

**EXAMINATION OF THE CONTRADICTIONS WITHIN THE EMPLOYMENT
LAWS REGARDING LABOR RIGHTS
A CASE STUDY IN UGANDA**

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DECLARATION

I **Win Prisca** declare that the work presented in this dissertation is original and has not been presented to any other University or Institution where the work of other people has been used, references have been provided. It is in this regard that I declare this work as originally mine and it is hereby presented in partial fulfillment of the requirements for the award of the **LLB** degree at Kampala International University.

Signature:.....

Date:.....

DEDICATION

This dissertation is dedicated to my dear family of the late **Mr. Francis Izongooza**, for all the sacrifice, encouragement and support they offered to me throughout my life and career.

May God richly bless you!

APPROVAL

This is to certify that this research work of **WIN PRISCA** titled **“Examination of the contradictions within the Employment laws regarding labor rights: A case study in Uganda”** has been submitted to the Faculty of Law with my approval as a University supervisor.

SUPERVISOR

MS BASAJABALABA JALIA



.....
Signature

15th July 2016
.....

Date

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ABSTRACT

This research sought to investigate the Employment industry and its laws and regulations in Uganda. Specifically the study looks at the contradictions within the Employment laws regarding labor rights and the therein as applied to Uganda. The objectives of the research are to find out in general how the employment laws and regulations are being applied in Uganda, assess their applicability establishing the current working conditions of Employees, review the Employment Regulatory Bodies and to come up with effective mechanisms that can be utilize by the Employment Regulatory Authority and other professional associations in monitoring and supervising Employment industry. With use of different research methods, the study is intended to examine the efficiency of the Uganda Law Reforms and International Labour Organization regarding labor rights. The research looked at the literature review in the domain of the industry and its regulations. The review intends to bring fourth various contradictions within the Employment laws and regulations regarding labour rights and possible recommendations to various bodies. The government is required to re-consider the rationale that enforcing labour rights is at odds with a strong economy and may discourage Investment and cease sheltering foreign investors from enforcement of labour rights. Therefore, it should among other things Sponsor mandatory seminars for employers, on the content of and duties imposed by the country's new labour laws. The Directorate of Labour should Increase funding and facilitation of labour inspectors, support labour officers in providing increased protection for the freedom of association through enforcement of sanctions against employers who fail to recognize and bargain with unions and who punish employees for participating in union activities. In conclusion, it is clear from the failure of government to allocate necessary resources to the Directorate of Labour and to operationalize key, institutions such as the Industrial court that the political will needs to give effect to Uganda's new laws is lacking. This is predominantly due to the prevailing liberal economic policy, pursuant to which the protection of the rights of workers is viewed as being at odds with development.

CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Overview

Fundamental labor rights are laid out in Articles 6-9 of the International Covenant for Economic, Social, and Cultural Rights and include: the right to work, the right to just and favorable conditions of work, the right to form and join trade unions and the right to social security. From all the above, flow several upshot rights such as the right to fair remuneration, right to safe and healthy working conditions, to reasonable working hours and rest and the right to strike. A good number of these rights have been incorporated into domestic laws within the frame work of the Constitution of the Republic of Uganda, primarily Article 40, which protects a wide range of economic rights.¹

The employment relationship in Uganda is principally governed by the Employment contract between the Employer and the Employee governed by the Employment Act of 2006 as the primary Law.² Notwithstanding the 1995 Constitution of the Republic of Uganda and the Employment Act, there are a number of other laws and regulations regarding labor rights in Uganda to include among others: The Worker's compensation Act 2000, The Occupational Safety and Health Act No. 9 of 2006, The Labor Union's Act No.7 of 2006, The Labor Disputes (Arbitration and settlement) Act No. 8 of 2006, The minimum wages Advisory Boards and wages Councils Act cap 164, The Business Technical Vocational Education and Training(BTVET) Act 2008, The Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations, No. 62 of 2005. These laws have become a manifest of transformation in Uganda.

1.1 Background to the study

Historically, Employment laws and regulations arose due to the demands by workers for better conditions, and the Employer's demands to restrict the powers of worker's many organizations and to keep labor costs low. The state of labor law at all times is therefore both the product of, and a component of struggles between different interests in society.

¹The 1995 Constitution of the Republic of Uganda

² Section 27(1) of the Employment Act, 2006

In Uganda, the concept of employment laws and regulations was re-defined by the advent of colonial administration and since then, many changes in the Employment industry have been witnessed. At some point in 2006, the former Minister of Gender, Labor and Social Development, Hon. Bakoko Bakoru, observed that the laws were absolute and did not address the challenges and needs of the new work environment and modern labor market thus explaining the rampant strikes at places of work, increased forced and child labor and poor working conditions. Further, she intimated the need for the harmonization of the Uganda law with regard to the international conventions on labor to which Uganda is a signatory.³

Today, Parliament is empowered to enact laws to provide for the rights of persons to work under satisfactory safe and healthy conditions.⁴

1.2 Statement of the problem

The 1995 constitution of the Republic of Uganda together with other laws and regulations stated above recognize the importance of good working environment of all workers and their rights. Article 40 of the said constitution being the supreme law of the country provides for economic rights and under this, parliament among other things is mandated to ensure equal payment for work without discrimination; and to ensure that every worker is accorded rest and reasonable working hours and periods of holidays with pay, as well as remuneration for public holidays.

The Employment Act of 2006 and other laws and regulations governing labor rights together with the constitution however contradict with the provisions of regarding the issue of labor rights at common law, for example, equal treatment of every worker as women are given more work rest days than men⁵ among others. While Uganda's labor laws combined with the Constitution now provide strong legal protection for labor rights, research indicates that in practice, employees largely do not reap the benefits of these new and improved legislations. Employees suffer not because the laws protecting the workers are bad but because the social political and economic conditions do not favor implementation of the laws.

Reports of inhuman treatment of workers, illegal dismissal from work have been commonly reported in the press for long, prompting outcries from different sectors of Ugandan society, for

³New Employment Laws for Uganda. The New Vision, Tuesday April 4th,2006

⁴Article 40 of the 1995 constitution of the Republic of Uganda.

⁵Sections 56 and 57 of the Employment Act, 2006.

strengthening of the enforcement of labor laws. There is need for a critical analysis of the legal application of labor laws in Uganda and how far they have improved the conditions of the working population. This is what prompted me to carry out this study.

1.3 Purpose of the study

The country's workforce plays an important role in the development process and towards poverty reduction in the country. The purpose of this study is to provide an insight of the contradictions within the employment laws, regulations together with the constitution regarding labor laws and the legal analysis of how effectively they are applied at common law in Uganda.

1.4 Objectives of study

The study was aimed at achieving the following specific objectives;

1. To examine the efficacy of legal framework relating to employment in Uganda.
2. To assess their applicability establishing the current working conditions of employees in Uganda.
3. To find out in general how the Employment laws and regulations are being applied in the Uganda.

1.5 Research Questions

The study attempted to find answers to the following research questions;

1. Identify the various employment laws and regulations in Uganda?
2. What are the current working conditions of employers and employees in Uganda today?
3. How are the Employment laws and regulations being applied in Uganda?

1.6 Scope of the study

1.6.1 Content scope

This study encircles itself on the Uganda Law Reform Commission, a body mandated by law to oversee the implementation of practical reforms in the legal framework of Uganda. It looks at the various reforms made to the Employment laws and regulations and how effectively they have been implemented to improve the conditions of workers in the country. The study was concentrated on the activities of the Uganda Law Reform Commission over the past ten years.

1.6.2 Geographical scope

The study is to be carried out at the headquarters of the Uganda Law reform Commission, at their head office on Workers' house, Pilkington road in Kampala and other work place like industries and companies. The fact that the Uganda Law Reform Commission (ULRC) is the body that is empowered by law to oversee law reform in the country, so the personnel at the ULRC would be best suited to provide the required information for the study.

1.6.3 Time scope

The researcher carried out a field study within a period of 30 working days (one month).

1.7.0 Significance of the study

The study seeks to make the following contributions:

- 1.7.1** It is expected that this study will be significant in a number of ways, but what is of paramount consideration is the idea that amongst the clearest significance of any legal research, such as this one, is its potential for underpinning the development of specific legal and policy reforms. Thus, its findings will add important drops in the country's legal understanding of its Employment laws and regulations.
- 1.7.2** The findings of the study will help in developing tools necessary for public sensitization and training; including but not limited to training of trainers, in the form of training/working manuals on the administration of labor laws in the country.
- 1.7.3** The study will help in the establishment of adequate and reliable system of documenting statistics of employment laws and regulation abuses in relation to the roles of the executive, parliament and other interested civil society organizations.
- 1.7.4** The study will be used as a tool for influencing policy and law reforms, stimulating public awareness and debate, encouraging transformation of attitudes and intellectual culture, and using them in creating and building awareness on international principles of Employment laws and regulations amongst the employees, employers as well as workers organization.
- 1.7.5** The findings of this study are further expected to form an important nucleus for enhancing lobbying, awareness building and provision of proper legal support for proper execution of Employment laws and regulations in the country.

1.8 Methodology

The primary research methodology used was interviewing selected government officials, statutory bodies, union representatives, employers, employees, scholars and civil society organizations. Also analyzed are governing international instruments and national legislations and, a review of various secondary materials including government publications, writings of leading scholars and newspaper reports all of those materials contributed to the analysis of the state of labor rights within the laws and regulations thereof in Uganda and the resulting conclusions and recommendations. A comparative study from Kenya, one of the East African Countries regarding minimum wage was made and hence it was realized that Kenya's minimum wage is envisaged under Section 43 of the Labour Institutions Act, No. 12 of 2007.

The unskilled workers earn Kshs5,436.90 per month whereas the semi-skilled and skilled earn the least of Kshs 9,808.10 per month. Unlike Ugandan, the last minimum wage in was set in 1984 at 6,000/= per month. However, in 1986 there was a currency fold, so today this would equate to 60/= per month (roughly USD \$0.03).⁶ In 1997 the Minimum Wage Advisory Board, established two years prior, recommended a minimum wage of 75,000/= (USD\$32) but "the President and the Ministry of Finance rejected the Board's proposals, and indeed any idea of a minimum wage at all."⁷

Wages in Uganda's agricultural industries (such as rice, tea, sugar and tobacco) are particularly low a fact which coupled with employees' grievances over poor living and working conditions, has led to a number of labour disruptions and even business closures.

Until recently, flower farm employees were among those employees at the bottom end of the pay scale, making as little as 2,000/= per day (thereby putting these employees below the world poverty line).⁸

1.9 Literature review

The aim of literature review is to identify the scholarly issues that have been discussed and materials written on the domain regarding contradictions within the Employment laws and

⁶COFTU, *supra* note 88.

⁷Barya, John-Jean. "Trade Unions, Liberalisation and Politics in Uganda" in Bjorn Beckman, Sakhela Buhlungu & Lloyd Sachikonye, eds., *Trade Unions & Party Politics: Labour Movements in Africa* (Human Sciences Research Council, 2010) [Barya, "Trade Unions and Liberalization"] at 94.

⁸According to the World Bank, persons living below the poverty line are those living on less than \$1.25 a day <http://www.worldbank.org>

regulations governing labor rights at common law in Uganda. In other words this presents the existing literature on the problem of study. It will study and present the works of researchers who have studied the Employment laws and regulations governing labor rights before, present their findings and analyze whether or not these findings are credible and applicable.

A presentation on Labor Rights in Uganda by the international Law Institute- Uganda⁹ pointed out that Uganda does not have a social protection policy and the current formal social security arrangements do not cater for the informal sector. Overall, social security arrangements are inadequate in meeting the domestic capital formation and social insurance needs of Uganda because of its limited scope. Some categories of workers such as low paid and migrant workers are often exposed to harsh conditions, lack personal security, live in unsanitary conditions and, women in particular are vulnerable to sexual harassment. Informal sector workers, low paid workers, the urban unemployed, plantation workers are some of the vulnerable groups in Uganda and their vulnerability arises mainly out of poverty. The fact that a good number of these workers are also paid in cash with very minimal wages render difficult for them to have formal social security arrangements.

With the exploitation of workers, it appears that the absence of minimum wage had led to exploitation of workers to larger extent. A report by the Platform for Labor Action in 2010 pointed out that: although Uganda has ratified a number of United Nations human rights instruments and ILO Conventions on the rights of workers, the Constitution also provides for a comprehensive range of human rights as required under the different conventions, workers' rights are not yet fully respected." The absence of a minimum wage has also led to exploitation of workers.¹⁰

On decent work and decent work deficit, the first expression and formal mention of decent work' was in the Director General's Report to the International Labor Conference in 1999, where it was referred to as "productive work" under conditions of freedom equity, security and dignity, in which rights are protected and adequate remuneration and social coverage are provided. Other attributes to decent work include productive and secure work, respect of labor rights, provision for an adequate income, union freedom, collective bargaining and

⁹ Presented at the National Consultation Conference- in November 2006 by Lillian Keene-Mugerwa of Platform for Labour Action.

¹⁰ Platform for Labor Action Annual report 2010.

participation balancing work and family, education for children, absence of child Labor, gender equality, ability to compete in the market place and ultimately human dignity.¹¹

The issue of workers' freedom of association generally and the right to organize has received only limited attention in Ugandan labor law and industrial relations literature, although internationally, this is a much written about subject. However, no detailed analysis of the right has taken place particularly in light of the new labor laws. John Jean Barya's PhD thesis analyzed the development of labor law and trade unions from the colonial period up to 1987.¹²

He was concerned with the role of law in the development of trade unions in Uganda over that period. The conclusions studies are still relevant in so far as they described the ideological and political role of the law in circumscribing rights of workers both organizational and substantive. A broader sweep of the existing labor law was made by the same author, a year later.¹³ The paper concluded with proposals for the amendment of all, labor laws including aspects concerning the right to organize. Most of the proposals made have now been incorporated into the new (2006) labor laws. Subsequently, an analysis was made of the expansion of organizational space brought about by the 1993 trade union law¹⁴ and of the provisions in Uganda's 1995 Constitution relating to the rights of labor noting, among other things, that while the 1995 Constitution generously opened workers' organizational or what we called associational space, the 1993 law itself made some reasonable openings only within the context of the regime's corporatist political agenda.¹⁵ The new laws have further-expanded the associational space and are much more in conformity with the provisions of the 1995 Constitution and ILO standards on freedom of association.

A number of other works by the author were concerned with specific or broader issues of concern to workers but not freedom of association. For instance one compared the policy impact of NOTU (National Organization of Trade Unions) and UMA (Uganda Manufacturers' Association) 2002, another with different aspects of the termination of employment contracts in different African jurisdictions, 2004 or the general relationship between trade unions and policies in Uganda particularly since 1986.

¹¹ Inter American Research and Documentation Centre on Vocational Training

¹² Barya, 1990,

¹³ Barya, 1991.

¹⁴ The Trade Union Laws (Miscellaneous Amendments) Statute 10/1993.

¹⁵ Barya, 2001

Other writers have black letter law expose of the law relating to trade unions. For instance, *Angeret* basically analyzed the Common Law position and the Trade Unions decree without much reference to the operation of the law in practice.¹⁶ In a later study, he dealt with the technical aspects related to rights and limitations on the termination of the contract of employment and records some cases in this respect.¹⁷

The author has also considered the relationship between rights, generally and government economic policy, particularly in relation to health and education but did not deal with the relationship to workers freedom of association. On his part, *Juma Okuku* assessed the involvement of trade unions in the political and economic reforms under the National Resistance Movement (NRM) government, the interface with civil society and NGOs, the impact of globalization and neo-liberalism on the labor movement generally and the implications for the democratic process.¹⁸ He noted the debilitating effects of structural adjustment policies and neo-liberalism on Ugandan society and the labor movement in particular.¹⁹ However Okuku was not specifically concerned with rights or organization as such but observes that SAPs in general ‘have brought in the formula of casual laborers and that most employers in Uganda today would wish to have only casual laborers where no written contracts are given.’²⁰

On the other hand, a number of unpublished theses have dealt with issues of labor in general albeit with minimal focus less on organizational rights. For instance *J. Muwawu 1999*²¹ was specifically concerned with the broad rights of workers in the process of privatization while *Asuman Kiyingi* focused on the limitations of the existing social security law in Uganda.²² Some of the most prolific writers on labor have been researchers at Uganda’s Centre for Basic Research (CBR) especially in the period 1989 - 2000. The studies have covered inter alia conditions of labour of specific types of workers such as those on commercial dairy farms in

¹⁶ Angeret, Stephen, (1998), Trade Union Law in Uganda (self-published)

¹⁷ Angeret, *ibid*

¹⁸ Okuku, J., (1995), Workers’ Conditions and Struggles at Nyanza Textiles Industries, Jinja 1970— 1990, CB.R Working Paper No. 47.

¹⁹ *Ibid* at 47

²⁰ *Ibid* at 44

²¹ Muwawu J. (1999), The Impact of Privatization on Labour Rights in Uganda, LL.M, Dissertation, Makerere University.

²² Kiyingi Asuman, (1995), Limitations of Social Security Law: The case of the Aged in Uganda, LL.M Thesis, Makerere University.

Kabale, *Mulindwa Rutanga 1989*²³ or migrant labor on coffee Shambas in Masaka.²⁴ *S. Rutabaijuka 1989* or fisher laborers on Lakes Kyoga and Victoria²⁵ or specific struggles related to attempts to improve terms and conditions of services as in the former UGIL,²⁶ MULCO²⁷ or NYTIL.²⁸ One particular CBR study was interesting for survey of health and safety conditions in four industries in Uganda.²⁹ Overall, ever, these works were generally concerned with the microcosmic aspects of workers' conditions, unrelated to the questions of organization and the labor movement, or they dealt with specific historical incidents and struggles as part of what the authors saw as social movements in the general struggle for democracy.

The only other writer that attempted to deal with questions of rights of organization for workers has been **Ralph Gonsalves** whose work is now rather dated.³⁰

Nevertheless, this thesis provides one of the more detailed macro analyses of the development of trade unions, their political role and the hurdles created by the law to workers struggles in the colonial period and over the first decade of independence. The thesis raises questions related to the use of law by the state to control and subjugate or incorporate trade unions within the state structures particularly under the UPC/Obote I regime.

The literature related to or affecting workers' freedom of association in Uganda is not simply Uganda specific. Because labor law and labor rights are historically and in certain respects currently derived or derivable from international sources, reference to relevant workers international work and standards is also pertinent. The major relevant sources are ILO standards that are applied or are applicable in Uganda. Therefore, a study on workers' freedom of association in any country that is signatory to the ILO Constitution and Conventions requires an assessment of the extent to which ILO standards are embedded in our laws in general and, in

²³ Muriudwa-Rutanga (1989), Conditions of Labor on Commercial Dairy Farms in Kabale District, CBR Working Paper No. 1.

²⁴ *ibid*

²⁵ Asowa-Okwe (1989), Capital and Conditions of Fisher- Laborers of Lakes Kyoga and Victoria Canoe Fisheries, CBR Working Paper No.3.

²⁶ Ahikire, Josephine (1991), Workers Struggles, the Labor Process and the Question of Control: the Case of UGIL, CBR Working Paper No.16.

²⁷ *ibid*

²⁸ Okuku J., (1995), Workers' Conditions and Struggles at Nyanza Textiles Industries, Jinja 1970 — 1990, C'BR Working Paper No. 47.

²⁹ Carasco 1993. A number of the CBR studies were eventually edited as a book entitled Uganda, Studies in Labor, See Mamdani Mahmood (1996), Uganda - Studies in Labor, Codesria Dakar.

³⁰ Gonsalves, R. (1974), The Politics of Trade Unions and Industrial Relations in Uganda 1950-1971, Ph.D Manchester University.

this particular case, the right to associate or organize specifically. The law itself, more certainly the new labor laws and the Labor Unions Act are inspired by ILO standards and input. Literature on ILO standards and its relevance to developing countries is enormous. It is of relevance to Uganda in so far, as in the present case, it deals with the issue of freedom of association for workers. The ILO has been at the subject of workers' freedom of association for several years. More recent relevant works date from 1992 for instance, ILO's Freedom of Association and Collective Bargaining, General Survey, which is a basic discourse on freedom of association and collective bargaining.³¹ The book looks at freedom of association for workers and trade union rights as part and parcel of traditional constitutional civil liberties and is basically an expose of Convention 87³² and Convention 98.³³ The book explains the meaning and practice of the right to establish organizations, the right to organize and manage them freely, the right to strike, the right to collective bargaining and the need for protection against acts of anti-union discrimination and for the promotion of collective bargaining.

The same themes are covered in a Special Issue of the International Labor Review by various writers.³⁴ For instance; *Nicolas Valticos* argues that international labor standards and human rights are universal and although progress had been made on these issues in the last half century, one can foresee another difficult period as a result of the advent of as yet unbridled globalization and economic liberalism. He argues that human rights and social protection could be extensively eroded.³⁵ *Valticos* is of the view that "to confront this threat to social justice and to human rights adapted forms of standard-surfering and "regulation" in place of today's extreme deregulations is evidently in order."³⁶ Otherwise the ILO has also produced publications that present cases and texts clearly illustrating and interpreting different aspects of freedom of association for workers.³⁷ These analytical and interpretative publications are of great assistance in assessing our own new labor laws and the Labor Unions Act in particular in so far as the Act (as the other new ones) drew inspiration from the provisions of ILO Conventions.³⁸

³¹ International Labour Organization, 1994.

³² Freedom of Association and Protection of the Right to Organize Convention, 1948

³³ Right to Organize and Collective Bargaining Convention 1949

³⁴ See ILR, 137, No.2, 1998.

³⁵ Valticos, N., (1998), "International Labour Standards and Human Rights: Approaching the year 2000," in International Labor Review, Vol.137. No.2.

³⁶ Ibid

³⁷ See for instance ILO, 1996

³⁸ See for instance ILO, 1996

Literature from elsewhere in Africa shows that in Southern Africa for instance “the conditions under which trade unions operate vary significantly. In some countries, workers enjoy basic labor and organizational rights whereas in others they are exposed to suppression and intimidation by employers and the state, the former including Zimbabwe and the latter South Africa”.³⁹ In addition, it is also clear that in most African countries “far too many workers in the small business sector are currently not unionized” yet they “present an enormous potential for membership growth” and the poor conditions of employment in large parts of the informal sector “can only be improved through a combination of protective legislation and unionization” while a further challenge for the unions is to pay more attention to the needs of women workers and young workers.⁴⁰

The impact of globalization on trade unions and labor rights has been extensively commented on. For instance, Ramasamy has identified four major challenges responsible for the negative impact of globalization on the labor movement in general and trade unions in particular. First is the challenge arising out of the “reorganization” of production and the development of new management strategies of “capitalism” which include “Toyotism, JIT, flexible production and employment of contract labor that have negatively impacted the independence and autonomy of the labor movement”⁴¹

Secondly, the internationalization of capital has led to the fragmentation of the labor movement due to the rise of the informal sector, the creation of a flexible labor force, the sub-contracting of employment and the use of female labor which have all “introduced serious divisions within the labor movement.”⁴² Thirdly, although the state has succumbed to the dictates of the deregulation of markets and thus withdrawing certain welfare provisions to labor, it has remained an active partner on the side of global capital. It has not been weakened; instead, its coercive attributes have been strengthened.⁴³ Therefore, the state is still a force in trying to tame and discipline the labor movement. Finally, globalization has undermined public sector employment due to the reduction of public expenditure, deregulation and the removal of the

³⁹Muneku A Baah, A.Y Kanyenze G. Chirimpurihwa, National Labour and Economic Development Institute (NALEDI), (2004), *Workers’ Rights and the challenges Facing Trade Unions in Six African Countries*, <http://www.eldis.ids.ac.uk/static/DOC17665.htm>.

⁴⁰ *ibid.*

⁴¹ Ramasamy, 2005, at 20.

⁴² John-Jean Barya, *Freedom of Association and Uganda’s New Labor Laws: A Critical Analysis of the State of Workers’ Organizational Rights* [April, 2007].

⁴³ Ramasany op cit at 21

welfare related functions. The loss of jobs has led to a reduction in Union membership. In the case of Uganda however, although privatization and retrenchment of the public service employees reduced the numbers of workers, unionization in the public service increased due to changes in the law.⁴⁴ This is because between 1968 and 1993, all public service employees, except group employees were prohibited from joining trade unions.⁴⁵ It is only in 1993 that a new law allowed unionization in the public service.

Related to globalization, is the whole question of neo-liberal economic policies, first introduced by World Bank and IMF in the 1980s and 1990s with a devastating effect on workers and their livelihoods. Today, many governments adopt similar policies and describe them as their “own” invention and according to *Muneku* and others for instance “Namibia, South Africa and The New Partnership for Africa’s Development (NEPAD) are typical examples in this regard.”⁴⁶ They also argue that governments have ignored alternative proposals to these policies by the labor movement as in Zimbabwe and South Africa, preferring to listen to the business lobby and the IMF/World Bank “advisors.” Indeed, in the case of Uganda, the Poverty Eradication Action Plan (PEAP) is claimed to be Uganda’s own policy framework “prepared through a consultative process involving central and local government, parliament, donors and civil society.”⁴⁷ And yet, the Poverty Eradication Action Plan (PEAP) reproduces standard IMF/World Bank economic recovery/poverty eradication prescriptions. Most writers see the way forward for labor as taking up a more overt political role. For instance, *H R Schillinger*, argues that though weak and undermined by an ongoing “informalisation” of African economies on the one hand and the consequences of neo-liberal globalization on the other, unions

*....remain a political force to be reckoned with, as they continue to be one of the very few societal organizations in Africa with a sizeable constituency, country wide structures and the potential for mobilizing members on social or political matters.*⁴⁸

⁴⁴ Barya, supra note 46

⁴⁵ See The Public Service (Negotiating Machinery) Act (Amendment) Act 1968, Act 24/1968, S. 1 (a — b) also the Public Service Act 18/1969, S.27.

⁴⁶ “MuneBAah, A.Y., Kanyenze, G., Chirimpurhwa, National Labour and Economic Development Institute (NALEDI), (2004), Workers’ Rights and the challenges Facing Trade Unions in Six African Countries, [ht://w.eldis.isc.ulstatic/DOC 17665.htm](http://w.eldis.isc.ulstatic/DOC 17665.htm).

⁴⁷ Ministry of Finance Planning and Economic Development (MOFPED) 2004. The Poverty Eradication - Action Plan.

⁴⁸ Schillinger (2005), “Trade Unions in Africa: Weak but feared,” FES Occasional Papers: International Development Cooperation.pl/library. fes.de/pdf-files/iezJ02822.pdf.

On their part, some scholars on Southern African labor movements have concluded that due to the antagonism from both capital and the state “unions will have to develop strategic alliances with other progressive organizations to create the necessary grounds well to force governments into a change of policy,”⁴⁹ while *Ramasamy* tentatively suggests “that exploring social movement unionism specifically in alliance with the new global social movements as a ‘new feature of global anti-hegemonic solidarity against globalization’ may be of great assistance to workers and the trade unions.”⁵⁰

1.10 Chapterisation

This research study will be made of five chapters, with the following breakdown:

Chapter One: This chapter deals with the introduction, background to the study, significance of the study, the statement of the problem, scope of the study, hypothesis, research questions, objectives of the study, literature review, methodology, Chapterisation and Limitations of the study.

Chapter Two: This chapter deals with the concept of Employment, the structure of the directorate of labor. It deals with the challenges of ensuring labour rights and also looks at labour laws in Uganda.

Chapter Three: This particular chapter introduces the right to work as the main right regarding labor rights in Uganda. The Chapter further discusses the concept of Employment and Unemployment plus youth Employment in Uganda.

Chapter four: This chapter provides an analysis of the contract of Employment, Labor rights at length, laws and regulations in Uganda. It discusses the effectiveness of the laws and institutions governing labour rights in Uganda.

Chapter five: This chapter gives the conclusions as to the entire study, yet also makes recommendations thereto. It analyzes the strong points and weaknesses of the legal regimes and also gives the steps taken by the regulatory bodies to rectify the weaknesses.

⁴⁹Muneku, A., Baah, A.Y., Kanyenze, G., Chirimpurhwa, National Labour and Economic Development Institute NALEDI), (2004), *Workers’ Rights and the challenges Facing Trade Unions in Six African Countries*, [http://www.eldis.ids.ac.uk/Jstatic/DOC 1 7665.htm](http://www.eldis.ids.ac.uk/Jstatic/DOC%201%207665.htm).

⁵⁰Ramasamy, 31.

1.11 Study limitations

During the investigations, the researcher encountered the following limitations;

Mistrust of official documents: One of the most important methods of data collection was literature search, which involves looking through the available documents for relevant information. This was however not easily accessible due to mistrust by concerned officials. In addressing this problem, the researcher assured the officials that the information obtained in this study would be kept with utmost confidentiality.

Financial constraints: The researcher was limited by financial constraints as a result of the expenses of paying field assistants and also because many people (respondents) expected to be paid in exchange for their information. The researcher tried to mobilize enough funds to cover all the costs during the research.

Time limitations: Scheduling problems affected the researcher's ability to gather relevant information, since all respondents have responsibilities at their work places so it was quite hard to make appropriate schedules for proper information gathering. In addressing this challenge, the researcher hired research assistants in order to attend to simultaneous interview schedules at the same time. Despite these limitations, the researcher believes that the research was not compromised in any way and that the findings of this study will be useful in filling the knowledge gap that the study set out to achieve.

However the findings from this study were particularized to Kampala District hence the sample being small compared to the entire country making a limited sample area of study. In this regard, prudence must be exercised in seeing the conclusions from these findings as an appropriate representation of what is going on in the East African Community and probably in the whole world. Certainly, to apply these findings to developed countries may be tricky.

Secondly, this study does not exhaustively address all the problems resulting from the contradictions within the Employment laws and regulations regarding labor rights, it raises a few solutions from the sample population and hence further findings may be required on the very study. The challenges found were mainly, failure to retrieve a minimum number of questionnaires and some respondents were biased in answering questions making statistical computation difficult.

CHAPTER TWO

CONCEPT OF EMPLOYMENT AND ITS EFFICACY

2.1 Introduction

Employment is the relationship between master and servant that is to say, employer-employee relationship.⁵¹

Employment also refers to the relationship between two parties usually based on a contract where work is paid for, where one party which may be a corporation, not for profit organization or other entity is the employer and the other the employee.⁵²

Employer means any person or group of persons, including a company or corporation, a public, regional or local authority, a governing body of an unincorporated association, a partnership, parastatal organization whatsoever, for whom an employee works or has worked, or normally worked or sought to work, under a contract of service, and includes the heirs, successors, assignees and transferors of any person or group of persons for whom an employee works, has worked, or normally works.⁵³ *Employee* means any person who has entered into a contract of service or apprenticeship contract, including, without limitation, any person who is employed by or for the government of Uganda, including the Uganda Public Service, a local authority or parastatal organization but excludes a member of the Uganda People's Defense Forces.⁵⁴

The employment relationship in Uganda is principally governed by the Employment contract between the Employer and the Employee governed by the Employment Act of 2006 as the primary Law.⁵⁵ Aside from the Employment Act there are other laws and regulations governing Employment in Uganda to include among others as listed in chapter one.

Employment laws and regulations arose due to the demands by workers for better conditions, and the Employer's demands to restrict the powers of worker's many organizations and to keep labor costs low. The state of labor law at all times is therefore both the product of, and a component of, struggles between different interests in society.

⁵¹ The Black's Dictionary 8th Edition

⁵² Stephen Jakin and J.Scott Armstrong, 1989. Predicting Job Performance.

⁵³ Section 2 of the Employment Act, 2006

⁵⁴ *ibid*

⁵⁵ Section 27(1) of the Employment Act, 2006

As earlier seen, the concept of employment laws and regulations in Uganda was re-defined by the advent of colonial administration and since then, many changes in the Employment industry have been witnessed.

During the pre-colonial era, there was no capital and most activities dealt/ depended on land. For example: Agriculture. The concept of Employment was unheard of and only labour force was relevant for providing community services for the general population and building administration offices.

In Buganda for example there was a concept of “Burungi bwansi”, literally for the good of the nation, whereby chiefs led by the able adults into community service which was compulsory and punishments were given in form of more labor to those who tried to abscond.

In the colonial Uganda like many other African countries, the colonial masters had to forcefully get people into growing cash crops, and because people also had to work in their plantations, there was shortage of labor and in a bid to reduce this; the colonialists started hiring people with payments. The first form of Employment led to the introduction of hut tax where people were to be forced to work to get cash to pay for various taxes.

In 1912, the hut tax labor was turned into Kanseru labor with the padding of labor regulations. However, the disadvantage with these regulations was that the peasants resisted and avoided recruitment by running away or bribing chief. Others employed means of sabotage. Around this time, the international agencies like the LON, heavily attacked the use of forced labor and by 1920, the colonial administration had to abandon it.

After independence, most Employment laws and regulations like the Employment Act, 2006 were originally established as decrees in the rule of General Idi Amin Dada, until recently, Uganda has been using these 1970's decrees for its Employment policies. Although Uganda has new policies on investment, Amin's labor policies were still in use until 2000 when the government changed all the decrees into Acts without debate.⁵⁶ However, today, Parliament is empowered to enact laws to provide for the rights of persons to work under satisfactory safe and healthy conditions.⁵⁷ The constitution of the Republic of Uganda recognizes the importance of good working environment of all workers and their rights. Article 34(4) of the 1995 constitution of the Republic of Uganda as amended not only looks at the labor force but also

⁵⁶ The New Vision, Tuesday April 4th 2006 Pg 26

⁵⁷ Article 40 of the 1995 Constitution of the Republic of Uganda.

children who are supposed to be protected from social or economic exploitation. Article 39 of the constitution further provides that, Workers have a right to a clean and healthy environment. Nonetheless the International Labor Organization estimates that two million workers die as a result of occupational accidents and work related diseases every year and an equivalent of the world GDP lost as a consequence of these occurrences.

According to the Uganda Bureau of statistics in 2006, 3.5 Million people of the labor force belong to working poor category and the incidence of working poor is highest among those engaged in primary sector followed by those in manufacturing sector.⁵⁸ Furthermore, despite all the provisions above, the laws and regulations governing Labor rights under the concept of Employment need to be examined due to the contradictions therein and the drastic transformation in the nature of Employment in Uganda Today.

2.1.1 Structure of the directorate of labour

At this stage, it is also necessary to provide a brief description of the bodies responsible for the administration and enforcement of the country's labour laws. The Ministry currently responsible for overseeing labour related issues in the country is the Ministry of Gender Labour and Social Development (MGLSD). The MGLSD is divided into a number of Directorates, including the Directorate of Labour. The Directorate of Labour, in turn, has three departments:

- 1) Employment Services; -
- 2) Occupational Safety and Health; and
- 3) Labour, Industrial Relations and Productivity.

Labour officers, appointed pursuant to the Employment Act, are responsible for conducting workplace inspections and ensuring compliance with the employment standards set out in the Employment Act.⁵⁹

They are also called upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court in respect of any violation of the Employment Act⁶⁰ Unfortunately, as will be discussed in greater detail; the Industrial Court has not been operational since 2006. Labour inspectors, appointed pursuant to

⁵⁸ The Uganda Bureau of statistics report 2006.

⁵⁹ Supra note 6 at S. 11

⁶⁰ Supra note 6

the Occupation Safety and Health Act (OSHA), are responsible for conducting workplace inspections to ensure compliance with, the standards set out under the OSHA. Proceedings instituted under the OSHA are brought before magistrate courts.⁶¹ Labour officers operate under the Employment Services Department but the responsibility for appointing and administering labour officers has been delegated to the individual districts as part of the country's shift towards decentralization.⁶² Responsibility for labour inspectors, however, has not been delegated to the districts and their appointment and facilitation remains with the Directorate of Labour, under the Occupation Safety and Health Department.

2.1.2 Challenges of ensuring compliance with labor law in Uganda

Weak enforcement: In practice the government does not always enforce the law making it an offence to obstruct union organizing. Employers in the fish industry for example were not penalized for prohibiting workers from joining a union. Similarly, the government has not enforced the rights of some employees to join unions in newly privatized industries and factories.

Hostile employers; over all companies operating in hotel, textile, construction and transport sectors continue to be hostile to trade union and refused to recognize and negotiate with them. Such incidents are often not investigated by the government authorities. No collective bargaining in the public service; Uganda has failed to enforce implementation of the right to organize and collective bargaining laws as enshrined in the International Labor Organization convention. International Labor Organization Country Communications Officer, Ms. Grace Rwomushana said Uganda government has failed implement amended labor laws due to lack of legal policy guidelines.

Although the 2006 Labor Unions Act provides procedures under which employers can be punished for contravening the laws, it is silent on investor's or employers' labor guidelines. "The government enacts labor laws but is reluctant to implement them for fear of discouraging investors".⁶³ No public service unions, including medical staff and teachers, were allowed to negotiate their salaries and employment terms during the year. The government fixed the terms and conditions for all civil service workers.

⁶¹ OSHA, *supra* note 9 at S. 9.

⁶² Employment Act, *supra* note 6 at S. 9.

⁶³ Ms Grace Rwomushana Country communications Officer International Labor Organization — Uganda

2.1.2 Labor laws in Uganda

In January 2000, the Uganda Labor law reform project was initiated under the funding of the United Nations Development Program (UNDP), with the primary objective of overhauling of the legal framework in the field of employment to make it compatible with ongoing socio-economic reforms, whilst promoting ratification of ILO Conventions, and giving effect to the principles and rights concerning freedom of association and collective bargaining, non-discrimination and the elimination of forced labor and the elimination of child labor.

The development objective of the project was to achieve a coordinated labor law reform process and to update labor legislation in Uganda that will foster amicable labor relations within a legal framework that is consistent with basic human rights as enshrined in the 1995 Constitution⁶⁴. This project resulted into the enactment of various labor Acts, including the Workers Compensation Act 2000, the Minimum Wages Act 2000, the Employment Act 2006, the Labor Union [Arbitration and Settlement] Act 2006 and the Occupational Safety Act 2006. The laws remove barriers to organizations and in March 2006, four labor reform bills were passed, namely the Employment Act, the Occupational and Health Bill, the Labor Union Bill, and the Labor Dispute Bill, all of which significantly improved labor laws concerning workers' rights.⁶⁵ The Labor Union Act repeals the Trade Union Act of 2000 and with it the requirement of a minimum of 1,000 employees, representing 51 percent of the workforce in order to form a union.

The Labor Union Act does not specifically recognize the right to collective bargaining.

Uganda has made positive steps towards the promotion of labor standards to protect the rights of workers by ratifying key ILO Conventions and enacting relevant legislation to transform Conventions into municipal law. Ensuring that all Ugandans enjoy their rights and opportunities and access to education, health services, work, shelter, clothing and food security among others is one of the national objectives and directive principles of state policy under Uganda's 1995 Constitution⁶⁶. It stipulates economic rights to include the right to work under safe, satisfactory, and healthy conditions, equal pay for equal addition, it provides for the rights of workers, namely, the right to join trade unions; collective- bargaining and representation;

⁶⁴ Article 40(1) of the Constitution of Uganda 1995

⁶⁵ International Labor Organization — Policy paper, Uganda 2008

⁶⁶ Constitution of the Republic of Uganda, 1995, Objective XIV

withdrawal of labor; and maternity and post-natal protection by employers⁶⁷. It therefore incorporates the principles of the International Covenant on Economic, Social and Cultural Rights which provides for the right to work, the enjoyment by every person to just and favorable conditions from economic and social exploitation⁶⁸.

Uganda has also ratified the ILO Convention on the right to organize and collective bargaining and a Labor Unions law is in place which regulates their establishment, registration and management amongst others⁶⁹. However, as mentioned earlier, despite the existence of an adequate legal regime, enforcement has been limited. Many workers in Uganda do not belong to a labor Union. Government of Uganda, through its Ministry of Gender, Labor and Social Development, recognizes the National Organization of Trade the right to rest and reachable working hours as well as paid holidays.

National Organisation for Trade Union (NOTU) as a representative organization of employees and the Federation of Uganda Employers as the representative organization for employers. The Government consults the two organizations before arriving at decisions related to ratification or denunciation of Conventions. The recent Labor Unions Act also recognizes the Central Organization of Free Trade Unions (COFTU) as a second federation for workers unions in Uganda.

The Employment Act has provided for the rights of workers such as the right to rest, the entitlement to annual and sick leave amongst others⁷⁰. To ensure enforcement and compliance with the Employment Act, officers are empowered to engage in labor inspection which securing the enforcement of legal provision relating to the conditions of work and the protection of workers. The labor officers are also empowered to supply technical information and advice to employers, employees and their organizations concerning the most effective means of complying with the legal provisions. Although the Employment Act could be drawn on to regulate the formal sector, the circumstances in the informal sector are quite different, for example the issue of leave and rest may not easily be applicable to the informal sector where working for long hours is necessary to meet ends meet, particulaly business is run by one

⁶⁷ Article 40

⁶⁸ Article 7

⁶⁹ Labor Unions Act of 2006

⁷⁰ Sections 51, 54 and 55

person. In relation to forced labor, Uganda ratified the Forced Labor Convention which requires states to undertake to suppress the use of forced or compulsory labor in all its forms within the shortest possible period. The constitution prohibits holding any person or slavery or servitude and requiring any person to perform forced labor⁷¹. The current Employment Act also prohibits forced labor.⁷²

On the issue of child labor, Uganda has ratified the United Nations convention on the Rights of the Child and the African Charter on the Rights' and Welfare of the Child, which recognizes the right of the child to be protected from economic exploitation, and performing any work that is likely to be hazardous, interfere with the child's education or to be harmful to the child's health, or physical, mental, spiritual, moral or social development. The laws also call for the fixing of minimum wages for admission to employment⁷³ as well as regulation of hours and conditions of employment, and providing for appropriate penalties for enforcement.⁷⁴

The country has also ratified the two key ILO Conventions on child labor. The Minimum wage Convention calls upon member states to pursue a national policy designed to ensure the effective abolition of child labor and to rise progressively the minimum age for admission to employments or work to a level consistent with the fullest development of young persons. The Worst Forms of Child Labor Convention prohibits the engagement of children in any forms of slavery; using children for prostitution or pornography; using a child for illicit activities such as drug trafficking; or work, which by its nature, or the which it is carried out, is likely to harm the health, safety or morals of the child.

As stated earlier Uganda's Constitution prohibits the engagement of children in hazardous or dangerous work is also prohibited.⁷⁵ Pornography is criminalized under the Penal Code. The Constitution specifies an age limit of employment of children in hazardous work at not less than 16 years while the Children's Act also prohibits harmful employment for all children and empowers Local Councils to safeguard children and promote their welfare within their areas.⁷⁶

⁷¹ Art 25(1) & (2)

⁷² Section 5

⁷³ Article 32

⁷⁴ Article 32 (2) (a), (b) and (c)

⁷⁵ Article 34 (4) of the Constitution and section 55 of the Employment Act

⁷⁶ Children Act, Section 10

Uganda has also ratified the ILO, Minimum Wage Fixing Machinery Convention which requires member states to put in place mechanisms by which minimum wage rates can be set for employees, and the Minimum Wage Advisory Boards and Wage Councils Act is in place providing for the establishment of the boards. However, as mentioned earlier, in view of the extensive time lapse and the developments within the labor market, the prevailing minimum wage is not proportionate with the existing standards of living. Also, Minimum wages are not easily enforced in the informal economy except if prescription is made according to sub-sectors.

The Occupational Safety and Health Act, addresses the occupational safety and health related issues for all workers in Uganda. It covers all working environments and workplaces including all places where workers are found as a consequence of their work. This provision could be drawn on to provide for the workers in the informal economy through regulations specifically tailored to their situation, and ensure their well being. However, in a number of instances it is the responsibility of urban councils to provide the necessary services in workplaces in the informal economy and they need to be reminded to fulfill their obligations.

The Labor Disputes (Arbitration and Settlement) Act is also in place and establishes the industrial court and takes the labor services nearer to the people through enhancement of the powers of the Labor Officer in labor dispute resolution. The above infers that Uganda has an adequate legal regime to address the work deficits yet, overall, it is acknowledged that when laws are enacted they have not been adequately enforced.⁷⁷

2.1.3 Conclusion

There are adequate laws and regulations that provide for various rights of an employee both during employment and after specifically the right to leave and further there are institutes that an aggrieved party can get remedy just in case their right has been breached and these include the labour officer, the courts to mention but a few and on record there are cases to show that these institutes have upheld the rights of employees.

⁷⁷ SDIP: 9

CHAPTER THREE

THE RIGHT TO WORK AND THE CURRENT WORKING CONDITIONS

Introduction

According to the Bureau of statistics 2011, Uganda's working population increased from 12.9 million in 2009/10 to 13.9 million in 2012/13. The proportion of working females decreased from 52% in 2009/10 to 51% in 2012/13. 72 percent of the working population was engaged in the Agriculture sector in 2012/13, only 19.8 percent of the females in the work force have attached at least secondary school, the share of the jobs advertised in the public Administration sub-sector decreased 50 percent. The GDP at current market prices is shs58, 865 billion.

The most fundamental labor right is the right to work Enshrined in Article 23 of the Universal Declaration of Human Rights.⁷⁸ The right to work is further seen as "the right of everyone to the Opportunity to gain his living by work which he freely chooses or accepts" and places an obligation on member states to take steps to protect this right⁷⁹.

Article 6(2) of ICESCR, elaborates on this obligation stating steps to be taken by a State Party to the present Covenant to achieve the full realization of this right and that shall include technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

While Article 40(2) of the 1995 Constitution of the Republic of Uganda guarantees the right of every person in Uganda to "practice his or her profession and to carry on any lawful occupation, trade or business,"⁸⁰ the current levels of Unemployment and underemployment in the country present significant barriers to the fulfillment of this right.

3.1. Unemployment and underemployment

Employment is the most important concept for determining the legal protection associated with different forms of paid work. Employment establishes the boundary between the economic zone of commercial relations, entrepreneurship, and competition, on the one hand, and the economic zone of labor protection, economic dependency; and regulation, on the other.

⁷⁸ Universal Declaration of Human Rights [HR], GA Res. 217 (III), GAOR, 3d Sess., Supp. No. 13, UN Doc A1810 (1948).

⁷⁹ Article 6(1) of the International Covenant on Economic, Social and Cultural Rights.(ICESCR)

⁸⁰ The Constitution of the Republic of Uganda, 1995

Unemployment is defined under the Black's Law Dictionary, 6th Edition to mean an economic condition marked by the fact that individuals actively seeking jobs remain un hired whereas, *Under employment* refers to an employment action that is insufficient in some important way for the worker, relative to a standard.

According to the Millennium Development Goal Report for 2010, Uganda has made impressive steps in working towards economic development:

Uganda's macro-economic reform program is generally viewed as having supported economic growth well beyond what could be expected from the recovery and reconstruction process. These reforms, often considered among the most comprehensive in Africa, have reduced barriers to trade and liberalized prices and markets previously subject to state control. Improved management of monetary and fiscal policy has produced stability and has brought down the triple-digit inflation rate of the late 1980s.⁸¹

Unfortunately, while the government's neo-liberal economic policy may have resulted in an increase in investment and GDP to date this growth has not translated into a significant reduction in unemployment or improved job security for the citizens of the country. It has also come at the expense of strong enforcement of the country's new labor laws, since the government sees protection of labor rights as being at odds with a liberal economic policy as will be discussed later in great detail. Thus, while the government has fulfilled its obligation under Article 7 of the International Covenant of Economic Social and Cultural Rights (ICESCR) to take steps to implement policies to achieve steady economic development, it has failed to achieve a corresponding social growth.

The overall unemployment rate as at 2002 was 5% and the urban unemployment rate was at 10%.⁸² Although high, this figure is not wholly representative of the unemployment crisis the country is experiencing. More telling is the rate of under employment (those working less than 40 hours a week) which stands at 65% (75% of women and 55% of men).⁸³ Given the high growth rate of Uganda's population unemployment and underemployment are poised to

⁸¹ Uganda Ministry of Finance, Planning and Economic Development, The Millennium Development Goals, Report for Uganda 2010 (September 2010) pg. 28.

⁸² Ministry of Finance, Planning and Economic Development, State of Uganda Population Report (2010) [Population Report] at pg.9.

⁸³ Ministry of Finance, Planning and Economic Development, Uganda 's Poverty Eradication Action Plan (Kampala: 2004) [DEAF] at pg24.

increase if current trends continue. According to Uganda's Population Report, released by the Ministry of Finance in 2010:

In Uganda, like many other African countries, the rate of labor force supply has outstripped that of job creation. Uganda's total labor force was estimated at 10g million persons in 2006 (UNHS 2005/06) and is projected to reach 19million by 2015⁸⁴

Studies further show that less than 5% of the total labor force has permanent jobs⁸⁵Further, wage employment (employees earning a regular wage) currently accounts for less than 20% of Uganda's labor force,⁸⁶is concentrated in the public sector and, by the government's own admission, has not been growing as envisaged.⁸⁷Some have speculated that the growing discontent with the level of unemployment is a time bomb for social unrest:

Go and stand on Awich Road or Kitgum Road to Gulu town every morning, you will see a stream of thousands of young men and women flowing to town like water to look for what to do, but in most cases they get disappointed, they don't get the jobs. What will you expect if the situation remains as it is? They will get tired, and finally, they will revolt.⁸⁸

The consequence of the high unemployment rate has been to create a labor market wherein workers have no bargaining power. Employees feel lucky just to get work and are therefore reluctant to enforce their statutory rights. Employers are free to dictate the terms and conditions of employment, an imbalance that is reflected by the high number of casual laborers and laborers working without a written contract of employment. According to the Uganda Bureau of Statistics report 2016, the Unemployment rate in Uganda decreased to 3.80 in 2013 from 4.20 percent in 2012. Unemployment rate in Uganda averaged 3.63 percent from 2003 until 2013, reaching an all time high of 4.20 percent in 2010 and a record low of 1.90 percent in 2007.

⁸⁴ Population Report, supra note 68 at pg 8.

⁸⁵ Ibid at pg.9

⁸⁶ Ibid at pg.8

⁸⁷ PEAP, supra note 69 at 24

⁸⁸ Interview with Mr. LyelMoiOdong Interview with Mr. LyelMoi OdongOngab, former Secretary General for NOTU, on 1st March 2012., Former Secretary General for NOTU, on 1' March 2012.

3.2 Youth unemployment

Youths in Uganda are the youngest population in the world, with 77% of its population being under 30 years of age. There are 7,310,386 youth from the ages of 15-24 years of age living in Uganda. The youth Unemployment rate for young people aged 15-24 is 83%.⁸⁹ Unemployment and under employment of youth (ages 18-30) is of particular concern in Uganda and with 56% of the population under the age of 18 and the average fertility rate at 7 children per woman, this issue is only expected to get worse.⁹⁰ Uganda currently has over 40,000 university graduates entering the job market each year but only 8,000-10,000 obtain employment.⁹¹ This has fostered negative views of the education system, since paying for a university education is not seen as fruitful when so many graduates are unable to find employment. The Population Report notes that despite the high youth unemployment rate there remains a shortage of skilled labour and attributes this to an education system that is not responsive to the needs of the market.⁹²

In an attempt to address the issue of youth unemployment the government has announced 3 initiatives:

- (1) Decreasing the mandatory retirement age of government employees.
- (2) Creating the Industrial Processing Venture Capital Fund and
- (3) Creating the joint youth venture capital fund.

Decreasing the Mandatory Retirement Age of Civil Servants

The Ministry of Public Service in early 2010 was directed to reduce the mandatory retirement age of civil servants from 60 to 50 years, in the hope that these positions would be filled by the educated youth. The directive has yet to be debated by Parliament, but there has already been a great deal of resistance to the proposal. Those affected by the directive have argued that it would amount to a fundamental and unilateral change in the employment contracts of public servants.⁹³ At 50, many people still have children in school and, when budgeting for this expense, relied on the expectation of working until age 60. Implementing the change without a transition period would be very damaging to these individuals as there is a large variation between what an individual can make in 10 years of public service versus what they will

⁸⁹ World Bank.2008. African Development Indicators 2008/2009.

⁹⁰ Supra note 68 at pg. 2 and 4

⁹¹ William G. Naggaga, Editorial, "Retirement Age: The Government Should Not Rob Peter to Pay Paul," Daily Monitor (25 May 2010) <http://www.monitor&Mg>

⁹² Supra note 68 at pg. 12

⁹³ Naggra, Supra note 76

receive in 10 years of pension payments. It is imperative to note that as much as it is hoped that these positions will be filled up by youthful people, compulsory retirement will have a negative effect especially in cases where the ones being forced to retire are still physically active, mentally alert and bubbling with experience. Further, there is cause to seriously question whether the government would be able to pay the large number of pensions which would suddenly become due if this change were implemented and as of August 2010, the Ministry of Public Service was short by 300 billion shillings to clear pension payments that have accumulated since the late 1970s.⁹⁴

A spokesperson for the Government and Allied Workers' Union suggested that instead of substituting new graduates for experienced workers, thereby losing much of the public services' skilled labour, the government should focus on filling the 60,000 posts in local government that currently remain empty.⁹⁵ Implementing this suggestion would unfortunately also require government capital that may or may not be available. An alternative and softer measure to reducing the mandatory retirement age would be allowing for voluntary retirement at age 50.

The Industrial Processing Venture Capital Fund

The second proposed change, which may yield a more fruitful outcome, is the development of the Industrial Processing Venture Capital Fund. The fund established to provide skilled youth with the necessary startup capital for business a low interest rate.⁹⁶ The aim of the fund is to foster entrepreneurial activities among youth to assist the domestic economy and decrease unemployment. In June 2010 the government announced that it had allocated 4 billion shillings in the 2010/2011 budget for the development of the fund.⁹⁷ How this money is to be spent over the coming year and the impact that it has should be closely monitored.

Joint Youth Venture Capital Fund

The government signed an agreement with three commercial banks on 21st March 2012 to create 25 billion shillings youth joint venture fund. The money is meant to support the growth

⁹⁴ Joseph Miti, "Government needs Shs 300b to fix pension affairs," Daily Monitor (28 Aug 2010) <<http://www.dailymonitor.co.ug>>.

⁹⁵ Interview of Irene Kaboole, Uganda Government and Allied Workers' Union (UGAWU) -

⁹⁶ Honourable Syda N.M. Bbumba, Minister of Finance, Planning and Economic Development, Budget Speech, Financial Year 2010/11, Delivered at the Meeting of the Fifth Session of the 8th Parliament of Uganda, (10 June 2010).

⁹⁷ Ibid

of business ventures owned by the youth aged between 18 and 35 years and help create jobs for young people. The money will target start-up and small businesses to address bottlenecks of accessing affordable loans, the funds will also focus on improving the competitiveness of the business environment to enable the private sector to play a dominant role for employment generation, which will be enforced by vocational training. It is also aimed to support viable and sustainable small and medium-sized enterprises across the country because they comprise over 90% of the private sector.⁹⁸ However, the greatest challenge is that at present, the government does not have any legal policy on the both the Youth Joint Venture Capital Fund and the Industrial processing Venture Capital Fund. There is no legislative framework providing for the aforementioned funds.

3.3 Conclusion

There is still a big gap within the Employment Industry in Uganda regarding a right to work in Uganda as many people especially the youth as analysed above are left jobless. Therefore, government should put in place enforcement measures to reduce this contradiction.

⁹⁸ <http://www.newvision.co.ug/news/628717-govt-releases-sh25b-youth-fund.html>

CHAPTER FOUR

EMPLOYMENT STANDARDS AND APPLICABILITY OF EMPLOYMENT LAWS

4.0 Introduction

This Chapter examines the current level of enjoyment of the right to just and favourable working conditions as provided in Article 7 of the ICESCR and pursuant to the 1995 Constitution.

Emanating from the right to work is the right of everyone to enjoy just and favourable conditions of work. Article 7 of the ICESCR provides for this right as follows:

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- a) Remuneration which provides all workers, as a minimum, with:
 - i. Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
 - ii. A decent living for themselves and their families in accordance with the provisions of the present Covenant;
- b) Safe and healthy working conditions;
- c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
- d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay. Article 40(1) of the Constitution, mirrors this provision of the ICESCR with one exception: it only goes so far as to guarantee equal pay for equal work, failing to codify the entitlement to fair wages. Uganda's new Employment Act goes a long way towards protecting these rights, however implementation and enforcement of this Act is lacking, particularly in the private sector.

The right to work under safe and healthy working conditions is discussed in the following chapter of this report: Occupational Safety and Health.

4.1 The contract of employment

An employee's contract of service may be written or oral and the provisions of the Employment Act apply equally to both.⁹⁹ If an employee is unable to read or understand the language of the contract of employment, the contract must be attested to in accordance with the Act.¹⁰⁰ Except where expressly permitted by the Employment Act, a contract of employment may not derogate in any way from the rights set out therein and any clause which purports to exclude a provision of the Act will be deemed void.¹⁰¹ Casual labourers and workers employed for a fixed term are rarely given written contracts, a practice which makes enforcement of their rights very difficult. The Platform for Labour Action noted that attempts to sensitize workers about the importance of demanding a written contract have not been fruitful. They explained that, given the current rates of unemployment, employees do not feel they are in a position to make demands "There is no work [so] people work with or without contract letters."¹⁰²

Section 59 of the Employment Act stipulates that upon entering into a contract of employment, whether written or oral, an employee is entitled to receive written particulars of that contract, including: hours of work, the date upon which service began, the employee's wages and the interval at which they are to be paid.¹⁰³ Unfortunately, this provision of the Act is little known and rarely followed.¹⁰⁴

4.2. Equal pay for equal work

Pursuant to Article 7 of the ICESCR and Article 40 of the 1995 Constitution, employees are entitled to equal pay for equal work. As stated in the ICESCR, this means that employees are entitled to equal remuneration for work of equal value without distinction of any kind. Further, pursuant to the Employment Act, employees are entitled to freedom from discrimination in employment on several enumerated grounds including: race, colour, sex, religion, political opinion, national extraction or social origin.¹⁰⁵ Discrimination in employment was not one of the more prevalent complaints uncovered by FHRI in its research. However, the Uganda Horticulture and Allied Workers Union

⁹⁹Supra note 6 at s. 25.

¹⁰⁰Ibid. at s. 26.

¹⁰¹Ibid. at s. 26.

¹⁰²Interview of Betty Akello, Platform for Labour Action, Lira Office (6 September 2010) [Akello, PLA].

¹⁰³Supra note 6 at s. 59.

¹⁰⁴Interview with Mr. LyelMoiOdongOngab, former Secretary General for NOTU, Ofi 1st March 2012., supra note 74.

¹⁰⁵Supra note 6 at s. 6.

(UHAWU) did report that wage at Tilda do not necessarily correspond to an employee's position and level of experience but are instead set based on the discretion of management; in other words, employees working in the same position for the same number of years may be paid significantly different wages.¹⁰⁶ The Uganda National Teachers' Union also noted that discrimination on the grounds of HIV status is an issue in the education sector:

*We have many cases where, when the teachers get to know that a teacher is HIV positive and starts maybe falling ill, they go to the district education officers and they tell them to have that teacher transferred to another school.*¹⁰⁷

Transfer on the grounds of HIV status is directly contrary to section 6(3) of the *Employment Act* which prohibits discrimination on the grounds of HIV status and defines discrimination as any distinction, exclusion or preference made on the enumerated grounds. Section 71 of the *Employment Act* further states that an individual's HIV status shall not constitute a just cause, for dismissal.

4.3. Reasonable working hours and adequate rest

Part IV of the *Employment Act* sets out the rights and duties of employees and employers in the employment relationship, including the right to: weekly rest; work no more than 48 hours per week; annual leave and public holidays; sick pay and maternity/paternity leave.¹⁰⁸

Weekly rest

Employees are entitled to one day of rest for each 6 consecutive days of work.¹⁰⁹ In the course of this research, it was observed that the requirement for weekly rest was fairly well adhered to for permanent employees but that casual workers were less likely to get the required day off. This may be attributable to section 52 of the *Employment Act*, which states that workers whose pay period is one week or more cannot be deducted pay for their mandatory day of rest.¹¹⁰ In other words; workers whose pay period is less than one week (i.e. casual labourers) do not have to be paid for their statutory day of rest. As a result, most casual labourers will opt to forfeit their weekly day of rest in order to maximize their earnings.

¹⁰⁶ Interview with Stephen Barasa, General Secretary, Uganda Horticulture and Allied Workers Union on 24 January 2012 [U]IAWUI.

¹⁰⁷ Interview of Teopista Birungi, General Secretary and Juliet Wajega Sasagah, Programme Co-ordinator, Uganda National Teachers Union 2 June 2012 [UNTU] and UGAWU, supra note 80.

¹⁰⁸ Supra note 6 at s. 5 1-61.

¹⁰⁹ Ibid. at s. 51 and 52; see s. 52(2) for exceptions which include a person holding a high managerial position and a person working in a family establishment employing not more than five dependent relatives.

¹¹⁰ Ibid. ats. 52.

Workweek

Employees may not be employed for more than 48 hours per week and 10 hours per day without being paid overtime.¹¹¹ Although there are several exceptions, such as shift work, even for these employees a limit of 56 hours per week on average is set.¹¹² Failure to pay overtime was reported as a problem in the private sector. National Union of Education Institutions has this to say:

*The only problem we have in this area is if people go beyond working hours there is no specific arrangement for paying them extra hours of overtime... in public Universities they are paid overtime. In schools, primary and secondary institutions and colleges there is no specific arrangement for that.*¹¹³

Management of the Gulu Independent Hospital:

*We don't pay for overtime. Instead we have a policy that if someone has worked consecutively for 6 days, we give one day off to rest.*¹¹⁴

The requirements for weekly rest and payment for overtime as set out in the Employment Act are not mutually exclusive, however, and compliance with one cannot be traded off for non-compliance with the other.

Sick leave

Employees who have performed at least one month of continuous service for their employer and are contracted to work for at least sixteen hours a week are entitled to pay for the first month's absence from work at the full rate of pay.¹¹⁵ It was found out that many employees fail to notify their employers of their absence and that this failure sometimes results in dismissal:

They [workers] are also dismissed when they get ill and cannot report on time. When they are finally able to get to a phone to call in, they are already dismissed without a fair hearing.¹¹⁶

Pursuant to the Employment Act employees are required to give notice to their employer of their absence, but only as soon as is reasonably practicable.¹¹⁷ This provision in the Employment Act seems to take into consideration reasonable causes that may delay an employee from calling in. Even if they are not able to call in at all, this failure does not justify

¹¹¹ Ibid. at s. 53(1).

¹¹² Ibid. at s. 53(4) & (5).

¹¹³ NUEI, supra note 118.

¹¹⁴ Interview of Dr. Simon Okia, Clinical Director of Gulu Independent Hospital 19 March 2012 [Okia].

¹¹⁵ Supra note 8 at S. 55

¹¹⁶ Interview of Anita Kiddu Muhanguzi, Legal & Advocacy Officer, Platform for Labour Action (31 May 2012) [PLA].

¹¹⁷ Supra note 6 at s. 55(2)(a).

summary dismissal. Section 41(6) of the Employment Act provides instead that an employee who fails to show up for work without notice will not be entitled to pay for that day unless they have completed at least 3 months continuous services and the absence is due to an 'exceptional event,' such as a summons to court, or the death of a family member. The Act also provides that, where requested by employers, employees will provide a medical certificate substantiating their illness.¹¹⁸ This is also difficult for some employees with limited access to medical services:

*Also, the process of getting sick leave is difficult. If you are sick, in order to be paid for your time off, you must access a hospital to document that you are ill.*¹¹⁹

In some areas, this takes so long that some teachers are not benefiting.¹²⁰

This section of the Act should be amended to require medical certificates only for absences of one week or more.

Annual and maternity leave

Employees who have performed more than six months of continuous service for their employer and who are contracted to work for sixteen hours a week or more are entitled to 3 weeks of paid vacation per year, to be taken at a time agreed between the parties.¹²¹ While this is reasonable on its face, it was found that some employers avoided granting annual leave on ground that the requested times were not convenient. To address this issue, section 4(1) (a) of the Employment Act should be amended to state that annual leave may be taken at a time consented to by the employer, which consent may not be unreasonably withheld. Again, entitlements to annual leave appeared to be well respected in the public sector but less so in the private sector:

Q: Are nursing employees provided with annual leave, maternity leave, etc?

*A: [Yes] but only in government health facilities. In private facilities, missionary, and NGOs, this is nonexistent.*¹²²

Women are entitled to two months of paid maternity leave and their husbands to 4 days paternity leave.¹⁵⁶ Women are also guaranteed the right to return to the job held immediately

¹¹⁸ Ibid. at s. 55(2)(b).

¹¹⁹ UNTU, supra note 140.

¹²⁰ Supra note 6 at s. 54, note: s. 54(4) of the Employment Act omits to include after ss. (a) either: 'and' or 'or', thus it is not clear whether an employee must have worked for both or either six months and sixteen hours a week. For the purposes of this report we have assumed it should read 'and' but s. 54(4)(a) should be amended to clarify this.

¹²¹ Interview of Edith Nassuna, General Secretary and Godfrey Gime, Administrative Officer of the Uganda Nurses & Midwives Union (2010) [UNMU].

¹²² Supra note 6 at s. 56 and 57.

before taking maternity leave or a suitable alternative on terms no less favorable than the previous employment.

Despite their entitlements, for some employees taking leave is very difficult in practice:

*Theoretically, teachers are given leave. But those in the rural areas are vulnerable. When they leave, there is no one to take their place, so when they take leave there is no teacher for that class.*¹²³

The Uganda National Teachers Union reported that it has been advocating for increased funding for the education sector and pay rise for teachers because the low salaries paid to teachers has been an impediment to recruitment resulting in a shortage of qualified teachers.¹²⁴

4.4. Wrongful dismissal

Wrongful dismissal is where an employee has been dismissed without notice or an employee has not- been given the right amount of notice, or the employment is terminated contrary to the contract. Wrongful dismissal is based upon the actual contract between the employer and the employee and so breaches of that contract by the employer could give the employee the right to sue for wrongful dismissal.

Legislative Framework

Most contracts of employment may be terminated by either party giving the necessary notice of termination. This is what is called dismissal by notice as was in *Ridge VS Baldwin*¹²⁵ the learned judge held that dismissal on proper notice is lawful regardless of the motive behind it, that is to say, at common law there is no obligation upon the employer to give reasons for dismissal.

An employee cannot be terminated without adequate notice, compensation in lieu of notice, or just cause.¹²⁶ Summary termination occurs where an employer terminates the service of an employee without notice or less notice than the employee is entitled to under section 58 of the Employment Act.¹²⁷ Summary dismissal is only justified when an employee's conduct amounts to a fundamental breach of his or her obligations under the employment contract.¹²⁸ Prior to

¹²³ UNTU, supra note 92.

¹²⁴ Ibid:

¹²⁵ [1964]A.C 40

¹²⁶ Supra note 6 at s. 5 8(1).

¹²⁷ Ibid. at s. 69(1).

¹²⁸ Ibid. at s. 69(3).

reaching a decision of whether or not to dismiss the employee, the employer must explain to the employee the grounds that may lead to his or her dismissal and the employer must hear and consider any representations of the employee.¹²⁹ Of significance in a country where so many people are paid monthly, where an employee's pay period is longer than the period of notice to which he/she is entitled, the employee is entitled to notice equivalent to that pay period.

Probationary employees

The above restrictions on termination do not apply to employees who are on probation, however probationary employees are entitled to a minimum of 14 days' notice or payment of seven days wages in lieu of notice prior to dismissal.¹³⁰ All other employment standards apply equally to probationary employees, subject to the provisions of the Employment Act. A probationary period can be up to six months with the possibility of a six-month extension with the agreement of the employee.¹³¹

The allowance for a six-month extension is another provision of the Employment Act that leaves employees vulnerable in an economy where employees have little to no bargaining power.

Dismissal without just cause

Summary dismissal is primarily a problem in the private sector. For example, the General Secretary of the Uganda Nurses and Midwives Union reported that:

*The government has procedures in place to ensure that people are not wrongfully dismissed. But in some private hospitals they can just dismiss a worker at any time. It is common there, but in government there are disciplinary measures.*¹³²

Fear of summary dismissal acts as a significant deterrent to employees attempting to enforce their rights:

*"Workers are often dismissed right away when they ask for better working conditions."*¹³³

Prohibited grounds for summary dismissal as set out in the Employment Act include: pregnancy, HIV status, initiation of a complaint against an employer, or an employee's

¹²⁹Ibid. at s. 66(1) — 66(3).

¹³⁰Ibid. at s. 66(1) — 66(3).

¹³¹Ibid. at s. 67(2).

¹³²UNMU, supra note 154.

¹³³PLA, supra note 149.

membership in a trade union or participation in activities of a trade union.¹³⁴ This latter ground for dismissal was the most frequently complained of. While employees who are members of a union are 'more susceptible to wrongful termination they are also more likely to seek redress in the event of summary dismissal. Union representatives will usually act quickly to file a wrongful dismissal complaint with a labour officer where an employee is dismissed without notice. If a labour officer decides that an employee's complaint of unfair termination is well founded then the, labour officer can order that the employee be reinstated or appropriately compensated.¹³⁵ Unfortunately, without guidance or facilitation, this remedy is not always practically accessible for non-unionized employees. Other factors inhibiting access to justice include the chronic shortage of labour officers and the in operation of the industrial Court, which is the only avenue for appealing the decision of a labour officer.

4.5. Foreign Investors.

In addition to issues of wrongful dismissal, one of the most frequent complaints heard on the subject of employment standards is in respect of foreign investors:

Many investors come to this country and you wonder whether they have been shown the labour laws of this country. Uganda has one of the best labour laws in Africa, but they come and violate the workers' rights the way they want.¹³⁶

Julian Nychwo, 'Industrial Relations Officer with the Federation of Uganda Employers, defended the larger multinational corporations as being generally respectful of local labour laws explaining that it is the smaller foreign operations that are more likely to be uninformed about their legal obligations.¹³⁷

The General Secretary of the Uganda Building Construction, Civil Engineering, Cement & Allied Workers' Union (the Construction Union), stated that foreign investors in the construction industry are notorious for flaunting the country's labour laws:

African governments have recently collaborated with the Chinese government. They are coming here to invest in Africa. They have come in a big force. But they abuse workers a lot.

¹³⁴Supra note 6 at s. 75 and 76.

¹³⁵Ibid. at s. 71 77-78

¹³⁶Interview of Catherine Aneno, General Secretary of the Uganda Textile, Garment, Leather & Allied Workers' Union (7 June 2012) [UTGLAWU].

¹³⁷Interview with Julian Nychwo, Industrial Relations Officer with the Federation of Uganda Employers (25 January 2012) [FUE].

They don't accept unionization and human rights. This is something we want to talk about very clearly.¹³⁸

Labour inspectors have also encountered difficulties with foreign investors when attempting to conduct routine inspections to enforce occupational safety and health laws:

The challenge is that some of the foreign investors are not in Uganda for development; they are in Uganda for profit. Sometimes politicians guarantee them protection. So we have the laws, and when we come to enforce them, the investors hide behind the promises of the politicians. There are times when some political leaders say that the investors should not be disturbed. Then when you come, the investors away that so and so said this and you need to get this and that letter in order to come. We have the law that we are able to rely on, but we are going around in circles to the police etc.¹³⁹

The current practice of government insulating business is not limited to foreign investors. As explained by the former Secretary General of NOTU, most politicians in Uganda are receiving political and financial support from local and international companies and, in a bid to retain their support, they will sometimes intervene on their behalf to see that investigations into labour related issues are dropped.¹⁴⁰ In addition to poor enforcement of employment standards, a common concern with foreign investors is the failure of business owners and management to engage translators to communicate with the workers.

4.6. Minimum Wage

On this issue of the minimum wage, Dr. Sam Lyomoki, Chairman of COFTU has this to say:

*The President kept saying that he was consulting to get the right figures. Up to now we have put pressure, but still waiting... For him he just says he is consulting. He has been consulting since 1997. He has been consulting for 13 years.*¹⁴¹

Union representatives and employees unanimously expressed the need for enactment of a law providing for a minimum wage. The UDHR states that "everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worth of

¹³⁸ Interview of OlokaMesilamu, General Secretary and OchwoOkimu, Organizing and Education Secretary of the Uganda Building Construction, Civil Engineering, Cement & Allied Workers' Union (18 June 2012) [Construction Union].

¹³⁹ Interview of (anon), Labour Inspector (12 June. 2012) [Labour Inspector].

¹⁴⁰ Interview with Mr. Lyel Moi Odong Ongab, former Secretary General for NOTU, on 15th March 2012., supra note 74.

¹⁴¹ COFTU, supra note 41.

human dignity.”¹⁴² Uganda has ratified the ILO Minimum Wage-Fixing Machinery Convention which requires member states to “create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain trades.”¹⁴³ The last minimum wage in Uganda was set in 1984 at 6,000/= per month. However, in 1986 there was a currency fold, so today this would equate to 60/= per month (roughly USD \$0.03).¹⁴⁴ In 1997 the Minimum Wage Advisory Board, established two years prior, recommended a minimum wage of 75,000/= (USD\$32) but “the President and the Ministry of Finance rejected the Board’s proposals, and indeed any idea of a minimum wage at all.”¹⁴⁵

Wages in Uganda’s agricultural industries (such as rice, tea, sugar and tobacco) are particularly low a fact which, coupled with employees’ grievances over poor living and working conditions, has led to a number of labour disruptions and even business closures.

Until recently, flower farm employees were among those employees at the bottom end of the pay scale, making as little as 2,000/= per day (thereby putting these employees below the world poverty line).¹⁴⁶

However, after a long struggle which involved numerous labour disputes, the lower sector has emerged as rare good news, having recently signed both recognition and an industry wide collective bargaining agreement with the Uganda Horticulture and Allied Workers Union (UHAWU).¹⁴⁷ This has hopefully resulted in an increase in pay for flower sector employees. Low wages have also led to ‘brain-drain’ (emigration of the country’s most educated workers). For example, a report compiled by the Ministry of Health revealed that in 2010, 808 nurses left the country to seek higher-paying work abroad despite the country’s shortfall of 2,290 nurses in government hospitals alone.¹⁴⁸ This exodus of nurses is representative of the larger trend with Uganda reportedly losing at least 1,400 skilled professionals each year.¹⁴⁹

¹⁴²UDHR, supra note 58 at art. 23(3).

¹⁴³International Labour Organization C26 Minimum Wage-Fixing Machinery Convention, 16 June 1-92 8, (entered into force 14 June 1930, ratified by Uganda 4 June 1963).

¹⁴⁴COFTU, supra note 88.

¹⁴⁵Barya, John-Jean. “Trade Unions, Liberalisation and Politics in Uganda” in Bjorn Beckman, Sakhela Buhlungu & Lloyd Sachikonye, eds., *Trade Unions & Party Politics: Labour Movements in Africa* (Human Sciences Research Council, 2010) [Barya, “Trade Unions and Liberalization”] at 94.

¹⁴⁶According to the World Bank, persons living below the poverty line are those living on less than \$1.25 a day <http://www.worldbank.org>

¹⁴⁷UHAWU, supra note 139.

¹⁴⁸Al Mahadi Senkibirwa, “Over 800 Nurses trek to work abroad,” *Daily Monitor* (8 October 2010) <http://www.monitor.co.ug>

¹⁴⁹*Ibid.*

Uganda is presently the only country in East Africa which, practically speaking, has no minimum wage. No doubt this is perceived by some as a competitive advantage that will attract investment under the new EAC common market, as well as from the broader international community:

They say they cannot fix the minimum wage because this is a liberalized economy. So they want the market to fix the wages, which is very unfortunate. When you leave it to the market to fix the wage, then you are subjecting these workers to exploitation.¹⁵⁰

What this neo-liberal strategy overlooks, however, is that at the root of almost every industrial action in the country is a complaint about wages. The cost borne annually by companies due to closure of businesses and remediation of labour disputes may well outweigh the cost of increasing salaries to the level of a reasonable living wage. If Uganda wants to focus on diffusing foreign investment, employees and employers would both ultimately benefit from scrapping the race to the bottom strategy in favor of alternatives such as tax and transport incentives.

On 1 December 2010, Cabinet passed the National Employment Policy, which had been under review since 1998.¹⁵¹ Among other things, the Policy recommends the establishment of a Minimum Wages Advisory Board to undertake research on the impact of minimum wages on employment and wage trends in key sectors. For employees who have watched the government drag its feet on implementing a minimum wage for the last two decades under the presence of seeking feedback, the time for research is long past. It is hoped by all, and will be closely watched to see, that the promises made under the National Employment Policy shall swiftly turn into action.

4.7 Occupational Safety and Health

Another problem is acute unemployment in this country. The workers do not have bargaining power, especially workers who are not in the union. They will go in for anything, because they are desperate, as long as they get a job. -And the employers, of course, are not observing these laws. They don't provide proper tools. they don't provide protective gear it is a problem that

¹⁵⁰Construction Union, *supra* note 122.

¹⁵¹FaridahKulabako "Employers want say on minimum wage talks," Daily Monitor (3 December 2010) - p://www.monitor.co.ug

can even - result in death. Sometimes when there is an accident employees are not treated, sometimes they are not compensated. So this is a big challenge.¹⁵²

4.7.1 Introduction

The Universal Declaration of Human Rights states that “everyone has the right, to just and favourable conditions of work and to protection against unemployment.”¹⁵³ The International Covenant on Economic, Social and Cultural Rights further obligates member states to: “recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular safe and healthy working conditions.”¹⁵⁴ In addition to these international human rights instruments, the government of Uganda has ratified a number of ILO conventions for the protection of workers’ safety and health.¹⁵⁵

Uganda’s international commitments are reflected in section 40 of the 1995 Constitution, which states that Parliament shall enact laws “to provide for the right of persons to work under satisfactory, safe and healthy conditions.”¹⁵⁶ This constitutional obligation was realized with the enactment of the Occupational Safety and Health Act and the Workers Compensation Act.¹⁵⁷ On paper, these laws provide broad preventive and restorative measures to protect the safety and health of workers at the workplace. The OSHA sets out the duties of employers and minimum standards of workplace health and safety while the Workers Compensation Act establishes employer liability in the event of workplace accidents and injuries and an obligation to carry insurance to provide compensation for these incidents.

The Key common Law principle is that the employer owes a duty of care to his employees as individuals. In *Paris Vs. Stephey Bough Council*,¹⁵⁸ Mr. Paris worked as a cleaner, part of his duties consisted of scrapping rust from the Underside of vehicles, this was not a normal practice for each employer to provide goggles for this task. Mr. Paris had only one good eye and when a splinter of rust entered his only functioning eye, Mr. Paris was totally blinded.

¹⁵²OlokaMesilamu General Secretary, Uganda Building Construction, Civil Engineering, Cement &Allied Workers’ Union, [paraphrased].

¹⁵³Supra note 64 at art. 23(1).

¹⁵⁴Supra note 58 at art. 7(2).

¹⁵⁵e.g The Workmen’s Compensation (Agriculture) Convention, 1921 (C12), the Workmen Compensation (‘Accidents) Convention, 1925 (C 17), the Labour Inspection Convention, 1947 (C8 1) excluding part II, the Employment Policy Convention. 1964 (C 122), and the Vacationed Rehabilitation and Employment (Disabled Persons) Convention, 1983 (C 159).

¹⁵⁶Supra note 59 at art. 40(1)(a).

¹⁵⁷Supra notes 9 and 12.

¹⁵⁸(1951) All E R

Court held that the employer owes a duty of care to the employee as an individual Mr. Paris's employer should have foreseen that there was a great risk to injury and acted accordingly. In Wilson & Cycle Coal Co. Vs US English¹⁵⁹ it was held that the liability for safety and health of employees must lie only on the employer. Thus though performance of safety duties may be delegated the responsibility remains with the employer, in other words, the vicarious liability principle operates to hold the employer liable.

4.7.2 Preventive measures

As pointed out by the General Secretary for the National Union of Plantations and Agricultural Workers (NUPAW), when it comes to occupational safety and health, enforcement of preventive measures should take priority. In Berry Vs Stone Nanganese Co. Ltd.¹⁶⁰ The employees worked in an area of the works in which noise level was high, the employer provided ear defenders but little effort was made to ensure that employees actually wore them. Court held that in view of the known danger to employees from the high noise level and in view of the fact that the danger may not have been apparent to many of the employees; the employer had a duty to ensure that protective equipment was not only supplied but that the employer must see to it that they were actually used. Employers have to often not be reluctant after providing protective wears; they should ensure that proper use of the same safety equipment is implemented.

*A lot of workers... are injured, others die, and they are cut by machines. Even compensation becomes a problem because they engage their lawyers and there is always a problem to compensate. But compensation is not the thing because to compensate when you have lost your arm, you have lost one eye... the thing which should be done is to protect the worker, not to compensate. It may not be enough.*¹⁶¹

The Occupational Safety and Health Act requires all employers to take "as far as is reasonably practicable, all measures for the protection of his or her workers and the general public from the dangerous aspects of the employer's undertaking at his or tier own cost."¹⁶² These measures include provision of protective equipment where required, maintenance of machinery, employee education on preventing workplace accidents, and medical monitoring of employee

¹⁵⁹(1938) AC 57

¹⁶⁰(1972)1 Lyods Rep 182

¹⁶¹NUPAW supra note 72

¹⁶²Supranote 11 ats. 13(1)(a).

health. The OSHA further requires employees to report workplace hazards, and stipulates that employers shall not require employees to continue working in hazardous situations.¹⁶³ Employer compliance with these requirements is varied at best. Reports from the agricultural sector, where employees are often living in collective housing at the plantation, were particularly dismal:

*You find that what is supposed to be given at the factories and the plantations, workers are not protected. When they are not protected the workers will operate dangerous machines which are in poor condition. They are living in poor houses, no proper sanitation, no proper toilet faculties. You know, they are drinking water which is from unhygienic sources. All these are issues of health and safety. Even the inspectors from the Ministry of Labour are supposed to inspect the places to ensure that they follow the safety regulations and, but they don't.*¹⁶⁴

The above comment from the General Secretary of the National Union of Plantation and Agricultural Workers highlights some of the primary safety and health issues observed, including: unhygienic drinking water, insufficient protective gear and a general lack of enforcement of legislated Occupational Safety and Health standards.

Drinking Water

There were reports of a number of workplaces failing to make safe drinking water available to their employees. Section 50 of the OSHA states:

Provision of act equate wholesome drinking water

An adequate supply of wholesome drinking water shall be provided and maintained at suitable points in a workplace, conveniently accessible to all workers. For example, at the time of writing this research, the water collecting plant at Phoenix Logistics (Uganda) Ltd was out of use and employees were required to either come with their own water or go without.¹⁶⁵

Similarly, representatives from the NUPAW reported that plantation workers living on site often live in poor and unsanitary conditions and drink water from unhygienic sources.¹⁶⁶ For example, at Kasaku Tea Factory, employees may either bring their own Water or drink pipe

¹⁶³Supra note 11

¹⁶⁴NUPAW, supra note 72.

¹⁶⁵Plenary Meeting with Representatives Uganda Textile, Garment, Leather & Allied Worker' Union re: Labour Conditions at Phenix Logistics (15 July 2010) [Plenary Meeting at Phenix].

¹⁶⁶NUPAW

water.¹⁶⁷ Representatives from the Uganda National Teachers Union (UNTU) also advised that some public schools do not have drinking water within the school compound.¹⁶⁸

Protective Equipment

Section 13 of the Occupational Safety and Health Act obligates employers to provide adequate personal protective equipment to guard against the risk of accidents or adverse effects on health.¹⁶⁹ Compliance with this requirement is low. Employee failure to keep and/or wear protective equipment was frequently cited by employers as an excuse for non-compliance with the requirement to provide protective gear.

On a tour of the Uganda Tea Corporation's plantation it was noted that none among a group of sprayers working in the field were wearing masks, gloves or goggles.¹⁷⁰ Sprayers at UTC use a blend of two chemicals to control the growth of weeds roundup (glyphosate) and 2-4D (a phenoxy herbicide). Overexposure to 2-4D may cause a variety of side effects including nausea, vomiting, abdominal pain, decreased blood pressure, muscle weakness or muscle spasms.¹⁷¹

Exposure to these chemicals has also been linked to increased risk of Parkinson's disease.¹⁷² When asked about this, Vikram Singh Giauhan, General Manager at Uganda Tea Corporation, noted that protective equipment is provided to employees,¹⁷³ as well as training on the proper handling of chemicals, but explained that the company was faced with the problem of employees selling their equipment:

*For them they get a gumboot and after that it's sold. You give it to them again and they sell it again. They also have to realize the difficulties which can come if you don't use the gumboots. We are providing them with soap and everything, but if someone takes the soap and sells it what can I do?*¹⁷⁴

¹⁶⁷ Interview with employees (a non) at Kasaku Tea Factory (6 July 2010).

¹⁶⁸ UNTU

¹⁶⁹ Supra note 11 at s. 13(2)(g).

¹⁷⁰ Tour, Uganda Tea Corporation, Lugazi, (6 July 2012).

¹⁷¹ Nufarm, Material Safety Data Sheet/or 2, 4-D L. V. 4 Ester (10 May 2007). pg 7

¹⁷² R.J. Dinis-Oliveira, F. Remião, H. Carmo, J.A. Duarte, A. Sanchez Navarro, M.L. Bastos and F. Carvalho, "Paraquat exposure as an etiological factor of Parkinson's disease", *Neuro Toxicology*, Vol. 27, No. 6, Dec.2006, pp. 1110-1122.

¹⁷³ Note: employees at UTC advised that only permanent employees were provided with safety equipment.

¹⁷⁴ Interview of Vikram Singh Giauhan, General Manager, Uganda Tea Corporation, Lugazi (6 July 2010).

As frustrating as this may be, the responsibility to ensure that employees are wearing the required protective gear ultimately rests with the employer. This is even explicitly set out in the section of the OSHA which mandates the provision of protective clothing and equipment where the level of pollution and chemical substances in a working environment exceed exposure limits:

Section 19(2) states that 'It shall be the duty of an employer to ensure that personal protective equipment provided under subsection (1) is used wherever it is required'

In *Wilson & Cycle Coal Co. Vs English*¹⁷⁵ court held that the liability for safety and health of employees must lie only on the employer. Thus though performance of safety duties may be delegated the responsibility remains with the employer.

Enforcement of the use of protective equipment can be accomplished through the development of a workplace policy that sets out progressive disciplinary measures for employees who fail to wear their equipment. In fact, the OSHA obligates any employer with 20 employees or more to have a workplace health and safety policy in place that is known to employees and enforced.¹⁷⁶ The alleged practice of employees selling their equipment could be curbed by requiring employees to leave protective equipment with their supervisors at the end of each day or check equipment in and out of a designated storage space on a daily basis.

Another excuse which the researcher frequently heard for the failure to provide required protective equipment was financial hardship. At Phenix Logistics, a textile plant, a manager who wished to remain anonymous emphasized the need to make a profit:

*When you look at a factory, it is creating jobs. Yet it needs to profit. The employer is responsible to look after the workers' health, but it cannot continue without making a reasonable profit. So the employer needs to look at how to make profit.*¹⁷⁷

Lack of funds or a decreased profit margin is similarly not an excuse for the failure to provide required safety equipment. If employers cannot afford to operate safely then they cannot operate legally. Employers arguing that safety can be traded-off for profit are a reflection of the current attitude of government which prioritizes investment over enforcement of labour rights and which views the two objectives as being at odds. As discussed elsewhere in this report, labour rights should be enforced first and foremost because they are rights and because it is the

¹⁷⁵(1938)AC57

¹⁷⁶Supra note 11 at 14.

¹⁷⁷Interview with a Manager of Phenix Logistics, Kampala (15 July 2010).

law, but also because failure to enforce employment standards will only provide savings in the short term. The ultimate cost of non-compliance can be tenfold the short-term savings. This is particularly true of the consequences of failing to enforce minimum safety standards as workplace accidents could result in damages, ranging from expensive lawsuits to the closure of the business while accidents are investigated or employees on strike. In the case of fatal workplace accidents, employers must pay the family of the deceased a sum equal to sixty times the employee's monthly earnings as well as expenses of medical treatment and burial of the deceased.¹⁷⁸

Enforcement

The Occupational Safety and Health Act requires the appointment of labour inspectors to conduct workplace inspections and ensure compliance with occupational safety and health standards.

Any proceedings instituted under the OSHA are brought before magistrate courts.¹⁷⁹ Due to the funding constraints faced by the Ministry of Gender, Labour and Social Development there are presently only 22 labour inspectors in the entire country.¹⁸⁰ Training programs for labour inspectors have also been slashed; new labour inspectors now receive only one month of training after being appointed.¹⁸¹ The obstacles faced by labour inspectors in attempting to fulfill their mandate were summarized as follows:

We currently have three operational vehicles. One is being repaired, so we will soon have four operational vehicles. This is an area that has been lacking. Also facilitation for inspectors when they need to go upcountry or somewhere for inspection, and they need to stay there for some time, they need a maintenance allowance but there is no money for it. We also face challenges in the timely production of reports. We currently share three computers between us, which slows down our ability to produce written reports quickly after completing an inspection.

Safety inspections have become so rare an occurrence that they are commonly assumed to have stopped altogether:

¹⁷⁸WCA, supra note 14 at s. 4.

¹⁷⁹OSFIA, supra note 11 at s. 9.

¹⁸⁰Labour Inspector, supra note 123.

¹⁸¹*ibid.*

*I remember in the past, the Ministry of Labour had a department of Occupational Safety and Health. They used to go to workplaces and even check workers, especially in the government sector, [but] I don't see it being done anymore.*¹⁸²

Without the support and facilitation of government, labour inspectors have been stripped of their effectiveness as a tool for enforcing the requirements of the OSHA. In the absence of regular workplace inspections, it is left to employees and union representatives to bring violations of the OSHA to the attention of labour inspectors. Many employees, however, are too afraid of reprisal to blow the whistle on their employers. In the course of this research, it was learnt that employees were dismissed simply for reporting a workplace accident (a requirement under the OSHA):

*There are employers who threaten employees that 'if you report about an accident we will terminate your contract' and in most cases they do when you get an accident and you report, instead of treating you, you may be issued a termination letter.*¹⁸³

As a result, numerous OSHA violations go unnoticed and unreported. On the bright side, those violations of the OSHA that do come to the attention of labour inspectors are then prosecuted in magistrate courts, rather than the Industrial Court. Employees are therefore not at the same disadvantage when it comes to prosecuting OSH violations as they are with labour relations disputes and employment standards complaints.

4.7.3 Liability and compensation for workplace injuries

The Workers' Compensation Act establishes absolute employer liability for any personal injury resulting from accidents that occur in the course of a worker's employment including accidents occurring while an employee is travelling to or from their workplace.¹⁸⁴ Compensation for workplace accidents may include up to five years' salary replacement (including the value of benefits such as food, accommodation, and other benefits in kind supplied by the employer), as well as the cost of medical treatment associated with the illness or injury.¹⁸⁵ Employers are required by the WCA to maintain insurance to cover compensation claims.¹⁸⁶

¹⁸² UTGLA WU, supra note 120.

¹⁸³ Interview with Mr. LyelMoi OdongOngab, former Secretary General for NOTU, on 1st March 2012..

¹⁸⁴ Supra note 14 at s: 3. Note: Employers are not liable for injuries which do not incapacitate the worker for at least three consecutive days from earning full wages. In such cases employees can take paid sick leave pursuant to the Employment Act.

¹⁸⁵ OSHA, supra note 11 at s. 1, 4—6, and 24.

¹⁸⁶ WCA, supra note 14 at s. 18.

Common law has it that, a master is liable for his personal acts and omissions together with breach of his primary duties to supply hours of work, health and welfare, a safe system of work, proper appliance and efficient personnel.

In JURNA VS NYTIL¹⁸⁷ an accident had occurred involving Asile, a laboratory assistant who was mixing sulphuric acid and using new containers for the purpose of some industrial process. In the process the container collapsed, the mixture of the acid poured on the floor and his boots and as he tried to avoid it and was later hospitalized for 2 months and he claimed damages for permanent disability. It was held that at common law, an employer owes a duty of care to his employee to maintain safe premises, a safe system, safe appliances, implement and plant. The duty consists of the employer taking reasonable, precautions for the workman's safety.

Workplace accidents must be reported to employers who are then obligated to report them to the labour district officer.¹⁸⁸ The employer must then arrange to have the employee examined by a qualified medical practitioner at no charge to the employee.¹⁸⁹ The employer and employee may then, with the approval of a labour officer, come to an agreement as to compensation, provided the amount is not less than that stipulated under the WCA.¹⁹⁰ If the employee and employer fail to come to an agreement within 21 days from the date of the accident then the worker may make an application to enforce his/her claim to the court having jurisdiction in the district in which the accident occurred.¹⁹¹ The unfortunate reality for most employees, however, is that a workplace injury means unpaid time away from work.

In Byarugaba Vs Kilembe Mines Ltd¹⁹² the plaintiff who was a minor, employed by the defendant claimed damages for injuries sustained in a rock fall in the mine as a result of which both legs were amputated, aged 22 years earning 350Ugx he was fitted with artificial limbs. It was held that provided that he was working this was merely on unauthorized method of doing work and his employers were liable in negligence.

Despite all this, the government has failed to address the issue of employers who fail to compensate for workplace injuries and, without the threat of penalty, many employers simply neglect to maintain the required insurance policies. The problem is compounded by a situation

¹⁸⁷(1975)HC8292

¹⁸⁸*Ibid* at S.9 and 10

¹⁸⁹*Ibid* at S. 11

¹⁹⁰*Ibid* at S. 12

¹⁹¹*Ibid.* ats. 12.

¹⁹²[1972] EA 339

where; employers don't want to maintain insurance because the premiums are high but, insurance premiums are high because so few employers have subscribed.¹⁹³ Failure to carry workers compensation insurance is an issue which extends even to the public sector. Dr. Sam Lyomoki, the Chairman of COFTU, recalls the tragic deaths of 39 health sector workers in 2007/2008:

We have cases of workers who died because of the Ebola virus in different hospitals, but getting compensation for those workers was very difficult because the government had not provided for the money in the budget.¹⁹⁴ Enforcement of the requirement to carry insurance could be achieved by requiring employers to show proof of an up to date insurance policy in order to have their trading licenses renewed.¹⁹⁵

4.7.4 Conclusion

Violations of the employees right to leave stems from various factors like weak workers associations which cannot fight for its members right to leave since such associations are penetrated by the employers themselves who influence the internal running of such associations, the other factor is enforcement of such laws that are in existence since government lacks enough man power to monitor both employers and employees.

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CHAPTER FIVE

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.0 Introduction

Review on the employment laws and regulations in Uganda

The Primary laws in Uganda governing Labor rights include; The Workers' Compensation Act 2000, the Minimum Wages Act 2000, the Employment Act 2006, the Labour Union Arbitration and Settlement Act 2006 and the Occupational Safety Act 2006. Under the Employment Act 2006, the conditions of employment in Uganda are stated. The aspects of employment covered here are contract of service, termination of contract, termination notices, and protection of wages, hours of work, rest and holidays, employment of women, employment of children and care of employees. Sections 29 and 37 under which protection of wages lies, gives workers a right to their pay which may be a salary or wage, failure of which can result into the termination of a recruitment permit for an employer who does not pay.

Section 38 under which hours of work, rest and holidays fall, sets out an eight-hour working day and any overtime worked must be paid at one and a half times the normal rate of pay. It is further stated that, an employee whose hours of work exceed six a day, is entitled to at least an hour's break or more so that he or she does not work continuously for more than five hours.

An employer is required to give his or her employee holidays with full pay at the rate of at least one and a half working days for every month of actual service. "The law does not allow any agreement to forego such as actual service is deemed to include days of weekly rest, public holidays and days of absence from work due to sickness not exceeding 30 days per year. As for public holidays, it is stated, employees are entitled to resting on all public holidays as gazetted under the Public Holidays Act otherwise, "the employer is obliged to pay an employee who works on a public holiday double the normal rate or grant them a day off later with normal pay".

Dismissing workers at will is a violation of the law. The right procedure to be followed according to the Ministry of Labour, is to give a prior notice for service that has lasted for less than a year, 15 days' notice for service that has lasted a year but is less than three years and one months' notice for service that has lasted three years but is less than five years. Two months'

notice should be given for service that has lasted at least five years but is less than ten year and three months' notice if the service has lasted 10 years.

Under the Workers Compensation Act 2000, it is stated that an employee is entitled to compensation for any personal injury from an accident arising out and in course of his employment even if the injury resulted from the employee's negligence. "Under this Act, compensation is automatic. The compensation is to be paid by the employer whether the worker was injured as a result of his own mistake or not," it is stated. For an injury that leads to death, the compensation should be equivalent to an employer's monthly pay multiplied by 60 months.

A review on the working conditions in uganda

Fixing of Minimum Wages under the Statutory Machinery provided under the Minimum Wages Advisory and Wages Councils Act is an important and necessary safeguard for all unskilled workers especially those who may not be covered by collective bargaining. Decent work does not permit exploitation of workers and there is a need to have a minimum wage in Uganda. According to newspaper reports, Dr. Sam Lyomoki, a workers' MP, said that work Policies were reducing workers to "slavery and brutality," and that workers should be mobilized throughout the country to struggle against such policies.¹⁹⁶

There are many incidents of non-payment of wages, unlawful dismissal/termination and non-payment of terminal benefits. This is evidenced in the number of workers seeking legal aid from NGOs. In 2004 alone, for example, 246 clients sought legal support and representation from Platform for Labour Action (PLA) and in 2005, 640 sought legal aid to resolve labour related claims.¹⁹⁷ These abuses are common in many formal workplaces affecting, for example, teachers, security guards flower farm workers and big enterprises such as fishing.

Safety, poor working conditions, abuse of workers' rights, lack of capital, lack of proper work tools and the difficulty of collecting payments from customers are some of the major challenges facing urban informal sector employees.¹⁹⁸ The working conditions in most urban informal economy sites are appalling - long working hours with no rest as well as lack of adequate toilet facilities, storage space for their goods and child facilities.

¹⁹⁶ Daily Monitor Friday October 20th 2006: 7

¹⁹⁷ Platform for Labour Action, Annual Report 2004 and 2005

¹⁹⁸ UBOS: Report on the Labor Force Survey: 14&16

5.1 Assessment on the application of labor laws in uganda

Uganda's labour laws promote the rights of workers. However, the level of enforcement of, and adherence to, these laws is in limbo. Work deficits can be reduced when the labour laws are adhered to by both the employers and employees and this includes ensuring that labour disputes are fairly heard. The commercial justice system is deemed by many especially within the informal sector as being expensive, slow and corrupt. Labour rights can also be recognized when workers sensitized on their rights at work.

This can be done through civic education using the structures of labour unions and NGOs. The Labour Disputes (Arbitration and Settlement) law is an opportunity for the labour officers to resolve disputes nearer the people. They however, lack facilities and resources to carry out their work. The Government should allocate resources for labour dispute resolution. The Industrial court should be facilitated to develop regulations and a chief judge be appointed to preside over the court to enable the law to be functional.

Uganda ratified the ILO Right to Organize and Collective Bargaining Convention which provides for workers' rights to freedom of association and collective bargaining as well as workers' (unions) protection against anti-union discrimination. Uganda's Constitution also provides for a comprehensive range of human rights as required under the different conventions. Despite these provisions in Uganda over the years, the right to freedom of association by workers has continuously been threatened. Some unscrupulous employers block workers from organizing and forming trade unions, contrary to the Uganda Constitution of 1995.¹⁹⁹

5.2 Conclusion

Uganda has labor laws and regulations, but their enforcement has been weak and inconsistent due to capacity constraints at different levels of Government. The Constitution of Uganda provides for the right of every person to join workers' associations or trade unions, and the law allows unionization if the majority of the work force supports it. Further, the law prohibits forced or bonded labor but the lack of resources prevented the Government from enforcing this prohibition effectively.

¹⁹⁹ Uganda Constitution of 1995, Article 40

Also, the law prohibits employers from hiring workers below the age of 18. However, due to weak enforcement, child labor is common. Most working children are employed in the informal sector, often, on the subsistence farms of extended family members or as domestic servants. Uganda is a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination against Women and to the Vocational Rehabilitation Employment (Disabled Persons) Convention of 1983, though it has not ratified yet the relevant ILO Conventions. Finally minimum wage legislation exists, but the minimum wage rate has not been adjusted since the 1960s.

5.3 Recommendations

While some progress has been made as seen above, there is need to also highlight the challenges facing Ugandan workers and also find a way forward. The fundamental challenges facing workers in Uganda range from an erratic wage system due to the absence of a minimum wage, the lack of standardized working hours, both in the private and public sectors, low involvement of workers in policy matters that affect their plight, the absence of performance incentives, to the absence of a vibrant and all-inclusive national labour platform to protect and promote the rights and interests of workers.

Above and beyond, Uganda is one of the few countries without a comprehensive National Employment Policy. The absence of this policy leads to sporadic and haphazard planning and decision making regarding human resource management as there is no standardized policy guideline to set the benchmarks for employment in Uganda. There is need to have a census to take stock of the various current human resources that we have. The National Planning Authority should, therefore, take the lead in taking stock of the various professionals in the labour force that Uganda is blessed with. In this regard, the following recommendations were sought from different sectors;

To Government

The government is required to re-consider the rationale that enforcing labour rights is at odds with a strong economy and may discourage Investment and cease sheltering foreign investors from enforcement of labour rights.

- i. Advance the appointment of a judge to the Industrial Court and provide the Court with adequate funding to operate and fulfill its mandate.

- ❖ Do NOT make union registration contingent upon prior recruitment of a - minimum number of members as this would run counter to the Constitution and several international legal instruments; and
- ❖ Do NOT limit the number of unions, which can be present in one workplace or sector as this would directly contradict s. 24 (1)(d) of the Labour Disputes Act and the freedom of association as articulated in the Constitution.

To the Directorate of Labour:

- ❖ Increase funding and facilitation of labour inspectors.
- ❖ Support labour officers in providing increased protection for the freedom of association through enforcement of sanctions against employers who fail to recognize and bargain with unions and who punish employees for - participating in union activities:
- ❖ Review complaints made to the Registrar under section 24(3) of the Labour Disputes Act and require employers to respond within the mandated 21 days explaining their failure to comply with the Act.

To the Judiciary:

- ❖ Until the Industrial Court is constituted, the High Court should be adjudicating labour related matters instead of referring them to the in operational Industrial Court.

To Civil Society and Unions:

- ❖ High Court decisions referring labour cases to the defunct Industrial Court 'should be appealed.
- ❖ Continue efforts to sensitize employees about their rights and duties under the new labour laws and provide procedural information on how to access justice.
- ❖ A radio program could be an effective means of achieving these ends.
- ❖ Monitor the implementation of the Industrial Processing Venture Capital Fund and expenditure of allocated funds to ensure effectiveness.
- ❖ Increase sensitization of employers, employees, union representatives and government officials about the rights and definition of casual labourers.
- ❖ The formation of co-operatives among business owners in the informal sector should be facilitated in order to foster better working conditions in this sector.

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