora wa Mafao ya PSSF*, Remili Publishers Company (2018), Tanzania. P 9-15

^{xiii} The Ministry of Labour Youth Development and Sports ; *The National Social Security Policy* (2003) p.1

^{xiv} Article 11(1) Of the Constitution of the United Republic of Tanzania, 19977 as amended from time to time.

^{xv} The Constitution of the United Republic of Tanzania, *ibid*. The provision breathes out that, the provisions in Part Two (II) of Chapter one (I) of the Constitution, to which Article 11 belongs, cannot be enforced by whosoever against any other person including the government. The provision therefore, makes the contents and context of the chapter in the constitution meaningless and mere political declaration trying to decorate this important and supreme legal document of the country.

^{xvi} No 2 of 2018

^{xvii} The autonomous social security body that was established for the purpose of regulating the provision of social security via the Social Security Regulatory Authority Act No 8 of 2008 for the purpose of addressing the social security challenges that would accrue from the proliferation of the schemes and their relative laws in that particular special arrangements and setups.

^{xviii} There were almost nine contributory social security schemes in the country one of which is in Zanzibar. These schemes were the Local Authorities Pensions Fund or Local Authorities Provident Fund as it was called before 2015 (LAPF); The Public Service Pension Fund (PSPF); The Government Employees Provident Fund (GEPF) or the GEPF Retirement Benefits Fund as it became known after G. Number 37 of 2014; Political Leaders Retirement Benefits Fund (PLRBF); The Public Parastatal Pension Fund (PPF); The National Health Insurance Fund (NHIF) and The National Social Security Fund (NSSF); The Workers Compensation Fund (WCF) and The Zanzibar Social

Security Fund(ZNSSF).All of these Schemes had their different laws and different social security benefits and calculations something that needed a serious intervention by the autonomous body to harmonize some of the social security affairs and arrangements among the schemes.

^{xix} The members of social security schemes were given a right to choose the scheme of their preferences via the Social Security Regulatory Authority Act No 8 of 2008,section 30.The schemes were to be run on competitive basis .

^{xx} Act No 9 of 2006 which gave a legal capacity to the LAPF standing as the Pension Fund.

^{xxi} Via GEPF Retirement Benefits Fund Act No 8 of 2013.

^{xxii} Ibid.

^{xxiii} Mohamed Juma Mwerinde ; *A Dissertation Submitted to The Department of Development and Economic Studies In Partial Fulfillment of MSC In Economic and Finance For Development*; The University of Bradford ,(2013) p.31. Where it is observed that NSSF is the leading contributory social security scheme offering seven social security benefit with the inclusion of the withdrawal benefit .

^{xxiv} See ss.14 and 15 of The Public Service Pension Fund Act No 22 of 1999.

^{xxv} The National Social Security Policy Of 2003 *ibid*

^{xxvi} Social Security Regulatory Authority Act (Cap 315 R.E 2015)

^{xxvii} PSPF requires the employer to deposit 5% of his employee's contribution drawn from the employees monthly salary while the same employer's contribution is 15% of the gross salary of the employee and the latter is drawn from the employers pocket other than the employee's monthly salary With LAPF The employer deducts 15% of the employee's gross salary while contributing from his pocket 15% of the gross salary. With NSSF the employer deducts and deposits 10% of the employee's gross salary plus the employer's contribution of 10% of the employee's gross salary.

^{xxviii} See the Citizen Newspaper,28th July 2012

^{xxix} International Labour Organization Report of 2010 tagged in Mohamed Juma Merinde Dissertation *ibid*.

^{xxx} The Citizen Newspaper *ibid*

^{xxxi} Every year, the youths entering the labour market is eight hundred thousand with a very low employment capacity in both public and private sectors. See <http://www.worldbank.org/en/country/tanzania/overview> *ibid*.

^{xxxii} It is quantified that twelve million people out of fifty million live below the national poverty line hence a need to make stimulus for economic development is obvious and creation of employment vacancies is very important(with emphasize) see <http://www.worldbank.org/en/country/tanzania/overview> *ibid*.

^{xxxiii} It is said that only 10% of the Tanzanian population is employed and 6% of which is employees in the formal sector. See Mohamed Juma Mwerinde's Dissertation p.32 *ibid*.

^{xxxiv} See The Citizen Newspaper of 26th July 2012

^{xxxv} See The Citizen Newspaper 10th September 2016.

^{xxxvi} Social security has been enshrined under Article 11(2) hence incapable of being enforced per requirement of Article 7(2) of the Constitution of The United Republic of Tanzania, 1977 as amended from time to time.

^{xxxvii} Of 10th December 1948

^{xxxviii} See Jeremy Bentham; *Anarchical Fallacies* Bowring Edition,(1962)

^{xxxix} Of 1966

^{xl} Article 2 of The International Covenant on Economic ,Social and Cultural Rights of 1966

^{xli} *The Government of The Republic of South Africa v Grootboom (2001) (1) SA 46CC*. Where the Constitutional Court of South Africa in interpreting the right to access shelter and housing for the Respondent against the Applicant came with the position that ,the government had the obligation to give the economic right beyond its economic capacity to do so(My own interpretation of the court decision. For further reference .The same observation was given in the other case relating to the health facilities in the so called *Soobramoney v The Mister of Health Kwazulu –Natal (CCT3297) (1997) ZACC 17*, in which the concept of limited resources dominated the discussion on the possibility of enforcing the right to medical treatment although the right is expressly provided within the constitution. The court went as far as to provide that, some constitutional rights are of no value as they cannot in practical word enforced in the court of law. For further reference visit <http://www.saflii.org/za/cases/ZACC/17/1997/html> visited on 3rd January 2017.

^{xlii} No 102 of 1952

^{xliiii} No 102 *ibid*

^{xliiv} No 102 *ibid*.

^{xli v} No 102 *ibid*

^{xli vi} Social Security Laws (Amendments) Act No 5 of 2012. This generally aimed at transforming all social security schemes in the Country into Pension Funds with the removal of the withdrawal abolition. Later on the bill that was to be tabled for the purpose of express prohibition of the withdrawal benefit in Tanzania was suspended in the same year and until now under section.36(2) of the Social Security (Regulatory Authority)Act (Cap 315 R.E

2015) In this year however the same government came up with the clear intention to prepare a bill that would among other things aiming at abolishing the withdrawal benefit in the country.

^{xlvii}The Ministry of Labour Youth Development and Sports; The National Social Security Policy (2003) pp 19-20.

^{xlviii} <http://jamhurimedia.co.tz/ssra-na-kilio-cha-fao-la-kujitao/> visited on 31st December 2016 short term benefit is still retained and perhaps this would include the withdrawal benefit unless and until this will expressly be nullified. The government itself has expressly stated that the withdrawal benefit will continue to be provided by the social security schemes of the country.

^{xlix} For example in the year 2008-09 the withdrawal benefit paid by NSSF alone was Tshs,71,021,142,000/=For Further reference see Mohamed Juma Mwerinde's Dissertation p 57 *ibid*.

^l <http://jamhurimedia.co.tz/ssra-na-kilio-cha-fao> *ibid*.

^{li} For example it is pointed out that only 4% of the elders in Tanzania are covered by the social security schemes out of more than 1.4million elders See Mohamed Juma p.16 *ibid*..

^{lii} Guardian Newspaper 4th November 2012 with some discussions of the members of parliament from the house on the government intention to withdrawal the withdrawal benefit in Tanzania.

^{liii} See the Citizen Newspaper of 10th September 2016; the statements of human rights activists and leaders of the Trade Union in Tanzania.

^{liv} The initiatives to burn the employment withdrawal benefit in the Tanzanian Social Security Law and industry did start in 2012 where the government tabled a bill to effect the same before the parliamentary session but having received negative reactions from the MPs and other Trade Union Leaders the government withdrew the bill and the same initiatives were started later soon after the 2015 General Election. The initial removal of the bill may be associated with the government fear to lose its votes from the employees from both the private and public sectors in the by then about coming general election. For more information a visitation may be made to <https://mtanzania.co.tz/taharuki-fao-la-kujitao> accessed on 21st June 2021 around 1200hrs.

^{lv} See The Citizen News paper 10th September 2016; Where various human rights activists and leaders of trade union in Tanzania raised their common voices against the government's intention to abolish the withdrawal benefit;

^{lvi} <http://jamhurimedia/ssra-na-kilio-cha-fao-la-kujitao> *ibid*.

^{lvii} <http://jamhurimedia/ssra-na-kilio-cha-zao-la-kujitao> *ibid*. This is also given an impetus by the International Labour Organization's 101st Session in Myanmar for sixteen days lasting from 30th May to 14th June 2012 where an emphasize was placed on the member states to issue unemployment benefit in their respective countries. See Mohamed Juma's Dissertation p.67 *ibid*

^{lviii} <https://mtanzania.co.tz/taharuki-fao-la-kujitao> *ibid*

^{lix} The Citizen Newspaper 10th September 2016.

^{lx} <http://jamhurimedia/sra-na-kilio-cha-zao-la-kujitao> *ibid*.

^{lxi} No 2 of 2018

^{lxii} With the coming of the Public services social security Fund Act No 2 of 2018, there has been an introduction of unemployment benefit which had never been in place before. The introduction of unemployment benefit in the Tanzanian social security industry did burn the provision of the employment withdrawal benefit in the same social security arrangements in Tanzania.

^{lxiii} Regulation 20 of the Social security benefits regulation of 2018 has brought the social security unemployment benefit that is provided at the rate of 33.3% of the employee's salary payable for six months from the date and month within which the same employee has lost his employment. In any case, that the same employee doesn't secure another new job he is entitled subject to an application to the Direct General to convert his compulsory social security contributions into the supplementary tier where he gets all the rights to have an access to withdraw his social security contribution from a scheme subject to the social security supplementary tier system arrangements and freedom.

^{lxiv} This has been even raised by some of the MPs in one of the Parliamentary sessions where they were very direct that, the government has had been borrowing money from the social security fund without following proper borrowing procedures and in most circumstances the government has not been paying back the money so borrowed and probably that this is what has been one of the underlying force behind the merger of the social security schemes in Tanzania. In a very direct context the recent merger of GEPF, PSPF, PPF and LAPF into the PSSSF has been so effected to rescue the financial capacity of some of these schemes individually in affording paying the social security benefits to their members as they have had lost financial stabilities because of the unpaid government debts to these schemes. You may visit <https://youtu.be/GP9egJpMTg>