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Abstract:

This article examines the legal framework for protection of social security rights of cross-border migrant workers in Kenya in the light of supranational legal rules streaming from the East African Community Treaty. It focuses on how the Kenya National Social Security Fund Act, 2013 complies with the Treaty and the Common Market Protocol. It investigates how far Kenya has gone in removing legal restrictions against equal access to social security rights as between national workers and cross-border migrant workers in line with the provisions of the EAC Treaty and the CMP. Challenges standing in the way of legal protection of migrants' rights to equal social security benefits in the framework establishment of the Treaty are examined. Data for this paper is based on doctrinal research. The results of this study shows that Kenya has made significant strides towards constitutional incorporation of the social economic rights and harmonisation or approximation of its previously inconsistent national social security laws so as to conform to EAC Treaty. The article reveals that Kenya is not capable of efficiently moving alone in implementation of the Treaty. It is recommended, inter alia, that in order to comply with the EAC law, Kenya and all other EAC Partner States need to put in place social security legal framework that is closely coordinated so as to eliminate unequal treatment in social security systems. Kenya should engage all
EAC Partner States to adopt, conform and enact efficient social security laws that effectively implement the EAC Treaty obligations.

**Key Words:** social security, migrant workers, common market, equality of treatment, EAC Treaty, portability, harmonisation.

**UJMDD Classification:** Law

### 1.0 Introduction

Social security is often referred to in the EAC legislative instruments (the EAC Treaty, 1999 and the Common Marker Protocol, 2009) but no definition has been provided. Thus, social security may be described as a scheme(s) under which individuals become entitled to receive certain benefits as a result of having paid contributions either voluntarily or mandatorily into a social security scheme during their periods of employment or other economic activity. It is in the context of the latter description of social security that the EAC Common Market Protocol (CMP) and the Kenya social security law both provide for some legal mechanisms for ensuring that equal treatment among workers of national origin and migrant workers in cross-border labour mobility and portability of social security benefits are guaranteed. Both the EAC supranational and national legal regimes provide for standards that are applicable in ensuring that paramount social security benefits are guaranteed on equal footing as between national and migrant workers of foreign origin within the EAC Partner States.

Internationally, the ILO legal framework underscores the importance of legal regimes for regional-wide provision of statutory social security benefits within legally established regional economic communities such as the EAC. The UN International Covenant on the Protections of the Rights of All Migrant Workers and Members of their Families (ICPRMW) sets internationally agreed level on the minimal degree of
legal protection that migrants generally should enjoy. Among other things, the kind of international legal framework recognizes the rights of migrant workers to enjoy a number of internationally recognized social security benefits. These benefits include: old age benefit, retirement pension, maternity benefit, sickness benefit, survivors benefit, invalidity or disability benefit, unemployment benefit, death grants, social assistance benefits, and occupational injury benefits.

On a multilateral level such as the EAC legal framework, equal social security benefits may be partly or fully provided for under existing national legal regime or under a negotiated and concluded region-wide legal instrument. This may involve the EAC Partner States entering into a multilateral agreement on social security or bilateral agreement on social security among Member States. This article examines the legal framework for protection of social security rights of cross-border migrant workers in Kenya in the light of supranational legal rules streaming from the East African Community (EAC) Treaty. It presents as to how the Kenya National Social Security Fund Act, 2013 conforms to the treaty. It examines the extent to which Kenya has gone in removing legal restrictions against equal access to social security rights as between national workers and cross-border migrant workers in line with the provisions of the EAC Treaty.

Challenges standing in the way of legal protection of cross-border migrant workers’ rights to equal social security benefits in the framework establishment of the treaty are pointed. The applicable legal framework under the EAC treaty and the common market protocol and the Kenya National Social Security Fund Act, 2013 is examined and assessed alongside the treaty for the establishment of the EAC. The aspect of equality of treatment in social security rights for cross-border migrant workers is investigated with a view to identifying the extent to which the EAC CMP provides in as far as the subject of equal treatment of national and migrant workers within the EAC intra-regional labour mobility is concerned. The state of harmonisation of national social
security laws in Kenya is also examined and analysed in order to establish the state of re-alignment of her national law with that of the EAC Treaty and the CM protocol. Therefore, this article is divided into seven parts. Part one introduces the subject of the study. Part two presents the background information while part three explains the problem under the study. Part four presents the methodology that was used to arrive at the given findings. Part five examines the East African community law, free movement of workers and social security rights. Part six presents the state of compliance with EAC Treaty on equal protection of migrant workers in Kenya. Finally, part seven contains concluding remarks and recommendations.

2.0 Background

The Partner States of the East African Community (EAC) signed the EAC Treaty on 30 November 1999 and the Treaty entered into force on 7 July 2000. Within this Treaty, Member States of the community undertook, among other things, to adopt concrete measures to achieve free movement of persons, labour and services for benefits of the peoples of the region. Every EAC Member State is contractually required to ensure that the EAC citizens enjoy the right of establishment and residence within the community. Therefore, the concept of free movement of workers beyond national borders within the EAC falls in the broad category of free movement of persons, labour and services under the EAC CMP. The rights of migrant workers are meted within the framework implementation of the CMP. The EAC Partner States are at different levels of making law reforms towards fulfillment of their EAC Treaty obligations including protection of rights of workers in mobile conditions within the community.

Despite the legal framework for free movement of workers in the EAC, it is also true that in the world of international labour migration, national restriction against migrant workers is a common phenomenon.
In the area of social security rights of labour migrants within the EAC, the subject of equal social security rights between workers of national origin and foreign labour migrants may be accounted for in the nature of national legal framework of Partner States. Also, the legal regime through which the EAC common market operates may serve to underpin the levels of equal protection guaranteed to intra-regional labour migrants. This is so because, a common market is not the same thing as a political integration. Moreover, in the EAC, little attention has been placed on political integration which is often seen as a failed attempt even before it started.

In the actual implementation of a common market, there are some legal restrictions regarding the exercise of certain activities. Some legal limitations exist in the areas pertaining to realization of equal social security rights by aliens in national jurisdictions of the EAC Partner States. In some other regional communities elsewhere, such legal restrictions may remain in place without affecting the quality of the common market rights and opportunities. However, in the EAC, the latter has not always been the case in some instances. Nevertheless, the EAC countries are at different levels in attracting foreign capital investment within their territorial borders which in turn has led to increased number of migrant workers crossing national borders for employment within the EAC Partner States.

In many instances, migrant workers often face different social economic risks pertaining to their migration status as they seek for employment from one country to another within the integration region. Among such risks include the apparent lack of equal protection in social security rights as between nationals and migrant workers in conditions of cross-border labour migration. For example, currently, the EAC appears to be reluctant to implement fully the free movement of goods, people, labour, services and capital which are the cornerstone to the stable Common Market. There has been reported some series of instances of Member States failing to apply Community laws, or applying them
arbitrarily. Cross-border services remain deeply constrained, and the right of establishment, on which the free movement of services and labour depends, is reportedly blocked in many areas either by arbitrary laws or by unacceptable practices. It has been echoed in many circles of the EAC institutions and in national jurisdictions that none of the EAC Partner States fully respect the principles of non-discrimination and equal treatment of member-state nationals, which the EAC Treaty provides for.

Among the several challenges facing the social security provision within the EAC, is the apparent lack of harmonised social security legal framework within national jurisdictions of the EAC Partner States. The latter is an apparent gap that affects the attainment of desired equal treatment of EAC cross-border migrant workers in the area of social security.

**3.0 Problem Statement**

The broad spectrum of the subject or concept of equality of treatment of nationals and migrant workers in the area of social security rights within the national jurisdictions of EAC Partner States may be generally derived from key provisions of the EAC CMP, 2019. Various legal provisions in the CMP provide for different conditions within which labour migrants may find certain foundational basis for claiming equal legal protection of their social security rights. Some EAC legal provisions which provide foundational framework for protection of migrant workers’ social security rights within the community include: principles of the common market (Article 3); free movement of persons (article 7); free movement of workers (article 10); harmonisation of labour policies, laws and programmes (article 12); national treatment (article 17); domestic regulation (article 20); harmonisation of social policies (article 39); and approximation and harmonisation of policies, laws and systems (article 47).
From the foregoing cited provisions of the EAC CMP, it may generally be derived that, equality of treatment in social security is a principle which requires certain standards to be fulfilled by the EAC community Member States. The principle demands that, persons to whom the protocol applies are entitled to enjoy the same benefits and be subject to the same obligations under the legislation of any EAC Member State as the nationals of a Member State. It is expected that even when a person is residing in another EAC Member State, the principle of equal treatment shall apply. Thus, it is common that all the persons whether residents of EAC Member States or not, are prone to social economic risks. As a matter of international human rights law, migrant workers equally deserve the same social security rights and obligations in any Partner State as the citizens of any other EAC Member State. This translates into a legal condition that, it is not legally permissible to include legal provisions in a national legislation of any EAC Member State which results into discrimination against the citizens of other Member States who are protected under the Community law.

Consequently, the extent to which the EAC law and national legislation in Kenya provides for and extend or guarantee equal social security rights to migrant workers within the EAC and beyond the EAC, remains unclear. This /article seeks to provide some answers to the present state of the problem pertaining to the extent to which Kenya is legally compliant with the EAC law in the area of equal social security rights for migrant workers. Perceived obstacles that stand in the way of enforcement of the EAC Treaty on equal social security rights to migrant workers are investigated so as to expose proximal answers to the problems.

1.0 Methodology

Data used in this paper was obtained through doctrinal method. The author collected and analysed a body of EAC laws, together with relevant Kenya national legislation. Some secondary sources such basic legal textbooks and published journal articles were gathered and
reviewed. The author also critically reviewed written commentaries on some foreign case law and some community and national legislation. These methods and processes involved description of existing body of law on the subject under investigation. Attempt was made to interpret and apply laws using legal research approach skills. The author was able to provide analysis of the state of the Community law and national law on the subject matter. As a result, the author has demonstrated how the EAC law has been developing, and where applicable, has shown some judicial reasoning and legislative enactments that have been analysed and upon which various opinion were provided.

The comparative legal scholarship methodology was applied because the subject of investigation crosses beyond the traditional categories of law operating within national jurisdictions. This methodology sought to integrate public and private international law with domestic law because both the EAC Community and national laws have been examined. Another reason for employing the comparative legal scholarship is due to the fact that, there has been an increasing impact of supra-national legal rules as well as the influence of international legal materials on national jurisdictions as well as on the law of regional organisations. This trend has created a demand for the increasing need for legal scholars to refer to legal materials from a variety of jurisdictions, thus, it was thought appropriate to employ comparative legal research methodology in the study. In the next part below, it is presented a brief analysis of the EAC law on the free movement of workers and social security rights.

5.0 East Africa Community Law, Free Movement OF Workers and Social Security Rights

5.1 Legal Framework for Free Movement of Workers in the EAC
The legal framework for free movement of workers in the EAC is traceable from the Treaty establishing the EAC of 1999 which was amended on 14th December, 2006 and 20th August, 2007. Articles 76 and 104 of the EAC Treaty provide for the establishment of EAC CMP. The Common Market (Free Movement of Workers) Regulations, 2009 provide in Article 2(4) for free movement of persons and labour which translates into a guaranteed right of migrant workers. Article 10 of the CMP provides for broader Partner States’ obligations concerning the free movement of workers in the Community. This includes the EAC States’ obligation to guarantee the free movement of workers who are citizens of the other Partner States within their territories. According to Article 10 (2) of the CMP, all EAC Partner States are duty bound to implement EAC law that prohibits discrimination of the workers of the other Partner States (migrant workers) based on their nationalities. The latter is in relation to employment, remuneration and other conditions of work and employment. The CMP permits the free movement of workers in the whole region of the EAC. Migrant workers are entitled to apply for employment and accept offers of employment actually made in any Partner States. Therefore, the signing of the CMP contributed to the increased migration of workers across the EAC countries.

Some restrictive conditions against employment of non-nationals still exist and are variably implemented by each EAC Partner States in the free movement of workers regulations. However, the EAC Treaty generally allows migrant workers to move freely within the territories of the Partner States subject to limitations imposed by Partner States in their national laws. Notably, under Article 10(3) (a) of the CMP, the employment of non-nationals in each of the Partner States has been made subject to national immigration laws and employment laws of
respective Partner States. According to Article 10 of the CMP, the citizens of other Partner States are legally entitled to be administratively treated in the manner the nationals are treated. This implies that the workers of other Partner States in matters of employment, social security and other conditions of employment should be treated according to the principles of equality of treatment without any discrimination.

The Schedule of implementation of the provisions on free movement of workers that is annexed to the Regulations on Free Movement of Workers has been variably implemented by the Partner states. This variation in implementation of the provisions on free movement of workers is due to the fact that each EAC Partner State has its own set of priorities depending on the national conditions in the domestic labour markets. Under the schedule of implementation since 2010, a member State has been given discretion to determine the timing and the type of opening of its doors to allow admission of migrant workers from fellow member States.

Further, under Article 10(10) of the EAC CMP, the EAC law has left the discretion upon the Partner States to choose to apply the provisions on the free movement of workers contained in Article 10 if the rights of workers so involved concern the public service. Thus, the EAC law has excluded the application of the provisions on free movement of workers in cases involving public service, unless the national laws and regulations of a host Partner State so permit. One of the problematic parts of the EAC CMP is that the EAC has not established full-fledged rights of the EAC citizenship enjoyable equally across the whole region due to some restrictions which are permissible under the EAC law. These restrictions should be gradually removed, and this has been a source of delays due to the fact that each Partner state moves at own pace, depending on set of national priorities and domestic challenges. The EAC CMP directs Member States to ease cross-border movement of workers and to adopt an integrated border management system so
that the citizens of the Community may enjoy the rights conferred by the EAC Treaty and subject to the duties that are imposed by the Treaty. Since 1999, the Partner states have continued with gradual removal of restrictions on movement of labour in the region at different paces.

Further, the subject of implementation of the process of harmonisation of a number of national laws, including those impacting on the rights of migrant workers, requires, among others, each EAC Partner State to embark on a multi-sectoral involvement, and that needs intensive consultations and study on the repercussions in the domestic legal order. Under Article 104 (3) (e) of the EAC Treaty, the member States agreed to harmonise their labour policies, legislation and occupational health and safety regulations, among others, in order to implement the provisions of the Treaty and the accompanying Protocols as well as related annexes.\textsuperscript{xii} It is from this background that article 12 of the EAC Common Market Protocol has, specifically provided for the Partner States to harmonise their labour policies, national laws and programmes so as to facilitate the free movement of labour within the Community.\textsuperscript{xiii}

Under EAC CMP of 2009, particularly in Article 47, it is provided that all Partner States are required to approximate their national laws and to harmonise their policies and systems for purposes of implementing the Protocol. However, actual practical steps of implementation depend on the types and nature of directives that should be issued by the EAC Council of Ministers. Under the Treaty and the Protocol, the Council is legally mandated to issue various directives and regulations for purposes of harmonisation and approximation of laws, systems and policies of the Partner States.\textsuperscript{xiv}

The subject of equal rights of labour migrants is justified because, no any EAC citizen moving within any one of the EAC countries will ever feel happy at all when the nationality condition is attached to a particular right entitled to a person by virtue of being a human being. The right to security against factors causing social insecurity especially
those threatening human life is a right of every person without distinction based on race, caste, colour, nationality, station in life, among others. This is one of the reasons as to why the EAC has put regional labour migration policy of non-discrimination and is enforced through the framework of the EAC CMP. The next sub-part briefly elaborates the concepts of rights and duties of EAC citizenship in the context of national laws of Member States.

5.2 Rights and duties of EAC citizenship
Citizenship in its classical sense and under international law would ordinarily involve duties as well as rights of people described as citizens.\textsuperscript{xv} Bronwen considers citizenship as synonym to nationality whereby different types of belonging to a political community are shown. Ordinarily, there are rights attached to a citizenship but also obligations.\textsuperscript{xvi} For example, the citizenship condition may become typical qualification for someone to join the army. Community citizenship has been stated in the EAC law but elaborate duties attached to the EAC citizenship seem to be lacking. The citizenship in the EAC appears additional to citizenship of the Member States of nationality. Even the EAC Treaty, 1999 and the EAC CMP do not seem to intend to replace the citizenship of the national States with EAC citizenship. The EAC citizenship seems subordinated to national citizenship and the legal paradigm that operates in the EAC generally indicates that it is the holding of the nationality of one of the EAC Member States that automatically gives rise to citizenship of the Community.

Consequently, each Member State of the EAC continues to run own national immigration laws and nationality affairs according to own rules for the grant of nationality, and this seems to be intrinsically perceived as the right of each Partner State to have that freedom. This forms the essence of intra-regional workers being referred to as foreign migrant workers within each EAC sovereign State. Although the EAC CMP requires each Member State of the Community to harmonise their national laws in order to align them with the EAC law, it remains the
rule of the thumb that when it comes to nationality and citizenship, each country has her separate internal rules for identifying nationality of other countries and for granting citizenship. Foreign workers from within the EAC are equally classified as migrant workers. It is important to state that despite there being freedom of EAC Partner States to grant nationality and admit migrant workers from other territories; an international rule of practice requires that a sovereign State is not expected to use its internal legal rules to deny recognition of the nationality of another Member State or discriminate non-nationals.

5.3 General principles for equality of treatment in social security under the EAC CMP
5.3.1 Provisions governing equal treatment in social security under the Protocol

According to the CMP in Article 29 (2) (b), the principle of equality of treatment or freedom from discrimination on grounds of nationality appears to be one of the fundamental rights conferred by the EAC Treaty. This forms a basic ingredient of the Community citizenship. The EAC Partner States may design practices to be adopted for social security rights for migrant workers and portability of benefits that better support mobile labour within the Community. Prohibition of discrimination of EAC nationals and investors on grounds of their nationality in matters within the scope of the EAC Treaty is one of the foundational principles of the Community.

Restrictions based on nationality may exist in legislation or in practical implementation of the provisions of the EAC CMP thereby hindering the freedom of movement of workers (labour), persons, goods and services and capital. Prohibition of discrimination has continued to become more attached to citizenship of the EAC and it resembles that of constitutional guarantees contained in national constitutions of EAC Member States. In the EAC Report of the 30th Meeting of the Council of Ministers of 2014xvii the Council of Ministers referred the issue of
developing regional laws on the various aspects of the Common Market Protocol to the Sectoral Council on Legal and Judicial Affairs for consideration by 15\textsuperscript{th} November 2014 (EAC/CM 29/Decision 08).\textsuperscript{xviii}

This indicates that national laws of EAC Partner States are not harmonized in as far as social security laws are concerned.

The EAC CMP has been implemented by the Partner States in different stages and steps through the accompanying annexes (Annexes I, II, III and IV) to the Protocol. The CMP and the Free Movement of Workers Regulations, 2009\textsuperscript{xix} provide for equality of treatment of migrant workers. According to Regulation 13 (1) (d) of the Free Movement of Workers Regulations, 2009, it is provided that the Partner States shall put in place domestic legal mechanism to implement the principle of equal treatment of all citizens in employment. Specifically the said Regulation 13 (Annex II) provides, among other things that should ensure that the same treatment is accorded to the workers from other Partner States as is accorded to the nationals of the Partner State with regard to: contribution to a social security scheme.

Taken without any qualifications, by implementing article 13 of the EAC CMP on the right of establishment and also Regulation 13 of the Free movement of Workers Regulations (Annex II) on equality of treatment, it would mean that any citizen of any Member State present in a State other than that of his or her own nationality must be treated in exactly the same manner as nationals of the host State in the same situation. Any difference of treatment between a national and non-national would need to be objectively justified on grounds that did not relate to the nationality of the individual concerned. However, the EAC policy and legal framework recognizes the rights of regular migrant workers but abhors illegal or irregular labour migration. Thus, lawful migrant workers from one country to another within the EAC have the right to seek for employment in any of the Contracting States and to enjoy equal treatment with nationals in terms of employment conditions and the right to social security.\textsuperscript{xx}
Discriminatory treatment of citizens based on their nationalities is a violation of the Treaty and other applicable Protocols and regional instruments governing the EAC Partner States. This is the reason why the EAC CMP provides under Article 10(9) that the national laws and administrative procedures of a Partner State that have the principal aim or effect of denying the citizens of other Partner States the employment that has been offered should not be made to apply in the recruitment process. This means that the law may on the face of it look non-discriminatory but its effect, when it is implemented, results into discrimination of non-nationals against nationals. This type of the law is prohibited by the EAC law and whenever a partner state has such a law, the same should not be applied on matters of the EAC.

The EAC law requires each Partner State to work towards translating the standards established by the Community into their domestic legal order by way of harmonisation of their internal policies and laws. However, challenges still remain in many areas of the cooperation due to some notable delays in signing and implementation of various EAC Council Directives. Harmonisation of internal laws has the objective of making them come in line with the uniform EAC law. This would involve either repealing wholly or in part all contradictory national legislations that appear to be either expressly or impliedly discriminatory in consequence or in conflict with the EAC law. It may as well require partner states to effect amendments to such domestic legislations so that to make them compatible with the EAC law.

By the standards of human rights protection and rule of law under Article 7(2) of the EAC Treaty and the accompanying CMP read together with annexes I, II, III, and IV of 2009, the unequal treatment in employment and in social security is in principle a violation of fundamental principles of equality of treatment impliedly contained in the Treaty and directly provided in the Protocol and accompanying regulations. The rule of law, social justice and the maintenance of
universally accepted standards of human rights is one of the operational principles of the Community. The principle of equality of treatment in social security, among other things, is also provided in the East African Community Common Market (Right of Establishment) Regulations, 2009.\textsuperscript{xxvii} These regulations make provisions for implementation of the provisions of article 13 of the CMP. The Protocol allows migrant workers in self-employment in the Partner States to take up and pursue economic activities in host states based on the principles of fairness, accountability, consistency and transparency in accordance with the provisions of the Common Market Protocol without any discrimination and they have a right to join any social security scheme and be accorded equal treatment with a national.\textsuperscript{xxviii}

Migrant workers are entitled to join existing social security schemes of the host Partner State(s) and to receive no less favourable treatment than the nationals as expressed in paragraph (f) of sub-article (3) of Article 10 of EAC CMP. Migrant workers are entitled to enjoy equal rights to social security benefits as accorded to national workers of the host Partner State. Although the EAC CMP is intended to promote deeper economic integration, there are still some public policy issues that are permitted restrictive conditions to immigration of EAC citizens. Such restrictions still exclude non-nationals from entitlements to pension rights, employment in civil and public service of the Governments of the Partner States. Article 10(11) of the CMP states that the free movement of workers in the EAC is permissible subject to certain limitations that may be imposed by the host Partner State on grounds of public policy, public security or public health. The Partner States have agreed to such restrictions or limitations to the right of establishment imposed by the host Partner States.\textsuperscript{xxix}

The actual legal and administrative mechanisms that have to be followed in ensuring that specific types of social security benefits are accessed by migrant workers based on the principle of equality of treatment with nationals is provided for in Article 10(4) of the EAC
CMP. The provision provides: *For the purposes of the implementation of subparagraph (f) of paragraph 3, the Council shall issue directives and make regulations on social security benefits.* Also, within the terms of Article 16 of the EAC Treaty, 1999 all the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of the Treaty are obligatory and mandatorily binding on the Partner States. This binding nature is on all organs and institutions of the Community other than the Summit, the Court and the Assembly within their jurisdictions. They are also binding on those to whom they may under the Treaty be addressed.\(^{xxx}\) Note, however, that the EAC as a regional institution recognizes the differences between national legislations that are in force in the member states. This practice is common even under the international organizations such as the ILO and the UN as well as other regional organizations.

Notably, various ILO reports on Application of international labour standards recognize that in carrying out the compliance work by countries, it is admitted fact that modes of implementation may be different in different States, and thus ILO is cognizant of different national realities and legal systems.\(^{xxxi}\) Therefore, the same applies in the EAC whereby whatever regulations or directives that may be passed by the EAC Council of Ministers regarding implementation of basic principles of social security and protection of migrant workers should take into account individual national differences of the partner states. Impliedly, any standard code on social security in the EAC or any such regulation has to aim at guaranteeing equality of treatment for all workers in formal employment and self-employment in Partner States irrespective of their country of origin.

### 5.3.2 Harmonisation of social security laws under EAC CMP

According to Article 39(1) of the EAC CMP, the coordination and harmonisation of social policies help to promote and protect decent work and improvement of the living conditions of the citizens of the
By concluding the CMP, the Partner States are under legal obligation to coordinate and harmonise their social policies relating to promotion and protection of human and peoples’ rights, as well as implementing the principles of good governance, the rule of law and social justice. Article 12 of the CMP provides:

1. “The Partner States undertake to harmonise their labour policies, national laws and programmes to facilitate the free movement of labour within the Community.
2. The Partner States undertake to review and harmonise their national social security policies, laws and systems to provide for social security for self-employed persons who are citizens of other Partner States.”

Article 12 (2) of the EAC CMP directs a continuous review and harmonisation of national social security policies, laws and systems of the EAC countries as one of the key objectives of the protocol. This Article is of particular importance to the benefit of migrant workers because if this is achieved, it is likely to provide for social security for self-employed persons who are citizens of other Partner States (migrant workers). Self-employed persons of other Partner States are an additional category of migrant workers to the group of formally employed migrant workers who are covered by social security schemes. It is commonly understood that, traditionally, the group of migrant workers in the formal sector employment is the one that has for long period of time been primarily benefiting in one way or another from existing formal social security schemes (both public and private) of host states. The EAC CMP seems to have broken this tradition by including coverage of self-employed persons. This is seen in sub-article 2 of article 12 which provides for possibility of social security benefits coverage of self-employed migrant persons who are citizens of partner states. With this final remark on the state of harmonisation of social security laws under EAC CMP, the discussion turns to part six of this
article below which addresses the subject of compliance with the EAC law on equal protection of migrant workers in Kenya.

6.0 Compliance with EAC Law on Equal Protection of migrant workers in Kenya

6.1 Constitutional guarantee to equality of treatment in social security

The Constitution of Kenya, 2010 has entrenched the subject of equality in the preamble in which equality is enumerated as one of the six key values upon which socio-political and economic governance as well as legal control should be based.\textsuperscript{xxxv} The ambit and effect of the application of the principle of equality of treatment and opportunity is given legal force in Article 10 (2) (b) of the Constitution of Kenya. In the latter Article, the Constitution entrenches national values and principles of governance which bind every person and has to be observed by all Kenyan State organs, State officers, public officers and all persons when interpreting or applying the Constitution. The principles and values of good governance include ‘human dignity’, ‘equity’, ‘social justice’, ‘inclusiveness’, ‘equality’, ‘human rights’, ‘non-discrimination’ and ‘protection of the marginalized.’\textsuperscript{xxxvi} The principle of equality of treatment is applicable in making or implementing national policy decisions.\textsuperscript{xxxvii}

Article 20 of the Constitution\textsuperscript{xxxviii} entrenches equality and equity as key values that are protected and promoted in interpretation and application of the Bill of Rights. Article 21 (1) of the Constitution imposes duty on the Government of Kenya to observe, respect, protect, promote and fulfil the fundamental human rights and freedoms of all people in Kenya, without discrimination.\textsuperscript{xxxix} Substantially, the Constitution shows positive steps taken by Kenya on theoretical part to ensure that every individual person in Kenya has the right to claim equal treatment and
liberties with others subject to limitations imposed by the municipal law.

In Article 27(1) the Constitution further provides that: “Every person is equal before the law and has the right to equal protection and equal benefit of the law”. Therefore, equality of treatment of ‘every person’ under the Constitution extends to include, among other things, the ‘full and equal enjoyment of all rights’.

It should be pointed out that there is no direct reference to migrants’ rights or migrant workers’ rights in the Constitution of Kenya. However, it is a Constitutional obligation of the State of Kenya to protect “minorities,” “marginalized groups,” “every person” and “any persons” without discrimination. Broadly interpreted, the latter impliedly includes equal protection of migrant workers. The word ‘every person’ is broad enough to include coverage of migrant workers. Note also that sub-Article (4) of Article 27 of the Constitution of Kenya, 2010 provides:

“The State shall not discriminate directly or indirectly against any person on any ground, ‘including’, race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth”.

The foregoing cited provision does not expressly prohibit discrimination based on nationality or national extraction or migration status generally. On the face of the section, one may contend that the extent of protection of migrant workers in Kenya under this provision is unclear. But approaching the same section from another angle, the phrase in sub-article (4) of Article 27 opens with the words: “the State shall not discriminate directly or indirectly on any ground, including…” In my view, the list of prohibited grounds of discrimination contained in Article 27 is not exhaustive. The word “including” invites interpretation to the effect that there are other prohibited grounds of discrimination other than those expressly listed in the provision. This implies that, any migrant worker complaining of violations of human
rights including unequal treatment based on nationality may be entitled to lodge a complaint to the Kenya Human Rights and Equality Commission or any judicial authority challenging discrimination based on nationality.xlv The latter interpretation approach is fortified by the provision on construing the Constitution of Kenya contained in Article 259(4) (b) which provides that “in this Constitution, unless the context otherwise requires... (b) the word “includes” means “includes, but is not limited to”.”xlvi

In Article 39 of the Constitutionxlvii it is also provided that every person has the right to freedom of movement,xlviii and every person has the right to leave Kenyaxlix and that it is the right of every citizen to enter, remain in and reside anywhere in Kenya.lix The ‘right to freedom of movement’ and the ‘right to leave Kenya’ are the rights of “every person” and therefore, are expressions so inclusive of migrant workers from other countries. No specific guarantee or protection of rights of foreign immigrants from other countries is provided other than the right of Kenyans to freedom of movement and residence. The right to enter, remain in and reside anywhere in Kenya is exclusively reserved for Kenyan citizens only as provided for in sub-article 3.

In terms of Article 43 (1) of the Constitution of Kenya, the right to social security for “every person” is a constitutional guarantee and is entrenched as a bill of rights. Therefore, every person in Kenya has the right to social security.li It is provided in sub-article (3) of same Article that: “the State shall provide appropriate social security to persons who are unable to support themselves and their dependants”,lii and this may take form of social assistance by the Government. Expressly, the Constitution attempts to implement the international human rights instruments providing for social economic rights, particularly the ICESCR of 1966 which refers to the right to social security as a human right issue. The Constitution provides that “Every person is equal before the law and has the right to equal protection and equal benefit of the law.”liii The Constitution of Kenya interprets the words ‘equality of
treatment’ as including the full and equal enjoyment of all rights and fundamental freedoms.\textsuperscript{lv} Further, Article 27 (6) of the Kenyan Constitution, 2010 provides:

\begin{quote}
(6) “To give full effect to the realisation of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.”
\end{quote}

Eliminating past discrimination may include but not limited to repealing past laws that fostered inequality of treatment between nationals and foreigners. Further, Article 59 of the Constitution of Kenya establishes the Kenya National Human Rights and Equality Commission for purposes of promoting, investigating, encouraging and recommending on matters of equality of treatment and observance of human rights. One of the duties and functions of the Commission includes acting as the principal organ of the State in ensuring compliance with obligations under treaties and conventions relating to human rights\textsuperscript{lv}.

\section*{6.2 How the Kenya NSSF Act is re-aligned to EAC law on equality of social security rights for migrant workers}

\subsection*{6.2.1 Types of benefits under the Act}

The Kenya National Social Security Fund (NSSF) Act, 2013\textsuperscript{lvii} has outlined a wide range of general principles on implementation of social security rights and equality of treatment of migrant workers in Kenya and within the wider EAC. The Act provides for pension fund benefits of the following class: (a) retirement pension; (b) invalidity pension; (c) survivors’ benefit; (d) funeral grant; and (e) emigration benefit.\textsuperscript{lvii} The social security legal framework under the Kenya NSSF Act, 2013 provides for benefits provisioning mechanism in Kenya beyond the EAC and legal rules applicable in outside Kenya but within the EAC.
6.2.2 Exportability of benefits in Kenya beyond the EAC

The Kenya NSSF Act deals with subject of overall social security provisioning mechanism by providing general standards, and in this case, the relevant provision applicable to migrant workers is section 64. Sub-section (1) of the latter section provides as follows:

“To give effect to any agreement providing for reciprocal arrangements with the government of any country beyond the East African Community in which a fund scheme similar to the Fund has been established, the Cabinet Secretary may make Regulations to give effect in Kenya to any such arrangements and for modifying or adapting this Act in its application to cases affected by such arrangements”

The provision cited above shows the room for reciprocal social security agreements with countries beyond the EAC for social security benefits of migrant workers under the NSSF Act, 2013. The law embraces basic principles of social security portability or transferability of benefits for migrant workers. Such arrangements also include maintenance of acquired rights, aggregation of benefits and equality of treatment. These must be agreed upon including application of the same principles in provision of benefits to third country nationals as they are applied to national workers. In case the EAC countries agree to ratify a mutual recognition agreement in matters of social security for benefits of migrant workers, then certain arrangements are essential to ensure equality of treatment. However, the Kenya NSSF Act does not allow reciprocal arrangements to confer a right to double benefit.

6.2.3 Rules applicable for benefits payment where employee resides outside Kenya but is within the EAC Member States

It is already stated that, reciprocal agreements are essential because the legislation of the country of payment of benefits is to be made clear under the agreement. The Kenya NSSF Act under section 64(3) provides that:
“Where the employee resides outside Kenya but is within the East African Community Member State, the Board shall coordinate with the social security scheme of the Member State, or a similar scheme by whatever name called, to ensure that:...there is actual physical transmission of contributions and benefits under paragraph (d) to the Fund in order to facilitate the totalisation of contributions and benefits under this section.”\textsuperscript{lx}

Paragraph (d) referred to above provides that: “… where an employee decides to return to Kenya, the exportability of the benefits of the member as at the date of that decision takes place.” Thus, as far as equality of treatment in social security in Kenya within the EAC is concerned, the Kenya NSSF Act has provided for the establishment of legal coordination framework among other EAC countries. The Act proposes portability of social security benefits outside Kenya. The Board has a duty to put mechanisms for actual physical transmission of social security contributions and benefits to the Kenya NSSF. Under this Act, migrant workers and other entitled migrants can access social security benefits on equal principles with nationals if the Kenya NSSF Act is accordingly modified to make it suitable for conclusion of social security agreements in respect of specified agreed benefits.\textsuperscript{lxii} The Act says that the said modifications may include provision for securing certain acts, omissions and events having any effect for the purposes of the law of the country in respect of which the reciprocal agreement is made so as to have corresponding effect for the purposes of this Act.\textsuperscript{lxiii} However, any portability of social security benefits may be made subject to reciprocal agreements which are designed to take into account the avoidance of double benefits payment.\textsuperscript{lxiii}

\section*{6.2.4 Benefits payment in Kenya for emigrating worker}
Section 39 of the Kenya NSSF Act\textsuperscript{lxiv} provides that a member to social security Fund as a matter of mandatory requirement is entitled to an emigration benefit if a member migrates from Kenya to another country. That other country must be the country other than a country
within the EAC with which a reciprocal agreement is made pursuant to section 64 of the NSSF Act. An emigrating person from Kenya to another country outside the EAC without any present intention of returning to reside in Kenya will benefit from this regulation that permits payment of emigration benefits. The law provides that the emigration benefits must be equal to the member’s Pension Fund Credit.

The pre-condition for practical enforceability of payment of benefits beyond the EAC is existence in place of social security fund in the foreign Contracting State that is similar to the Kenyan NSSF Fund as established under the NSSF Act. Moreover, the NSSF Act, 2013 provides for maintenance of acquired rights to social security benefits. The Act allows determination of rights which have accrued both to a member under the Act and under the law of that other country beyond the EAC. The determination is intended to make sure that applicable rights are made available to the insured migrant worker and they are appropriately and accordingly determined and administered.

As such, Kenya has made substantial stride under the NSSF Act, 2013 regarding embracing principles of social security portability mechanism in an attempt to implement equality of treatment and legal protection of migrant workers within the EAC and beyond. The Kenya law sets mechanism for making it possible to pay benefits or allow exportability, maintenance of social security benefits rights, aggregation and equal treatment anywhere within the EAC.

6.2.5 Mandatory procedures to be followed by beneficiaries for benefits portability

For efficient administration of social security benefits portability, the Kenya NSSF Act, 2013 has provided for various procedural principles to be followed by beneficiaries. The principle of mandatory registration with social security schemes of a host State is the first requirement
under the Act in order for migrant workers to benefit from entitlement to benefits. The Kenya NSSF Board of trustees established under section 5 of the Act\textsuperscript{lxvii} is mandated to coordinate with the social security schemes of other EAC Member States for social security benefits arrangements for benefits of Kenyans in Diaspora working within the EAC. Any Kenyan national who is an employee but resides outside Kenya within any EAC Member State, such employee needs to register with the scheme for benefit from supposedly agreed legal arrangements for reciprocal provision of social security benefits. Such employee from Kenya employed outside the home country must be registered with any social security scheme of the host State provided that the social security scheme in which the migrant worker has registered with a Board is similar to the scheme obtainable in the emigrant’s home country.

Basically, the purpose of registration with social security schemes of a host State is to ensure that he acquires membership in the national social security scheme of the EAC Member country.\textsuperscript{lxviii} Section 63 further provides that EAC Partner States may have similar scheme like that of Kenya and in this case the exact name of the scheme may be irrelevant. As long as the migrant resides and work for gain in a Member State there should be coordinated arrangements for registration of that migrant worker.\textsuperscript{lxix}

The principle of \textit{Applicable law} in administration of social security benefits under the Kenya NSSF Act provides that, where the employee is residing and working for gain outside Kenya but is within the EAC Member State, the Board of Trustees of the Kenya NSSF is mandated to coordinate with the social security scheme of the Member State, or a similar scheme by whatever name called. The purpose is to ensure that the member makes the required contributions in the said foreign scheme. A migrant worker from Kenya to the other EAC countries is by virtue of the law of Kenya required to make social security contribution in accordance with the law of the Member State.\textsuperscript{lxx} The Kenya social
security law requires that migrants’ contributions and corresponding benefits should be preserved and protected whether they are due or not.

The third principle established under the NSSF Act 2013 is the principle of cross-border portability (exportability) of benefits. The Act provides that, where the employee resides outside Kenya but is working and residing within any of the EAC Member State he may access social security benefits portability. The scheme is mandated to coordinate social security scheme of the Member State having similar scheme and provisions to ensure exportability of benefits beyond national borders. Portability occurs where a worker who is a member to social security schemes is enabled to preserve the actuarial value of accrued pension rights or other benefits when moving from one country or job to another. In this regard, Kenya is considered as having adopted the mutual international social security practice among nations by enshrining a legal framework that guarantees exportability of benefits.

In an event a migrant employee chooses to return to Kenya, the law allows exportability of benefits of the member in a foreign State as at the date of labour migrant’s decision to exercise the right of return to his or her home country. The legislation imposes obligation on the NSSF Board to ensure that there is coordination with social security schemes of other Member States within the EAC for actual physical transmission of contributions and benefits due for exportability. Transfer of benefits is to be made back to the National Social Security Fund in Kenya in order to facilitate the totalisation of periods of contributions and benefits for purposes of crediting the benefits into the individual account of the Member or beneficiary. The benefits are supposed to be credited into the appropriate account of the member as soon as it is practicable. Depending on the nature of individual membership and period of contributions, the employee’s account may be either ‘pension fund credit’ or a ‘provident fund credit’ within the terms of section 24 of the Kenya NSSF Act.
The fourth principle concerns the rule of payment of retirement benefits of a Kenyan migrant worker in EAC Countries. The Act provides that a Kenyan emigrant who resides and works for gain outside Kenya but remains within the EAC Member State, payment of retirement benefits to such migrant worker should be coordinated by the Kenya NSSF through its Board. The coordination is made with the social security scheme of the Member State where that emigrant is employed and has made contributions.
lxxvi
Upon retirement of the migrant worker in foreign territory within the EAC, that member who contributed in the foreign scheme is subjected to the Kenya NSSF Act in terms of member’s retirement benefits. Therefore, social security benefits coordination for exportability or portability beyond national borders but within the EAC becomes relevant in payment of retirement benefits to migrant workers. The legal framework for provision of death grants or survivors benefits to migrant workers in foreign country outside Kenya but within the EAC is provided for under the Kenya NSSF Act, 2013. The Act provides that where the employee was residing outside Kenya but within the EAC Member State, but dies while still in that Member state, the NSSF Board is charged with the duty to coordinate death grants and survivors’ benefits. The Board has to pursue that member’s account in the foreign social security scheme with a view to an appropriate and just conclusion of the member’s social security rights.
lxxvii
The NSSF Fund has a duty to coordinate with the social security scheme of the Member State, or a similar scheme for that purpose.

The fifth principle for proper management of social security for migrant workers under the Kenya NSSF Act is the principle of establishment of mutual administrative assistance in social security for workers on mobility in the EAC. The Act makes provisions for mutual administrative assistance between Contracting States, particularly where a reciprocal social security agreement exists. The Act provides that internal laws may be modified by making provisions as to administration and enforcement of migrants’ social security rights at
The objective of this mechanism is to ensure that there is close collaboration between Kenya’s and other EAC Contracting Parties' administrations and institutions responsible for administering social Security.

The provisions of section 64 of the Kenya NSSF Act were entrenched in order to guarantee the proper application of the EAC standards so that there are enabling provisions dealing with relations between competent authorities of Kenya and those of Contracting States. The administrative assistance must exist between Kenya and other countries so that to afford one another the required execution of obligations for facilitating working relations between the authorities and institutions concerned. The rights of emigrants and immigrants are as contained in the NSSF Act or in any regulations applicable. The NSSF Act, 2013 mandates the Kenyan Cabinet secretary to make regulations to give effect in Kenya to any such arrangements and for modifying or adapting the Act in its application to cases affected by social security reciprocal arrangements.

The mutual administrative assistance in social security is also involved in enabling cooperation between social security authorities of Contracting States, particularly regarding proper keeping of records of social security beneficiaries who engage in labour mobility from one country to another. The overall objective of this mechanism is to create efficient managements of social security rights of migrant workers and enable speedier determination, coordination and payment of benefits to the beneficiaries. The subject of mutual administrative assistance in social security is not as easy as one would think, and this is because it involves the application of social security laws of Kenya (country of origin) and other country (destination country) which is any EAC Member State.

The EAC Treaty recognizes the fact that each EAC Partner State has its own laws and jurisdictions which are not necessarily the same with
those of the other fellow Partner State. The reality among the EAC countries is that each Partner State proceeds to enact laws to comply with the EAC Treaty at the time of her own choosing, even when there is agreement to fast-track the process of legislation. Even harmonisation of their national laws has not been so efficient. Harmonisation helps to make national laws compatible with regional EAC law contained in the EAC Treaty, 1999 and the EAC CM Protocol upon which various directives and regulations are issued and agreed upon by the Member States. In recognition of the existing disparity among the EAC social security laws and schemes, the Kenya NSSF Act has provided in section 64 that:

“(3) Where the employee resides outside Kenya but is within the East African Community Member State, the Board shall coordinate with the social security scheme of the Member State, or a similar scheme by whatever name called, to ensure that—(i) the Board makes every endeavour to work with the foreign scheme of the Member state to ensure that the records pertaining to the member are preserved until all rights and entitlements of the member in the foreign scheme are fully exhausted in favour of the member and that there is no liability whatsoever in the foreign scheme with regard to the member.”

From the foregoing quoted provision, it may be argued that the right of migrant workers in Kenya to freely access social security benefits on equal footing with nationals within the EAC depends on the extent to which social security laws of other EAC partner States have been accordingly harmonised to conform to the EAC law. Internal harmonisation of national social security laws for possible mutual reciprocal arrangements between these States based on agreed terms and conditions is key to achieving equal treatment. Such agreed terms would be enforceable if they are contained in a multilateral treaty on social security for migrant workers or bilateral arrangement. However, the binding nature of any reciprocal or multilateral treaty or
arrangement among EAC Partner States will depend on the type or nature of clauses put in place.

7.0 Conclusion and Recommendations

7.1 Conclusion(s)
The paper has shown that Kenya has made significant strides towards Constitutional incorporation of the social economic rights and harmonisation or approximation of its inconsistent national social security laws to conform to the standard law of the EAC. Also, the Kenya NSSF Act, 2013 has largely laid a clear framework for dealing with migrant workers’ social security rights when they migrate, terminate employment or return home or die while employed outside Kenya. The effectiveness of this law, however, is dependent on existence of such similar legal mechanism in other EAC Partner States. Currently, there is a lack of EAC regional wide social security benefits portability Code within the community for implementation of equality of treatment provisions for migrant workers that are contained under the CMP. This explains why Kenya is not capable of moving fast alone in the implementation of equality of treatment clauses enshrined in the EAC Treaty despite its efforts to comply with the EAC Treaty. The latter has the effect of limiting the extent to which Kenya may implement the EAC legal provisions on equality of treatment of foreign labour migrants with nationals.

Also, Kenya has not fully harmonised all her national social security laws, but the latter is not the subject of the present paper and therefore shall need a separate treatment altogether.

7.2 Recommendations
The paper recommends, among other things, that, despite progress made in upgrading the law to implement the protocol, Kenya should
take further deliberate steps to strengthen her social security laws by enacting or amending the NSSF Act so as it effectively implements the exportable benefits on equal footing with nationals. As it is today, the NSSF Act, 2013 does not state if at all nine branches of benefits are all capable of being paid outside the country under the EAC framework. Also, because of legislative progress made by Kenya in the area of social security rights for cross-border migrant workers within the EAC, it is recommended that Kenya may need to explore the avenues of engaging the rest of the EAC Partner States to collectively embark on creating a regional wide social security policy which should take on board the protection of social security rights for cross-border migrant workers. This policy should impose obligations on each Member State to adopt, conform and enact efficient social security laws that seriously reflect effective State compliance to their regional obligations under the EAC treaty.

Finally, establishing a regional wide Convention in the EAC that deals with social security portability of benefits in the region similar to the ECOWAS General Convention on social security of 2013 is another positive step that should be considered for. The latter was adopted on 7 December 2012 during the Conference of Ministers of Labour and Social Welfare in Dakar, Senegal, thereby reaching a new milestone in the implementation of regional free movement protocols. For the first time the Convention was initiated in 1993 but it could not take off until 2013 when it materialized. The ECOWAS General Convention takes into account the objectives of the International Labour Organization on Equal Treatment of 1962. (Convention 118). It also recognizes the preservation of social security rights under Convention 157 of 1982. Both these conventions aimed at the effective realisation of equal treatment for migrant workers and the preservation of their social security rights. lxxxi
The prototype model Convention of the ECOWAS underscores the importance of the principle of equality of treatment in social security and portability of benefits within a regional organisation. It also underpins the importance of maintenance of social security rights in the course of regional wide labour migration for employment in a regional economic community.

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**End Notes**

i See ICPRMW, 1990.

ii See the Social Security (Minimum Standards) Convention, 1952 (No.


vii See Palmer, V. V.(2005). From Lerotholi to Lando: Some Examples of Comparative Law Methodology, American Journal Comparative Law, 53 : 26

viii See EAC CMP, Article 10(1).

ix Ibid, Article 10(3) (a).

x See EAC CMP, Article 10(3) (c).

xi Ibid, Article 10(10).
See the EAC Treaty, 1999 (as amended), Article 104 (3) (e).

Ibid, Article 104 (3) (e); the EAC CMP, Article 12(1) and (2).

Ibid, Article 12(3)


Held in Nairobi, Kenya on 20th – 28th November, 2014.

Ref: EAC/CM/30/CM/2014), EAC Secretariat Arusha, Tanzania, p.5.

See Annex II. Note however that the roadmap for implementation of annex II ended in 2015.

Ibid. Article 10 (2), (4).

EAC CMP, Article 10(9).

Ibid, Article 12 (1) and (2).


See EAC Treaty, 1999 (as amended).

EAC CMP, Article 10; Free Movement of Persons Regulations (Annex I), Free Movement of Workers Regulations (Annex II), Right of Establishment Regulations (Annex III); and Right of Residence Regulations (Annex IV);

See the EAC CMP, Art 13; Annex III, Regulation 13.

Annex III.

See Annex III, Regulation 2.

EAC CMP, Article 13 (8).
xxx See the EAC Treaty, Article 16.


xxxii Article 39(1).

xxxiii Article 39(2) (b).

xxxiv See the EAC CMP, Article 39 (2) (a).


xxxvi Ibid, Article 10(1) and (2).

xxxvii Ibid, Article 10 (2) (b)

xxxviii Ibid, Article 20(4) (a).

xxxix Ibid, Article 21 (1).

xl Ibid, Article 27(1) and (2).

xli Ibid, Articles 21(3); and 56.

xlii Ibid.

xliii Ibid, Articles 20(1); 43(1); 47(1); 50(1) and (2);

xliv Ibid, Article 27 (4).

xlv Ibid,Article 59(2) (e).

xlvi Ibid, Art.259 (4) (b).
Ibid, Article 39 (1), (2) and (3).

Ibid, Article 39(1).

Ibid, Article 39 (2).

Ibid, Article 39 (3).

Ibid, Article 43(1) (e).

Ibid, Article 43 (3).

Ibid, Chapter 4 Part 2 sub-article 2(1).


Ibid, Article 59(2) (g).

No. 45 of 2013.

NSSF Act, No. 45 of 2013, section 34 (1).

Ibid, section 64 (1).

Ibid. section 64(2) (a).

Ibid, section 64(3) (e).

Ibid, section 64 (2) (1).

Ibid.

Ibid.

No. 45 of 2013.

Section 64(1).

Kenya NSSF Act, section 64(2) (c).

Also see Kenya NSSF Act, section 2-Interpretation; and section 5.
lxviii Ibid, section 64(3) (a).

lxix Ibid.

lxx Ibid, section 64(3) (c). This partly complies with ILO Convention No. 157 of 1982 on applicable legislation.

lxxi Ibid.


lxxiii See the NSSF Act, op.cit, s. 64(3) (d).

lxxiv Ibid, section 64 (3) (e).

lxxv Ibid, section 24; and section 64(3) (e) and (f).

lxxvi Ibid, section 64(3) (g).

lxxvii Ibid, section 64(3) (h).

lxxviii Ibid, section 64 (2) (c).

lxxix Ibid, section 64(2) (c).

lxxx Ibid, section 64(3) (i).