

Analysis of the Effectiveness of Portability of Pension Rights for Migrant Workers in the Framework of the CEPGL

Richard Ndikumana

Ecole Doctorale, Université du Burundi, Bujumbura, Burundi
Email: richardndiku76@gmail.com, isinda1986@gmail.com

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Abstract

The UN knows over 272 million international migrants among whom two-thirds are workers who retire time after time needing to acquire their pensions and other benefits. Using a documentary technique, we realized there are many ILO Conventions and the General Convention in CEPGL protecting workers whether themselves or their family members. In accommodation to these international conventions, East Africa adopted a protocol denoting movement of peoples and goods which denotes workers' movement within the community. Using documentary techniques through the reports of the institutions controlling pensions, results show that every year for the fulfillment of these conventions, Burundi and Rwanda pay pensions to retirees who worked in Burundi but went back to their home country in retirement. However, DR-Congo does not send these pensions to retirees who worked in it but came back home in Burundi or went back home in Rwanda after retiring. Reciprocally, Burundi and Rwanda do no longer pay them. In all circumstances beneficiaries are victims of reciprocal measures taken by countries in regard to pension payment in retirement when they go back home from their former working country.

Keywords

East African Community, Pension Rights, Portability of Rights, Social Legislation, Effectiveness of Rights, Migrant Workers, CEPGL General Convention, ILO's Conventions

1. Introduction

The United Nations estimated about 272 million international migrants in 2019 (ONU—Le nombre de migrants internationaux atteint 272 millions en 2019)

European Migration Law, 2019) among whom about two-thirds were migrant workers, needing to be integrated without discrimination in the host country (“Deux tiers des migrants dans le monde sont des travailleurs, selon l’OIT”, 2015). The Global Compact for Safe, Orderly, and Regular Migration (“Global Compact for Safe, Orderly and Regular Migration (GCM)”, 2018) was adopted in 2018 by 164 states but has no binding force and responses to migration remain largely national. Thus, it struggles for decent living conditions for migrants depending on the willingness and ability of states to integrate migration into their public policies.

There are three parameters as the basis for defining migration: change of residence, change of employment, and change of social relations (Simmons, 1987) even though the change of residence is essentially a dominating criterion. Counting on the change of employment (Ciza & Sindayigaya, 2023; Jonya et al., 2023), how the old migrant, now unproductive, could be seen as a “total incongruity” (Sayad, 2006).

In the imagination, the migrant symbolically represents above all the worker (Ciza & Sindayigaya, 2023; Mpabansi, 2023; Ndericimpaye & Sindayigaya, 2023; Sindayigaya, 2022; Sindayigaya & Nyabenda, 2022). The presence of the foreigner is always more legitimate as a “useful” labor force. The cause of elderly migrants is not very mobilizing and few associations are committed to defending their cause (Buhendwa et al., 2023). However, elderly migrants face many difficulties in accessing their rights. In particular, there are strong inequalities in access to pensions especially in calculating their pension rights (CATRED, 2022). Immigrant workers bear the brunt of all the discrimination in access to jobs, salary inequalities, precarious status, career development, and poor working and living conditions, and when they retire miss their pensions (Campbell, 2019; Ndericimpaye & Sindayigaya, 2023; Nduwimana & Sindayigaya, 2023b; Sindayigaya, 2023). Nevertheless, the law has evolved in this area. There has been a gradual shift in the borderline of social rights for elderly migrants (Sindayigaya, 2023), with the abolition of nationality or reciprocity conditions and the development of an increasingly demanding residence requirement and more and more stringent controls on it.

At the international level, the International Labor Organization (ILO)’s Convention No. 97 deals primarily with the status of migrant workers (and their families) during their stay in a state that has ratified the convention. It is binding on the ratifying State regardless of the nationality of the migrant workers (Mpabansi, 2023; Sindayigaya, 2023). This Convention requires non-discrimination, equal treatment between nationals and immigrants, reciprocity between host countries and countries of origin in the treatment of immigrant workers, and extension of the principle of equal opportunities enjoyed by nationals to immigrants “legally resident” in the host country (*Convention C097—Migration for Employment Convention (Revised), 1949 (No. 97)*). Hence, allowances are paid to persons who do not meet the contribution requirements normally required for the award of a pension. The ILO’s Convention No. 118 concerns the equal

treatment of nationals and immigrants in matters of social security. Under Article 3 para.1, each State for which the Convention is in force must grant to nationals of any other State for which the Convention is in force, the same benefits as those granted to nationals of that State (*Convention C118—Convention (n° 118) sur l'égalité de traitement (sécurité sociale), 1962*).

Within the Community of West African States, there are bilateral agreements that deal with the issue of migrant workers and members of their families, especially dropping the residence clause (Dray, 2012) and thus allowing families who remain in the country to benefit from social security in the same way as those residing in the host country. In Senegal for instance, there is no discrimination between nationals or foreigners in all society as long as the conditions of residence on the national territory are met. To this end, many bilateral security agreements or technical coordination agreements have been concluded with social security organizations to facilitate the liquidation or payment of rights acquired or in the process of being acquired by a migrant worker and the members of his or her family (Ciza & Sindayigaya, 2023; Mperejimana & Sindayigaya, 2023; Nduwimana & Sindayigaya, 2023b, 2023a). When these rights are violated, the migrant worker can bring his employer before the Labor Inspectorate of his place of residence. The latter must examine the complainant's appeal to conciliate the various parties. If an amicable settlement cannot be reached, the worker may file a legal action, in particular before the Labor Court (Fall, 2003).

The constitutive charter Community of East African States (*Charte de l'EAC, n.d.*) provides for the opening of borders, the free movement of goods and persons, etc. The partner states have agreed to achieve, in the protocol of the common market, the free movement of workers, capital, and services, the right of establishment and residence, although there is no legal framework for coordination or a portability convention as even the social security systems of EAC have different legal and regulatory frameworks that require organizational and policy reforms to improve the performance of this sector (*Common Market of EAC*).

To provide a lasting solution to the issue of the transferability of the rights of migrant workers successively working and contributing Between Burundi, Rwanda, and DR-Congo (former Zaïre) forming the Economic Community of the Great Lakes Countries, CEPGL had been signed in 1978 a General Convention on Social Security (*Convention Générale de Sécurité Sociale entre la République du Burundi, la République Rwandaise et la République du Zaïre*). These neighboring countries Burundi, Rwanda, and the DR-Congo (formerly Zaire) have a common past since, at the time of the Belgian colonial administration, the latter wanted to unite the Belgian Congo and Ruanda-Urundi into a single territory (Jentgen, 1957) implying the freedom of movement and the integration of immigrants from the Belgian colonial empire within the whole Belgian colonial territory. Rwandans and Burundians were assimilated into Belgium until the independence of the Belgian Congo in June 1960. Later, a Convention between the Rwandan Social Security Office (RSSB) and the National Office of Pensions and

Occupational Risks of Civil Servants, Magistrates, and Agents of the Judicial Order (ONPR) of Burundi relating to the transfer by the ONPR of pensions of former Rwandan complementary agents to the RSSB took a place on December 2013.

It is this part concerning migrant workers, especially the implementation of this convention that holds our attention. Thus, this study aims to describe and document the achievements and results of the social security portability arrangement in Burundi, Rwanda, and DRC through the conventions signed in this area, to note the problems (challenges encountered), and to assess whether these good practices can serve as a model for other communities including the community of East African States.

2. Methods and Methodology

The approach adopted is first of all documentaries, reviewing the literature on social insurance for migrant workers. Second, we examine the international conventions on the portability of social security rights and benefits; the convention signed between the Republic of Burundi, the Republic of Rwanda, and the Democratic Republic of Congo (former Zaire), the modalities adopted for the implementation of the conventions, the laws and their application texts of social security in the three countries. The way different national texts in the field of labor law and social security are implemented had been surveyed in the same way as the tax laws of the three countries concerning social security benefits to get the existing data on the field of portability of pension rights. After these text, we go beyond by analyzing reports from institutions managing pensions of retirees to inquire the way the conduct the payment after the beneficiaries choose better to go back home for retirement.

References within the text and in the bibliography are the result of “Zotero” software and the format “Université du Québec à Montréal—APA—prénoms (Français—Canada)” valid for this research.

3. Results

Within Pensions payment is made by the institution of the applicant’s place of residence based on the set of personal forms and the number of benefits due. The institutions concerned pay the beneficiary’s pensions to the central bank of their country, responsible for transferring them to the central bank of the beneficiary’s country of residence which for further transfer to the institutions’ bank. Finally, the pensions are transferred to the beneficiaries’ bank accounts by the social security institution concerned but the transfer costs are entirely borne by the beneficiaries.

The number of ensured receiving portability benefits varies from one period to another depending on whether they have been re-enrolled or not. The amount shown in **Table 1** is the cumulative amount of months of benefits transferred either by month or by quarter. You should know that the career is exchanged by

Table 1. Pensions transfer from Burundi to Rwanda and vice versa according to the residence country of the beneficiaries who retired after having worked in other.

Year	Rights to pensions portability and their benefits from Rwanda to Burundi		Rights to pensions portability and their benefits from Burundi to Rwanda	
	Number of assured	Amount in BIF	Number of assured	Amount in BIF
2021	137	46,128,762	277	73,730,868
2020	150	54,345,081	257	98,572,283
2019	150	49,644,261	252	84,593,031
2018	138	35,954,077	252	63,852,468
2017	144	44,941,841	252	65,858,894
2016	139	45,808,056	280	71,338,721
2015	139	30,098,543	308	64,041,204
2014	127	25,936,660	293	58,652,677
2013	141	25,555,782	292	54,724,937
2012	134	32,969,798	252	45,371,914

adding up all the weighted years as if they were done in one country and each country sends its share to the social security of the beneficiary's domicile, through the Central Banks of those countries.

The above-mentioned transfers, it does not appear anywhere from the DRC since the latter is a signatory of the convention. The Democratic Republic of Congo, (Excess Zaire) at the time had respected the convention by sending the benefits of the beneficiaries to Burundi and Rwanda, but following the crisis of the years 1996, this last one seized to send these benefits and in consequence, the two countries (Burundi and Rwanda) stopped in their turns to send the benefits to the Congolese who are in retirement and have worked at.

4. Discussion of the Results

Burundi, Rwanda, and DR-Congo, even though signatories of the General Convention on Social Security had not yet ratified the ILO Conventions No. 102 of 1952 concerning Minimum Standards of Social Security (*Convention C102—Social Security (Minimum Standards) Convention, 1952 (No. 102)*), No. 128 of 1967 concerning Invalidity, Old-Age and Survivors' Benefits (*Convention C128—Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128)*), and No. 143 of 1975 on Migrant Workers (*Convention C143—Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*). However, they recognized that they remained bound by the international labor conventions whose provisions had previously been declared applicable by Belgium to the trust territories of Rwanda, Burundi, and DR-Congo such as Convention No. 17 of 1925 concerning Compensation for Industrial Accidents (*Convention C017—Workmen's Compensation (Accidents) Convention, 1925 (No. 17)*), No. 18 of 1925 concerning Compensation for Occupational Diseases (*Convention C018—*

Workmen's Compensation (Occupational Diseases) Convention, 1925 (No. 18)), No. 19 of 1925 concerning Equality of Treatment of Foreign and National Workers in respect of Compensation for Industrial Accidents (*Convention C019—Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)*), and No. 42 of 1934 concerning Compensation for Injuries resulting from Occupational Diseases (*Convention C042—Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934 (No. 42)*). Even though those states are not parties to the ILO Convention 102, it establishes many principles among which the general responsibility of the state for the provisions of benefits and the proper administration of the institutions and the collective financing of benefits through insurance contributions or taxes. It also agrees on the minimum standards for nine branches of social security, namely medical care, health benefits, unemployment benefits, old-age benefits, workers' compensation benefits, family allowances, maternity benefits, disability benefits, and survivors' benefits (*Convention C102—Social Security (Minimum Standards) Convention, 1952 (No. 102)*).

The portability of benefits within the CEPGL applies only to the three branches of social security in the three countries, namely disability, old-age, and survivors' benefits, and accident and occupational disease benefits (*Convention Générale de Sécurité Sociale entre la République du Burundi, la République Rwandaise et la République du Zaïre*). It should be noted that the social security structures organized in Burundi, Rwanda, and the Democratic Republic of Congo were exported by the Belgian Trustee Authority and have referred to ILO conventions that have not yet been ratified by them. In those countries, the social security system is a pay-as-you-go system. The contributions paid by workers are immediately used to pay the social security benefits of the beneficiaries. This system is based on strong intergenerational solidarity. This pay-as-you-go system is "contributory". Social security benefits are calculated according to the level of contributions and the number of years of insurance. The pay-as-you-go system differs from the funded system (defined contribution or defined benefit plan). Social security benefits under the CEPGL convention are exportable (Niyongabo & Sindayigaya, 2023; Toyi & Sindayigaya, 2023). The national social security legislation of the three Member States provides for the insured person's career to be taken into account by applying the principle of aggregation of insurance periods. National laws allow the exportability of social security benefits and for the protection, continuity, and maintenance of the right to social security benefits, the totalization of insurance periods completed in each Member State for the determination of the rights opened in the application of each scheme has been adopted.

The agreement on the portability of pension rights within the framework of the CEPGL is commendable since many workers who have worked in Burundi and Rwanda easily increase their entitlements (Sindayigaya & Toyi, 2023a, 2023b). The agreement that regulates the totalization of contribution periods is the best practice. Such agreements ensure that the relevant social security insti-

tutions pay a fair proportionate part of the migrant's pension that reflects the contributions that any particular social security institution received from the migrant.

The provisions for the portability of social security benefits in the CEPGL region have enabled migrant workers to benefit fully from their compensation following the occurrence of insured risks. Workers have also benefited from the free choice to settle in a member country of their choice. They also benefit from local services made possible by the dynamism of social security institutions fully committed to serving the insured.

Nevertheless, the CEPGL convention has not provided for a technical committee to coordinate the portability of migrant workers' rights. It enables beneficiaries to apply for benefits in their current place of residence all at once with a standardized system. It opens the collaborations between social security institutions (Sindayigaya et al., 2016; Sindayigaya 2020, 2022, 2023) and the central banks involved in the rapid processing of social security benefits. Each member state calculates the theoretical and actual amount of benefits according to national legislation. The convention only covers workers insured by the social security institutions of the signatory countries (INSS Burundi, INSS RDC and Rwanda RSSB). However, the legislative and regulatory provisions of the three social security institutions differ from each other for the RSSB ensures all workers in the public and private sectors while INSS Burundi and INSS DRC ensure workers who are bound to their employer by an employment contract. In Burundi and DRC, civil servants are excluded and are insured by the public treasury (Jonja et al., 2023; Nyabenda & Sindayigaya, 2023; Sindayigaya & Toyi, 2023b, 2023a). Former civil servants from member states can only receive their social security benefits in the territory. Although it is recognized that migrant workers are numerous in all three countries (Mpabansi, 2023; Ndericimpaye & Sindayigaya, 2023; Sindayigaya, 2022; Sindayigaya & Nyabenda, 2022), statistics are lacking. The exchange of information between social security institutions has been ensured between some institutions but remains marked by the socio-political circumstances of the member states. Since 1996, the exchange of information with INSS DRC has been suspended following the socio-political crisis (Mpabansi, 2023; Ndericimpaye & Sindayigaya, 2023; Sindayigaya, 2023). Congolese beneficiaries are victims of this situation and are obliged, if they can, to come to Burundi or Rwanda to receive their due. Burundian and Rwandan beneficiaries who worked in the DRC no longer receive their benefits.

5. Conclusion

Burundi, Rwanda, and DR-Congo have been bound to a General convention on social security since 1978 obliging them to proceed to the aggregation of pensions of workers from and working inside these three countries. Thus, the aggregation system implies the portability of contributors' or beneficiaries' pensions after retiring wherever they are. However, due to the political environment in DR-Congo, this country no longer fulfills the obligations born in the

provisions of the ILO conventions existing since the colonial period, ongoing until now, and the CEPGL convention obliging it to fulfill retirees' rights to pensions and others benefits. Reciprocally, Burundi and Rwanda no longer send pensions and other Congolese national's retirees who formerly worked in Burundi and DRC.

Conflicts of Interest

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

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