

**ASSESSING THE LEGAL FRAMEWORK AND POLICIES AFFECTING THE
OPERATION OF LABOUR UNIONS IN UGANDA**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN
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DECLARATION

I do hereby declare that this work being presented for the partial fulfilment of a Degree in a Bachelor of laws at Kampala International University Uganda is my own except it is acknowledged and that it has never been presented anywhere for a ward of a Degree or a Diploma or reproduced for any other purpose whatsoever the case may be either as a whole or a part of it.



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APPROVAL

I certify that the research herein has been conducted under my supervision and is ready for submission with my approval as the university supervisor

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Supervisor

Date

26/09/2018

DEDICATION

This research is dedicated to my family Mr Muhairwe Ephraim, Mrs Naturinda Jolly for the love, care and support accorded to me

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The first thanks is to the Almighty God who above all deserves an acknowledgment in respect of this work and others for His utmost blessings, protecting, loving and guidance that always leads to my success and giving me strong suit throughout the period of my study at the Kampala International University. Further, I wish to express my appreciative to my supervisor for the great work and my other family members Muhangi Onani, Nkwasibwe Anorld ,Asingwire Prudence , Kyantanga Elisa , Atuhire Joaline , Nuwahereza Ambrose ,Tusiime Immaculate , Atuhaire Provia ,Pretty, Joan, Precious ,Praise ,Elvis, Victor and my best friends Mr Mungu PJ Brian, ,Dorren,Caroline ,Desderio ,Edgar, Emmanuel , Steven,Allen,Rabecca who has honestly supported my studies. In fact, there is large number of people who in one way or another sacrificed and surrendered their time and energy to encourage me. Although, it is not possible to mention and enumerate all of them, I would like to take this opportunity to thank them all for their useful contribution.

LIST OF ABBREVIATIONS

COFTU	:	Central Organization of Free Labour Unions
COLU	:	Confederation of Labour Unions
DLOs	:	District Labour Organizations
ICCPR	:	International Covenant on Civil and Political Rights
ICESCR	:	International Convention on Economic, Social and Cultural Rights
ILO	:	International Labour organization
MoGLSD	:	Ministry of Gender, Labour and Social Development
NOTU	:	National Organization of Labour Unions
NRM	:	National Resistance Movement
UDHR	:	Universal Declaration of Human Rights

STATUTES

Employment Act 2006

Labour Disputes Act 2006

The 1995 Constitution of the Republic of Uganda

The Labour Disputes (Arbitration and Settlement) Act 2006

The Labour Unions Act 2006

The Occupational Safety and Health Act, 2006

The Workers Compensation Act Cap 225

INTERNATIONAL INSTRUMENTS

African Charter on Human and Peoples Rights 1981

International Labour organization (ILO) 2006

International Convention on Economic, Social and Cultural Rights (ICESCR)

Universal Declaration of Human Rights (UDHR)

LIST OF CASES

Broadford Vs. Robinson Rentals 1967 AC

Chambers v. Florida 309 U.S. 227, 241 (1940)

Finch v Telegraph Construction & Maintenance Co Ltd (1949) AC 35

General cleaning contractors Vs. Christmas 1953 AC. 180

J.T. Stratford & Son v. Lindley and Others (1965) A.C. 269

John Otto v UEB (1981) HCB 52

Okori v Uganda Electricity Board (1981) HCB 52

Swar Borton v Cooperative Wholesale SOC (1917) KB 663

Uganda Commercial Bank v Yersua Nabudere & Ap Nabudere CACA No 31/2001

Virani v Dharamsi (1967) EA 132

ABSTRACT

The study examined the legal framework and policies affecting the operation of labour unions in Uganda. The research analyzed the challenges in the realization of workers' rights under trade unions and examined the level of effectiveness of trade unions in protection of workers' rights in Uganda. Uganda is a state party to the International Covenant on Economic Social and Cultural Rights (ICESCR) and other international labour conventions. Uganda has also enacted laws, created institutions and made provision for workers to have representatives in Parliament. The study found that the realisation of workers' rights was dependent on, among other things, enforcement of labour laws and rights, efficiency of Labour Officers in resolving labour issues and active participation of trade unions in the resolution of labour matters. The investigation observed that the rights most commonly violated were the right to equal pay for equal work done, provision of contracts of employment and in some instances, the right to freedom of association. Consequently, labour rights appear to largely remain on paper the investigations have shown that workers rights are indeed not highly respected or protected. There is no promotion either due to wrangles between trade unions which inhibits the expansion of union services as well as the inability or non-availability of Labour Officers to reach and address workers under their jurisdiction. In view of the findings, the study recommended, among others, that: employers conduct more on job training for workers; employees be supported by their employers in the formation and joining of labour unions; employers should increase wages and give fairer terms of employment for casual labourers; all workers should ensure their health and safety at the work place; the facilitation of labour offices should be centralised as most district local governments tend not to have sufficient funding for their operations; need for the strengthening and adequate resourcing of the labour function in MoGLSD; government should set a minimum wage for workers in accordance with the type of work done and level of qualifications of the worker; and, Trade unions should cultivate and maintain working relationships with management, labour office and workers to enhance resolution of issues affecting workers in a given institution.

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CHAPTER ONE

INTRODUCTION AND GENERAL BACKGRROUND

1.0 Introduction

This chapter present the background of the study, statement of the problem, purpose of the study, specific research objectives, research questions, and scope of the study and the significance of the study

Labor unions are entities established by workers and democratically operated in order to represent workers in any company or state enterprise in order to protect worker interests and promote mutually beneficial relationships between employers and workers. In addition, they also play an important role in the development of society and the nation as a whole.¹

Labour Unions Act defines Labour Unions as the combination whether temporally or permanent, of a thousand or more persons other than an employees association, the principle objects of which are under its constitution, the regulation of the relations between employees or employers whether such combination would or would not, if this Act had not been enacted, have been deemed to have been an unlawful combination by reason of some one or more of its objects being in restraint of trade.² Labour law is the body of laws, administrative rulings and precedents which address the legal rights and restrictions on working people and their organizations³

Labour law is of two categories i.e. collective bargaining and individual labour law. trade unions are concerned with collective bargaining and international labour office (a workers education manual)⁴ has defined collective bargaining as negotiations about working conditions and terms of employment between and employer, group of employers, organizations on one hand and employees, workers representatives or worker organizations on the other hand with the view of reaching agreement.

¹ Webb, 1896; Pongpangan, 1979; Wilawan, 2007.

² Sec 1 (z) (cc) Trade Unions Act Cap 223

³ Encyclopedia of law

⁴ Geneva 1960 page 3

And therefore under Article 29(c)⁵ which gives authority for every worker to be with a right to join and belong to any organization of his or her choice and to form any organization of their choice.

The question which Labour ministers must ponder, if they are to restore good relations with the Labour Unions at the same time as sidelining the continuing real influence of the 'hard left' in union councils, is whether unions are forever to be seen as bodies to be tightly controlled by government regulation. Are unions still to be regarded as conspirators in the law's eyes? The imposition of heavy, one-sided, and complex restrictions on traditional trade-union activities by Conservative governments in the 1980s signified a profound change of role by the state after decades of conflict. But the fact that, after ten years of Labour governments, most of these restrictive laws have been retained underlines how far apart in outlook the two wings of 'the Labour movement' have grown.⁶

1.1 BACKGROUND OF THE STUDY

The development of Unions in Uganda can be traced as early as the 1930's when the first trade union was formed. The Labour Unions which were formed then were used for political gains in a bid to fight colonialists and the Buganda Government Kingdom. Therefore, the basic functions of the Labour Unions were taken over by overtly political organisation. Despite the above, however, the economic depression gave a fertile ground for the normal functioning of Labour Unions plus of course the external influence⁷.

As far as early 1930s, a body was founded in Uganda calling itself a trade union. However, it is clear that this was associated with the earliest strings of political nationalism without any concern for the regulation of industrial relations. Political parties were out of the question at this time, viewed by officialdom as a challenge to the authority of the administration and the traditional rulers⁸. The trade union was approved organisation, sanctioned and encouraged by the colonial office. Thus a trade union could be used to give some appearance of legitimacy to the statements of aspiring political leaders.

⁵The Constitution of Republic of Uganda 1995.

⁶The law relating to trade unions in Uganda by JD Lutankome.

⁷ The development of Labour Unions in Uganda and the protection of human by Scott, 1966

⁸ Ibid

According to Piriyarangsan⁹, the philosophy of positive labor relations, the labor union is considered one of the most important institutes in the industrial world¹⁰. According to Dunlop¹¹, the labor relations system is a sub-system of an overall social system. It consists of three main parties, namely, employers, workers, and the government¹²; the representative of workers within any enterprise or industry is the labor union.

The early unions were formed on racial premise. The Asians who were skilled as compared to the Africans took on the "juicy jobs". Labour Unions developed in Uganda from 1938 although the ideas about trade unionism had been developed as a result of the building of the Uganda Railway. The formation of the national centre plus the splinter groups, political ambitions of some union leaders were partly responsible for the closure of both the National Centre (Uganda labour Congress) and the Labour College.

As the labour laws are very much a product of history, we need to turn to history. Trade union law is one of the most difficult parts of that history to disentangle. The subject is complex because British laws have constantly changed while retaining allegiance to the same underlying common law categories and concept for instance the law of conspiracy, restraint of trade, contract and tort. That complexity has been deepened by negative form in which trade union law has been framed as immunity from the normal common law rather as a declaration of positive rights for unions as free and independent associations of workers¹³.

The period of 1950_1960

Trade unions ordinance between 1950 and 1960, was the beginning of real trade unionism when it would be separated from politics, the ordinance was basically to provide trade disputes settlement machinery. Both parties (employers and employees) had to notify the labour commissioner of a trade dispute and the commissioner had to appoint a conciliator if he was convinced there was a problem¹⁴.

In 1952 under the Uganda trade union ordinance, the Uganda posts and telegraph workers union was registered on 7th September 1952, as time went on, more and more trade unions

⁹ The philosophy of labour relations *Britain Today* Manchester University Press Piriyarangsan 1999

¹⁰ Ibid

¹¹ The International Protection of Trade Union Freedom, London: Stevens and Sons. Dunlop (1958) pp. 181-183

¹² Ibid

¹³ Organise and Collective Bargaining Convention, Ananaba W. 1979 P.98

¹⁴ Abolition of Forced Labour Convention, McCrudden, C. 1983 Pg 255-257

were formed and by 1955, four trade unions were already registered under the above mentioned trade union ordinance. The 1952 ordinance provide for compulsory registration of trade unions, any trade union operating without proper registration would not be permitted and its leaders prosecuted, the ordinance also allowed greater supervision of the activities of trade unions especially in respect to finances, unions were obligated to submit financial returns to the ministry of labour, the ordinance also gave wide powers to the registrar of trade unions to inspect unions and enforcing a schedule of rules to be included in the constitution of each union, it further made sure that trade unions are not mingled with political activities¹⁵.

The first union to be registered under the new ordinance was the Kampala local government staff association which was mainly composed of Europeans and highly paid Asians. Despite the formation of these trade unions, there was still a trade union vacuum, Scott notes that from 1952 until 1955, agricultural prosperity continued and with it the labour shortage and because of this situation, it is logic that labour was on a high demand and therefore conditions not so appealing to warrant a trade union intervention.

Labour Unions Act, 1965 which came into force on the 2nd July 1965, purpose of the Act was stated to be; to amend and consolidate the law relating to the registration of Labour Unions and other purposes connected therewith." The Act¹⁶ gave power to the Minister to appoint a Registrar and Assistant Registrars whose main duty was to keep and maintain a Register of Labour Unions in which particulars as may be prescribed by the Minister were recorded, and such other books and documents as the Minister may direct. All Labour Unions were required to register with the Registrar. A trade union was defined as "any combination whether temporary or permanent, of more than thirty persons, other than an employees' association, not deemed a trade union¹⁷,the principal object of which are under its constitution the regulation of relations between employee and employer, or between employees and employers, or between employers and employees, whether such a combination would or would not, if this Act had not been enacted, have been an unlawful combination by reason of some or more of its objects being in restraint of trade." Labour Unions were free with prior consent of the Registrar to amalgamate to form federations or congresses by whatever name

¹⁵ Abolition of Forced Labour Convention, McCrudden, C. 1983 Pg 255-257

¹⁶Trade unions Act 1976

¹⁷ S. (48) of the Trade unions Act 1976

called, which would also be required to register with the Registrar¹⁸. Soldiers, policemen, prisons officers are excluded from membership of Labour Unions¹⁹.

It will be observed that under the 1965 Labour Unions Act, the Minister exercised purely regulatory powers through the Registrar and did not supervise or control the operations of the Labour Unions. There was no single national trade union center to which all other unions were required to affiliate.

After the publication of what is known as the Binaisa Commission Report on Labour Unions²⁰, this arrangement was brought to an end by the Labour Unions Act, 1970 which came into force on 31st December 1970. The purpose of the new Act was stated to be; to establish and regulate an integrated employees' trade union, to dissolve the former Uganda Labour Congress and all other Labour Unions registered under the Labour Unions Act, 1965, to provide for the formation of branch unions and for other purposes connected therewith." A single trade union called Uganda Labour Congress which was to be the only trade union in Uganda²¹. All the properties, rights, liabilities and obligations of the former Uganda Labour Congress and all other registered Unions were vested in the new Uganda Labour Congress by virtue of the Act. The newly established union was permitted to operate branches which could amalgamate with the prior consent of the Registrar of Trade Union. All the members of the abolished Labour Unions became automatic members of the Uganda Labour Congress.

All the branches of the Congress were required to be registered with the Registrar as long as they had at least 1000 employees. A registered branch union, members of which are his employees, shall be the negotiating body with which the employer shall be bound to deal in respect of all matters relating to the relations between him and those of his employees who fall within the scope of membership of the registered branch union, if at least ten per centum of such employees are members of the branch union²²

¹⁸Under Section 24 of the Trade unions Act 1976

¹⁹Under Section 64 of the Trade unions Act 1976

²⁰ Commission Report on Labour Unions , 1968

²¹ Section 1 of the Labour Unions Act 1970

²² Section 18 (1) (e) of the Labour Unions Act 1970

To register, a branch union one had to have a minimum of 1000 members. Other than those radical changes, most provisions of the 1965 Act were retained and the Minister's powers remained regulatory through the office of the Registrar of Labour Unions²³.

After the take-over of government by the Idi Amin Military regime The Labour Unions Act of 1970 was amended by the Trade Union Act, 1970 (Amendment) Decree,²⁴ 1973 whose purpose was stated to be; to amend the Labour Unions Act, 1970, to re-establish the freedom of employment, to Form Autonomous Labour Unions and other matters connected therewith.

Apparently someone persuaded the new military government of Idi Amin that the 1970 Act had abolished freedom of employment and the right to form autonomous Labour Unions and that the name "Uganda Labour Congress" was not appropriate. So the new decree abolished the name and established the National Organization of Labour Unions and re-established the formation of Labour Unions whose minimum membership had to be at least 1000. All the unions had to affiliate to National Organization of Labour Unions (NOTU) and to be registered by the Registrar. The decree provided that an employer would not be bound to recognize or negotiate with a union unless 51% of his employees were registered with the union.

In 1976, The Labour Unions Decree,²⁵ 1976 was enacted whose purposes were stated to be; "to amend and to consolidate the law establishing and regulating the National Organisation of Labour Unions and providing for the formation by employees of autonomous Labour Unions and branch unions of their own choice, and for other purposes connected therewith."

Apart from the consolidation of The Labour Unions Act, 1970 and The Trade Union Act 1970 (Amendment Decree) 1973, this 1976 Decree did not introduce any significant changes in the substance of the trade union law²⁶. The Labour Unions Decree 1976 is now called the Labour Unions Act 2006, which has not also introduced any change in promoting the rights and freedom of workers. If a labor union is strengthened and operated according to the philosophy of positive labor relations, members of such labor union will rely on labor union itself as the agent able to protect their interests. The labor union also plays an important role in promoting fairness within an organization and protecting members from being exploited by

²³ Labour Unions Act 1965

²⁴ Trade Union Act, 1970 (Amendment) Decree

²⁵ , The Labour Unions Decree, 1976

²⁶ The Labour Unions Act, 1970

employers. At the same time, if employers strictly follow the philosophy of positive labor relations, such employers must recognize the significance of labor unions and not weaken the labor union in any way so that the union can manage compensation, benefits and welfare, and conditions of employment fairly. When both parties pay attention to each other, a win-win situation becomes the ultimate goal²⁷.

However if the labor union is weakened and cannot truly protect the interests of workers, or if the labor union does not follow the philosophy of positive labor relations, employers may take advantage of or exploit workers. At the same time, workers will no longer trust the labor union as the representative of workers. Hence, the strength of labor unions strongly influence whether such labor unions are able to protect the welfare and interests of workers and promote fairness and impartiality among them. In addition, it also encourages employers to realize the existence and significance of labor unions as the representative of workers in any state enterprise or company. Employers will be less likely to take advantage of or exploit workers, and any unfair labor practices will be less likely to take place within the enterprise or company. The workplace atmosphere will move toward a win-win outcome.

1.2 STATEMENT OF THE PROBLEM

The International Labour Organization has identified certain civil liberties as essential for the exercise of trade union rights. In Uganda, unfortunately, the state has continued to deny Labour Unions the free exercise of these liberties for instance right to personal dignity and safety, freedom of assembly and freedom of opinion.

Though there are existing laws that regulate rights and freedom of workers in Uganda, the enforcement mechanism is still weak and this is as a result of lack of political will and failure to support Labour Unions. Rights and freedom of workers are therefore put in theory by the Labour Unions Act 2006²⁸, but unfortunately not put in practice. So because of that, there's an arguent need to address the mechanisms of enforcement of workers' rights and freedom. Failure to enforce and comply with this urgency will lead to more violation of workers' rights and freedom.

²⁷ Freedom of Association and Uganda's New Labour Laws Tengyai, (1996).

²⁸ The Labour Unions Act, 2006

1.3.0 OBJECTIVES OF THE STUDY

1.3.1 General Objective

To Assess the Legal Framework and Policies Affecting the Operation of Labour Unions in Uganda.

1.3.2 Specific Objectives

The specific objectives of the study are;

- i. To identify the legal frame work in relations to workers rights.
- ii. To examine challenges in the realization of workers' rights under trade unions
- iii. To find out the level of effectiveness of trade unions in protection of workers rights in Uganda

1.4 RESEARCH QUESTIONS

The questions that was guide this study include the following:

- i. What laws are put in place to protect workers' rights?
- ii. What are the challenges in the realization of workers' rights under trade unions
- iii. What is the level of effectiveness of trade unions in protection of workers rights in Uganda

1.5 SIGNIFICANCE OF THE STUDY

The study is significant in the following ways:

The study is intended to make a major contribution to the existing literature by adding more knowledge on the role played by labour union laws.

It will help the government in appreciating the effectiveness of Labour Unions and in giving immediate redress to the problems of workers in Uganda;

It will help policy makers to understand the current laws on Labour Unions and helped them in formulating new ones which are more effective; the study will demonstrated the fundamental rights and giving the true identity of the Labour Unions globally or recognized international principles and;

The study will help the policy makers to come up with policies to ensure that workers' rights and freedom are protected.

1.6 METHODOLOGY

In order to achieve the set of objectives above, the following methods were applied

Secondary data research was substantially used and numerous libraries were consulted including Makerere University Main library, Kampala International University in Uganda Kampala Campus library, Law Development Centre Library and internet .Various text, articles research papers, statutes and case law and other relevant sources were visited.

In order to ensure that the study is creditable, a combination of designs researches was used. I used qualitative method investigation. This marked the study more creditable. This method of data collection involved a critical analysis of documents related to rights of workers in the Labour Unions.

The study covered on Kampala district because it's accessible and it has got a number of workers who are organized under different unions for example the teachers, under the Uganda National Teachers Union, business under KACITA, whose rights as workers have not been adhered to and have been violated on different occasions for example the demand for the increase of salary yet have to be protected and poor working conditions and high rates of taxes.

1.7 SCOPE OF THE STUDY

This research covered the extent to which the rights of workers are available, protected and respected in Uganda and the problems workers face today regarding their enjoyment. This research will look at international instruments and domestic legislation on the rights and freedom of workers in particular the Labour Unions Act 2006 and with a view of establishing the current status of the rights and freedom of workers in Uganda. It will be carried in Kampala district.

1.8 LITERATURE REVIEW

The term labour relations also known as industrial relations, refers to the system in which employers, workers and their representatives and directly or indirectly, the government interact to set the ground rules for the governance work relationships. It also describes a field of study dedicated to examining such relationships .the field is an out growth of the industrial revolution, whose excesses led to the emergence of trade unions to represent workers and to the development of collective labour relations²⁹. A labour or industrial relations system reflects the interaction between the main actors in it, the state, the employer(or employers or an employers association) ,trade unions and employers (who may participate or not in union and other bodies affording workers representation) .The phrase "labour relations" and "industrial relations" are also used in connections with various forms of workers participation ;they can also encompass individual employment between an employer and a worker under a written or Implied contract of employment, although they are usually referred to as employment relations. There is considerable variation of the use of the terms, partly affecting the evolving nature of the field over time and place. There is general agreement however, that the field embraces collective bargaining, various forms of workers participation.

Industrial Relations and labour laws³⁰.Need to form trade unions. Trade unions is an outcome of the factory system.it is based on labour philosophy "united we stand, divided we fall". Industrial revolution in India has changed the traditional outlook in the labour management relationship between employer and employee disappeared and has given rise to many social and economic means to contact employers and to bargain with them.

Effectiveness of trade unions in promoting employee relations in organizations³¹ presents the role played by trade unions in solving labour related disputes, with specific reference to working conditions, salaries and fair treatment and how members perceive their work and non_work experiences and belief with their trade unions and whether the unions performed their duties in line with their expectations. The major findings demonstrated that economic factors like changes in government policies are taken into consideration in the operation of the union. The unions also stick to their traditional view that was founded. thus, working for the interest of its members rather than of the society it operates in otherwise it would not

²⁹ An overview by Anne Trebilcock, chapter 21

³⁰Industrial relations and labour laws, by professor s.c.srivastava Fourth Revised Edition 1982, on page 33

³¹ Effectiveness of trade unions in promoting employee relations in organizations by Josephine seapei moeti_lysson,university of Botswana. Article January 2011

serving according to the expectations of their members and this may result in decline in membership as it happened within some African countries.

International labour standards on freedom of association³² The principle of freedom of association is at the core of the ILO's values: it is enshrined in the ILO constitution (1919), the ILO Declaration of Philadelphia (1948). It is also a right proclaimed in the Universal Declaration of Human Rights (1948).

Vincent Nuwabaga³³ presents that Uganda does not suffer the death of instruments highlighting democracy and human rights. Our constitution is called a human rights constitution. The whole of chapter four addresses human rights, a situation that has led many people to dub it: the Ugandan Bill of Rights. Many rights enshrined in the International Bill of Rights are replicated therein. We also have numerous Acts of Parliament aimed at promoting and protecting the rights of different social groups.

Despite the fact that Uganda has ratified 31 International Labour Organization Conventions including all the eight core conventions³⁴, observance of these rights has drastically eluded us. The country is seen with high levels of unemployment and underemployment, worst forms of child labour, so bad working conditions for workers, squalid accommodation for the police force, miserable wages, high levels of hire and fire of the employees, absence of employment policy, sectarianism, nepotism and corruption among others. All these deal a hard blow to our workers.

One of the most contentious areas is social security or social protection. The government uses the National Social Security Fund the way it wants without due regard to the workers who in actual sense are the owners of the money. The government proposes that the National Health Insurance scheme being funded by workers and employers in addition to the contribution made to the National Social Security Fund. This follows the Local Service Tax which is

³²International labour standards on freedom of association by Alberto Otero and Haracio Guido, part one page 1.

³³<http://pambazuka.org/en/category/features/79224>

³⁴ Convention on Freedom of Association and Protection of the Right to Organize, 1948 No.87; Convention on Right to Organize and Collective Bargaining, 1949 No.98; Convention on Forced Labour, 1930 No.29; ; Convention on Abolition of Forced Labour, 1957 No.29; ; Convention on Minimum Age Convention, 1973 No.138; Convention on Worst Forms of Child Labour, 1999 No.182; Convention on Discrimination (Employment and Occupation), 1958 No.111; Convention on Equal Remuneration, 1951 No.100.

being paid already. Workers now feel that the government is bent on encroaching on their little earnings to fund its activities without due regard to their plight³⁵.

The right to social security is born out of convention 102 on minimum standards. The ILO Convention provides for nine forms of benefits which include among others medical care benefits and health insurance benefits. Uganda seems to have adamantly refused to ratify convention 102 so that it could be bound by the provisions therein³⁶. Uganda has ratified the tripartite consultation convention 144 yet it continues to sideline the other two partners in matters of concern to them.

On 30th June 2007, Hon Otafiire stated that he would not agree with workers on local service tax unless they showed him an alternative source of funding³⁷. Dr. Francis Runumi, Commissioner of Planning in the Ministry of Health said the National Health Insurance must be passed. One therefore wonders whether the Ugandan workers are not punching bags.

It is possible that workers in Uganda are taken for granted because of the absence of a strong trade union movement³⁸. In countries like Zimbabwe, Nigeria, Zambia, and South Africa and neighbouring Kenya, Labour Unions are a force to reckon with. The Labour Unions are so influential in these countries that they can determine who should be in power or not. On the other hand, here in Uganda, Labour Unions are preoccupied with internal squabbles. They have hardly mobilized and recruited members and are appendages to the National Resistance Movement (NRM) government³⁹. If you are deemed not to be an NRM, you are thrown out of the trade union leadership. In fact the entire Workers' MPs stood on the NRM ticket. Are they NRM or Workers' MPs? In the run-up to the 2006 elections, Central Organization of Free Labour Unions (COFTU) broke off from National Organization of Labour Unions (NOTU) following the elections in NOTU in which Dr. Sam Lyomoki and Mr. Kahirita emerged losers. It could be possible they never viewed the exercise as free and fair⁴⁰.

Another labour centre, Confederation of Labour Unions (COLU) has been formed following the elections in NOTU that were reportedly marred by irregularities which threw out the outspoken former Vice Chairman, Irene Kaboole, whose passion for workers' rights has

³⁵ Introduction to International Labour Standards by Alberto Otero and Haracio Guido, part one page 1

³⁶ Ibid

³⁷ Agnes Kyotalengerire, 'Making workers' safety a priority', *The New Vision*. Monday 20th September 2009 p6

³⁸ Ibid

³⁹ Ibid

⁴⁰ Ibid

remained unswerving. The total number of unionized workers is less than one million in Uganda. Some union leaders occupy two fulltime positions. For example, two Members of Parliament are at the same time General Secretaries of their Union positions that entitles them to two salaries⁴¹.

The leadership of some unions is comprised of semi-illiterates whose main preoccupation is not the betterment of workers' welfare but self-aggrandizement. In many Unions, if you are a university graduate, that is enough to disqualify you from getting a job there⁴². The leaders and some staff members fear that you might catch the eye of the donors hence blocking them from the spoils or that you may use that as a platform to contest as a workers' Member of Parliament. This intrigue has cost our unions talented and skilled potential employees who would authoritatively advocate workers' rights in Uganda.

This intrigue has also affected other labour rights civil society organizations as unions try blocking them from accessing funds from International Labour Organization. It is prudent that since all workers' MPs are from Labour Unions, the unions address all the workers' concerns whether unionized or not. But apparently, unions seem to be impotent. Labour Unions should neither be anti-NRM nor pro-NRM but pro-workers, regardless of their political inclinations⁴³. This research has discussed the advantages of nonpartisan appointment or voting of representatives of workers to represent views of Labour Unions which Nuwagabas' study did not address.

James G. Moher⁴⁴, standing out against extending workers' collective rights through the European Union's Charter of Fundamental Rights, shows how committed they have become to a model of the Labour market light years from the philosophies of the party's founders. Yet 'New Labour' in government has been sympathetic to many union aims and has advanced the condition of many workers since 1997 through the minimum wage, unfair dismissal rights, recognition rights and so on. But it has gained little credit for this, because it has simultaneously refused to address the bigger issue of collective rights, fearing the political

⁴¹ Workers' Freedom of Association in the United States: The Gap between Ideals and Practice." In Workers' Rights as Human Rights, J. Gross (ed.), p. 32. New York: Cornell University Press.

⁴² Ibid

⁴³ By Vincent Nuwagaba. The writer is a human rights defender and was a Hugbo-Danida Intern at the National Organisation of Trade Unions (NOTU).

⁴⁴ Trade Unions and the Law. The Politics of Change (Institute of Employment Rights, 1995).

fall-out from what would most likely be portrayed in the press as a restoration of trade-union power.

The question which trade-union activists must ponder is why there is so little media interest or public support for their many attempts to pressurize the government to repeal all the anti-union laws. In 2006, for example, a modestly-reforming private members' Trade Union Freedom Bill, though supported by well over a hundred MPs, sank without trace in the face of government hostility. Meanwhile, one would search far and wide to find journalistic or academic appreciation of the unions' many strengths and their contribution to our democracy over the centuries. So, it seems that matters are polarized between two mutually uncomprehending and dismissive perspectives, with little dialogue about how they might be reconciled. This study attempted to argue the case for review and suggest possible ways forward. This study has addressed the bigger issues of collective rights, fearing of the political fall out from what would most likely be portrayed in the press as a restoration of Labour Unions and found out the reasons for the little interest of the media in order to pressurize the government to repeal all the anti-union laws which he did not find out.

According to **SC SRIVASTAVA**⁴⁵ recognition of Labour Unions is a back born of collective bargaining. It has been debated time and again about in spite of the government stated policy to encourage Labour Unions there is no enforced central legislation on the subject. There however, voluntary code of discipline and legislation in some of the states. In the absence of any central legislation, management in several states has refused to recognize trade union mainly on five grounds:-

First most of the office bearers of union were outsiders⁴⁶; Secondary The trade union keeps outsiders disapproved by management and particularly politicians and ex-employees⁴⁷; Thirdly The union consisted of only small number of employees; fourthly There were in existence many rival unions; and The last trade union was not registered under the Trade Union Act, 1926⁴⁸.

However, none of these objections are maintainable because to accept the same would amount to interference in the functioning of the trade union. Be that as it may the refusal by the employers to recognize by or bargain with unions has been the major obstacle to the

⁴⁵ Industrial relations and labour laws by Sc srivastava fifth edition publishing house Pvt Ltd 2008 p.43

⁴⁶ Paramount films India ltd v their workermen (1950) 11j 690

⁴⁷ Report of the Royal Commission on Labour, (1931) p. 325

⁴⁸ Trade Union Act, 1926 .

healthy growth of trade union and collective bargaining. This research will generally found out the solution for the central legislation of Labour Unions and also found out the obstacles to the healthy growth of Labour Unions and collective bargaining which he never recognized.

Edward Webster⁴⁹ stress that Labour Unions in Africa have a long tradition of political engagement, beginning with their involvement in the anti-colonial movements through to present day struggles for democracy. Their historical engagement in politics has been divided into three phases. The first phase was marked by a common struggle against colonialism where close ties were developed between Labour Unions and the national liberation movements. Labour Unions, while being important actors, usually played the role of junior partners to political parties, without developing an autonomous social agenda outside and beyond the struggle for political independence.⁵⁰

The second phase begins with independence and the introduction of state-led projects which rapidly expanded jobs in the public sector. During this phase formal union rights were often protected in theory but in practice unions were subordinated to dominant parties, losing an autonomous capacity to intervene politically. Instead unions were expected to play a dualistic role: first, that of aiding with overall national development, and second, the representation of the job interests of the rank and file members. The argument for this reversal of the primary role of unions to be developmental rather than representational was based on the government belief that Labour Unions only represent a proportion of the labour force of these countries.⁵¹

A third phase, the phase of market regulation, began in the nineties. Faced by widespread state indebtedness incurred during the seventies and eighties, governments during this phase came under pressure from the International Financial Institutions to adjust their budgets in line with the neo-liberal orthodoxy of fiscal austerity. Widespread job losses took place under these Structural Adjustment Programmes and most unions sought to disengage from the state-corporatist order which seemed to have lost its capacity to deliver. As Labour Unions began to resist retrenchments, cuts in wages, privatization, and the deterioration of social services,

⁴⁹ International Trade Union Cooperation Briefing Papers Friedrich-Ebert-Stiftung No. 3 / 2007

⁵⁰ Ibid 16

⁵¹ International Trade Union Cooperation Briefing Papers Friedrich-Ebert-Stiftung No. 3 / 2007

the labour movement emerged as a significant opponent of the one-party states that had come to characterize post-colonial Africa⁵².

1.9 ORGANISATION OF CHAPTERS

CHAPTER 1

It contains the introduction, background, and problem statement, objective of the study, scope of the study, methodology, study area, type of data, research design, oral interviews, method of data analysis and the way the proceeding chapters are going to be broken down. In brief, it covered the contents of the dissertation.

CHAPTER 2

It includes the legal framework governing rights of workers in labour unions of Uganda.

CHAPTER 3

The third chapter discusses the challenges faced by workers under labour unions in Uganda .

CHAPTER 4

Chapter four discusses the findings in the effectiveness of the operation of labor unions in Uganda.

CHAPTER 5

This was the last chapter of the study and included the conclusions and recommendations that should be done for the betterment of the operation of labour unions in Uganda.

Conclusion

Labour unions are of great role to protection of workers' rights and there many laws and regulations available to protect the rights of the workers and their labour unions. However the level of enforcement of these laws together with the success of operations of labour unions in Uganda has not been fully researched about. Labour unions / trade unions have operated in Uganda since 19 century but they have not fully achieved the objectives of the roles they pay, there still cases of labour rights violation in Uganda including mistreatment of workers, inequality cases, poor payment among other. There is a great need to improve by amending some legislation to new forms that can change the status of trade unions and also improving on law enforcement to protect trade unions and workers.

⁵²Trade Unions and Politics by the Sociology of Work Unit (SWOP) at the University of the Witwatersrand, the Institute of Development on July 21-22, 2006

CHAPTER TWO

LEGAL FRAMEWORK GOVERNING RIGHTS OF WORKERS

2.0 Introduction

Uganda has enacted a number of laws as well as set up institutions mandated to safeguard workers' rights. Uganda has also ratified various international instruments that make provision for workers' rights. At the international level the conventions include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention Concerning Minimum Age for Admission to Employment⁵³ and the ILO Convention on Forced Labour⁵⁴ which all target various abuses of workers' rights in the course of employment. The State is obliged to put in place a legal and institutional framework to ensure the protection of workers' rights and to afford workers an opportunity to work in a decent and safe environment.

This chapter examines the efficacy and adequacy of the legal and institutional framework in the protection of workers' rights. The analysis on the legal framework considers instruments at the international, regional and national level.

2.1 Legal Framework for the Protection of Workers' Rights

2.1.1 National

Uganda has increasingly sought to attract investors in order to boost its economic growth; it has also maintained the need to guarantee protection of workers through the enactment of laws and policies. These laws are discussed below:

2.1.1.1 Constitution of the Republic of Uganda, 1995

The Constitution is the supreme law of the land and provides for the protection of workers' rights under the bill of rights. It requires Parliament to enact laws that, among others, provide for the right of persons to work under satisfactory, safe and healthy conditions⁵⁵ and to ensure equal payment for work without discrimination⁵⁶.

⁵³ Convention Concerning Minimum Age for Admission to Employment No. 138 of 1973.

⁵⁴ Convention on Forced Labour No. 105 of 1957.

⁵⁵ Article 40 (1) (a) of the Constitution of Republic of Uganda.1995

⁵⁶ Article 40 (1) (b) of the Constitution of Republic of Uganda 1995.

Constitution further recognises the right of every worker to form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests;⁵⁷ to collective bargaining and representation;⁵⁸ and to withdraw his or her labour according to law.

The Constitution accords female workers protection during pregnancy and after birth⁵⁹. Article 45 of the Constitution also recognises that the rights, duties, declarations and guarantees relating to fundamental and other human rights and freedoms mentioned in the Constitution do not exclude others not specifically mentioned.⁶⁰ The Constitution further provides for avenues for enforcement of rights and freedoms by competent courts.⁶¹

However there are cases of discrimination among workers and their employers for certain positions and during decision making. The laws on protection of workers are in existence but the level of enforcement is low with many rights of workers still violated. Besides discrimination in Gender, the few employed women are denied their rights during pregnancy period, that is to say; during cases of pregnancy, women lose their jobs instead of being given maternity leave by their employers.

2.1.1.2 Employment Act 2006

The Employment Act governs employee-employer relationships, in particular, for employment under contracts of service. The Employment Act, 2006, provides for protection from forced labour,⁶² protection from discrimination in employment,⁶³ and protection of employees from sexual harassment by the employer⁶⁴. The Act also provides for regulation of working hours,⁶⁵ sick pay in the case of **Swar Borton v Cooperative Wholesale SOC**⁶⁶ it was held that a servant is entitled to be paid his wages during his absence through illness ,provided that the illness is not so long continued or of such permanent character as to terminate a contract of service, annual leave and holidays⁶⁷ in the case of **Okori v uganda**

⁵⁷ Article 40(3) (a) of the Constitution of Republic of Uganda.1995

⁵⁸ Article 40(3) (b) of the Constitution of Republic of Uganda.1995.

⁵⁹ Article 40(4) of the Constitution of Republic of Uganda.1995

⁶⁰ Article 45, of the Constitution of Republic of Uganda.1995.

⁶¹ Article 50, of the Constitution of Republic of Uganda.1995

⁶² Section 5 of the Employment Act.2006

⁶³ Section 6 of the Employment Act. 2006

⁶⁴ Section 7 of the Employment Act.2006

⁶⁵ Section 53 of the Employment Act.2006

⁶⁶ (1917)1KB 663

⁶⁷ Section 54 of the Employment Act.2006

electricity board⁶⁸, Also in the case of *John otto v UEB*⁶⁹ and paternity leave of four days⁷⁰ in the case of *Uganda Commercial Bank v Yerusa Nabudere & AP Nabudere*⁷¹ The Employment Act provides for the right to written particulars of the contract, the right to fair hearing before dismissal,³⁷ and the right to reinstatement or compensation in case of unfair dismissal. The Act creates the office of the labour officer and gives the officer powers to inspect places of work for purposes of securing enforcement of legal provisions relating to conditions of work. The Act also gives the labour officer powers to investigate and dispose of complaints, prosecute civil or criminal matters before the Industrial Court⁷².

The Act, however, does not apply to employers and their dependent relatives in family undertakings, or to the Uganda People's Defence Forces other than their civilian employees⁷³.

There are many cases of forced labour still in existence in the country despite the laws available against it. There are still cases of mistreatment of workers including sexual harassment, termination of employment among others which are illegal according to the employment act. The act allows four days paternity leave which is not enough for man to take care of his wife in such a period. Some companies still over work their employees without change in remunerations.

2.1.1.3 Labour Union Act 2006

The Labour Union Act seeks to maintain and improve working conditions and raise the economic status of the workers through the creation of unions. The Act recognises the right of workers to organise themselves in labour unions⁷⁴ and also requires employers to refrain from interfering with union organisation⁷⁵. The Act provided for the creation of Unions that could advocate for the observance of workers' rights. The Act also makes it an offence for an employer to contravene provisions in the Act⁷⁶.

The labour unions in Uganda are highly challenged with ensuring full protection of their members. There are number of cases of employee mistreatment, poor working conditions that

⁶⁸ (1981)HCB 52

⁶⁹ (1981)HCB 52

⁷⁰ Section 57 of the Employment Act.2006

⁷¹ CACA No 31/2001

⁷² Section 13 of the Employment Act.2006

⁷³ Section 3(2) of the Employment Act.2006

⁷⁴ Section 3 of the Labour Union Act.2006

⁷⁵ Section 4 of the Labour Union Act.2006

⁷⁶ Section 5 of the Labour Union Act.2006

the labour unions have failed to solve. There is need for strengthening of the operations of labour unions towards employee protection.

2.1.3.4 Workers Compensation Act Cap 225

The Workers' Compensation Act provides for a mechanism of paying workers for damages or injuries incurred in the course of employment⁷⁷ and caters for compensation of injured employees, in the case of **Virani v Dharamsi**⁷⁸ the defunct court of appeal for Eastern Africa stated that an action arises out and in the course of employment if it results from the act which the employee is employed to do even if the employee is adopting a wrong method of doing the act or doing the act in wrong manner . Section 3 (1) of the Act provides that an employer is liable to pay compensation if personal injury by accident arises out of and in the course of the worker's employment. The Act also absolves an employer from liability in the event that the injury does not result in permanent incapacity or incapacitate the worker for at least three consecutive days from earning full wages at the work for which he or she was employed⁷⁹.

Most of the employers don't compensate their employees in case of injuries caused or incurred while on duty. Most of the employees are also not aware of this right and therefore end up struggling without support or compensation from employers.

2.1.1.5 Occupational Safety and Health Act, 2006

It is estimated by the International Labour Organisation that two million workers die as a result of occupational accidents and work related diseases every year⁸⁰. Consequently, countries like Uganda have enacted the Occupational Safety and Health Act as a means to safeguard workers' health and safety rights. This law generally provides for the right of persons to work under satisfactory, safe and healthy conditions. The Act makes it a duty for employers to protect workers⁸¹ and to, among other things, monitor and control the release of dangerous substances into the environment,⁸² provide protective gear⁸³ and supervise the

⁷⁷ Making workers' safety a priority by Agnes Kyotalengerire', The New Vision, accessed from <http://www.enteruganda.com/brochures/labourpage01.html> (accessed on 9 January 2012).

⁷⁸ (1967)EA132

⁷⁹ Section 3(2) Workers Compensation Act.2006

⁸⁰ Occupational safety and health issues in Uganda Patrick Katabaazi Kiconco', accessed from <http://pkatabaazi.blogspot.com/2008/02/occupational-safety-and-health-issues.html> (accessed on 30 December 2011).

⁸¹ Section 13 Occupational Safety and Health Act.2006

⁸² Section 18 Occupational Safety and Health Act. 2006

⁸³ Section 19 Occupational Safety and Health Act. 2006

health of workers in the case of **Finch v Telegraph Construction & Maintenance Co Ltd**⁸⁴ finch was employed as a gilder and was injured when he was when a piece of flying metal struck him in the eye, the employer had acquired the necessary protective goggles had never told the employees where he kept them it was held that the employer was liable for the employee's injury. The Act also imposes on workers a duty to take reasonable care for the health and safety of themselves or any other person that may be affected by their acts or omissions⁸⁵.

The working conditions in many companies are still poor yet the employers are aware of the Occupational Safety and Health Act regulations. Today employers in manufacturing companies lack protective gears and their many cases of health problems caused as a result of poor health conditions of workers.

2.1.1.6 Labour Disputes (Arbitration and Settlement) Act 2006.

The Labour Disputes (Arbitration and Settlement) Act was enacted against the backdrop that there would be fast resolution of labour disputes through the Industrial Court⁸⁶. The industrial court has the mandate to arbitrate on labour disputes referred to it by the labour officer and adjudicate upon questions of law and fact arising from references to Industrial Court by any other law⁸⁷.

The Act provides for the right of an employee to be involved in lawful industrial action without hindrance and, the right of access of union officials to employees or their representatives (shop stewards) in a workplace⁸⁸. Further, the Act prohibits the interference with a worker's right of association and makes it a criminal offence for an employer to obstruct this right. The Act also prohibits employers from discriminating against unionised employees and also recognises the right to strike⁸⁹.

2.2. Institutional Framework

In a bid to ensure the protection of workers' rights in Uganda, institutions were created as a mechanism of giving life to the laws that are in principle aimed at ensuring protection of workers' rights.

⁸⁴ (1949) AC 135

⁸⁵ Section 21 Occupational Safety and Health Act.

⁸⁶ Section 8(2) Labour Disputes Act. 2006

⁸⁷ Section 8(1)(b) of the Labour Disputes Act. 2006

⁸⁸ Section 30(1), of the Labour Disputes Act 2006

⁸⁹ Section 28-32 of the Labour Union Act. 2006

These institutions include the Ministry of Gender, Labour and Social Development (MoGLSD), the Industrial Court and labour unions. The mandate of these institutions in the protection of workers' rights are discussed below:

2.2.1 Ministry of Gender Labour and Social Development/Labour Office

The Ministry is mandated to cater for the interests of all workers in the country. In line with this mandate, it has a Directorate of Labour, Employment and Occupational Safety and Health which also has three departments: Labour, Industrial Relations and Productivity; Occupational Safety and Health; and Employment Services. It is within this directorate that the labour office is catered for. Labour officers have the role of inspecting work places to ensure enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work⁹⁰.

It is in the event of finding defects or abuses of workers' rights that are not covered by existing legal provisions that the minister is notified⁹¹. Inspection reports are forwarded to the Commissioner for Labour under the MoGLSD for action. Labour officers are also mandated to receive complaints and mediate labour issues⁹².

Much as labour officers generally operate under the MoGLSD, their activities are decentralized and funded under the District Local Governments budget. As such they are heavily constrained financially and are not in a position to effectively carry out their activities. Furthermore, labour officers are not in all the districts of Uganda which, therefore, limits their ability to protect workers' rights in the whole nation. It is estimated that there are less than forty (40) labour officers in the country and yet there are over 100 districts⁹³. The labour officers are not only inadequate to protect workers' rights, but their effectiveness is also affected by their limited national coverage.

2.2.2 Industrial Court

The Industrial Court was established under the Labour Disputes (Arbitration and Settlement) Act, 2006⁹⁴ to settle unresolved disputes between employers and trade unions over terms and conditions of employment. The role of the Industrial Court is to adjudicate on labour disputes

⁹⁰ Section 10(2) (a) Employment Act, 2006.

⁹¹ Section 10(2) (c) Employment Act, 2006.

⁹² Section 13 of the Employment Act, 2006

⁹³ Interview with Ms. Dorah Caroline Mafabi, the Deputy Executive Director, Platform for Labour Action on 25th May 2011.

⁹⁴ Section 7 Labour Disputes (Arbitration and Settlement) Act. 2006

filed by aggrieved parties whose complaints have not been settled by either the District Labour Officers (DLO) or a conciliator.

The Court has the same status as a High Court since appeals from the court are heard by the Court of Appeal. These appeals to the Court of Appeal are either on a point of law or to determine whether the Industrial court had the jurisdiction to hear a case. The court can sit as often as is necessary⁹⁵.

2.2.3 Trade Union Associations

The National Organisation of Trade Unions (NOTU) is one of two national trade union centres in Uganda; the other being the Central Organisation of Free Trade Unions (COFTU). NOTU was established by Decree No. 29 of 1973. NOTU represents millions of Ugandan workers and has 20 labour union affiliates, including, Amalgamated Transport and General Workers' Union, Uganda Building, Construction, Civil Engineering, Cement and Allied Workers' Union and National Union of Plantation and Agricultural Workers⁹⁶. It aims at promoting and defending workers' interests in the country.

Unfortunately, trade unions do not seem to have a very strong presence in the country. The estimated total number of unionised workers is less than 1,000,000 (one million) in Uganda⁹⁷. Furthermore, trade unions are preoccupied with internal wrangles which essentially stemmed from the creation of COFTU as a break away from NOTU⁹⁸. It is such wrangles and failure to expand their network that could impede the ability of trade unions to ensure strict observance and protection of workers' rights in the country.

2.3 Regional

2.3.1 African Charter on Human and Peoples' Rights (African Charter)

The African Charter is the main regional human rights instrument aimed at protecting human rights in Africa. Uganda ratified the African Charter on 10th May 1986⁹⁹. The African Charter provides for the enjoyment of rights and freedoms without discrimination as well as

⁹⁵ Section 7(2) Labour Disputes (Arbitration and Settlement) Act.2006

⁹⁶ Accessed from NOTU website at <http://www.notu.or.ug/index.php> (accessed on 23rd September 2011).

⁹⁷ Labour Unions in Uganda, a Threat to Workers' Rights', by Vincent Nuwagaba The African Executive, accessed from <http://www.africanexecutive.com/modules/magazine/Articles.php?Article=4374> (accessed on 26th September 2011).

⁹⁸ Nuwagaba, Labour Unions in Uganda, a Threat to Workers' Rights, *ibid*.

⁹⁹ List of countries that have ratified the African Charter accessed from, <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf>, (accessed on 19 December 2011).

the right of workers to work under equitable and satisfactory conditions and the right to receive equal pay for equal work¹⁰⁰.

2.4 International Legal Framework

2.4.1 Universal Declaration of Human Rights (UDHR)

The UDHR (1948) to which Uganda is a signatory, is one of the initial international human rights instruments that recognised workers' rights. Article 23(1) of the UDHR recognises, among others, the right of every person to work, free choice of employment, just and favourable conditions of work and protection against unemployment. Article 23(4) specifically guarantees the right of workers to form and join trade unions for the protection of their interest. Furthermore, Article 24 guarantees the right of workers to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

2.4.2 The Convention Concerning Freedom of Association and Protection of the Right to Organise (ILO Convention No. 87)

Uganda ratified the Convention Concerning Freedom of Association and Protection of the Right to Organise, on 2nd June 2005¹⁰¹. The Convention aimed at recognising the principle of freedom of association as a means of improving conditions of labour and of establishing peace¹⁰². The Convention guarantees the right of workers and employers, to establish and join organisations of their own choice without previous authorisation¹⁰³. The Convention also provides for workers to affiliate their organisations with international organisations of workers and employers¹⁰⁴.

Article 8(1) of the Convention requires workers and employers and their respective organisations to respect the law of the land; and that the law of the land should not be one that impairs, or is applied in a manner that impairs the guarantees in the Convention¹⁰⁵. Worth noting is that this freedom of association has been interpreted to mean the freedom to form and join trade unions.

¹⁰⁰ Article 15 of the African Charter. 1986

¹⁰¹ List of countries that have ratified the ILO Convention No. 87 as accessed from <http://www.ilo.org/ilolex/cgi-lex/ratific.pl?C087> (accessed on 27th December 2011).

¹⁰² Preamble to the ILO Convention, accessed at www.ilocarib.org.tt/projects/cariblex/conventions (accessed on 12th December 2011).

¹⁰³ Article 2 of the ILO Convention No. 87.

¹⁰⁴ Article 5 of the ILO Convention No. 87.

¹⁰⁵ Article 8(2) of the ILO Convention No. 87.

2.4.3 International Covenant in Economic Social and Cultural Rights (ICESCR), 1966

The International Covenant on Economic Social and Cultural Rights (ICESCR) was adopted in 1966 with the aim of addressing socio-economic rights in general. The ICESCR defines the right to work to include the right of everyone to have an opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right¹⁰⁶. Article 3 of the Covenant calls upon states to ensure equal rights for men and women in the enjoyment of all economic, social and cultural rights. General Comment No. also calls for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value¹⁰⁷. In a bid to ensure non-discrimination on grounds of gender, there are attempts to offer protection to expectant workers. In particular, the ICESCR requires that pregnancies should not constitute an obstacle to employment and should not constitute justification for loss of employment¹⁰⁸.

Article 7 recognises the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions. It includes remuneration, fair wages, equal remuneration for work of equal value without distinction of any kind, equal pay, decent living for the workers and their families, safe and healthy working conditions, equal opportunity for everyone to be promoted, rest, leisure and reasonable limitation of working hours. Article 8 of the ICESCR also guarantees the right of everyone to form trade unions and join the trade union of their choice as well as the right of trade unions to function freely. Uganda as a signatory to the ICESCR has made efforts to domesticate the provisions of the Covenant through the enactment of laws, including the Employment Act.

In conclusion with the basis of the cited legislations above all gives out the authority on the rights of workers basically in Uganda under the trade unions and workers of other capacities. However there are still cases of violation of workers' rights in Uganda.

¹⁰⁶ Article 6(1) of the ICESCR.

¹⁰⁷ Para 13 General comment No. 18 on the Right to work.

¹⁰⁸ Right to work. General comment No. 18 on. Para 13

CHAPTER THREE

CHALLENGES IN THE REALIZATION OF WORKERS' RIGHTS UNDER TRADE UNIONS

3.0 Introduction

The 2006 Labour Unions Act¹⁰⁹ recognized the Central Organization of Free Trade Unions (COFTU), a rival to NOTU, as a second national trade union group. Uganda has ratified all eight of the International Labour Organization's core conventions. Four labour reform laws passed in 2006 improved workers' rights and repealed the requirement that unions represent at least 1,000 employees and represent 51% of the relevant workforce.

Under the Labour Unions Act 2006 and Labour Law have been enacted and passed. However a number of problems exist which must be dealt with. First and foremost hindrances to the realization of these rights are the government economic policies and the attitudes towards the labour rights in general. Government position as represented by the President and the Minister of Finance still view these new enactments as “populist laws” that are a hindrance to investment and economic growth, which are key interest of neoliberal policies. Workers' rights are therefore seen as a fetter to the achievement of this objective¹¹⁰.

The ministry of Finance will therefore most likely continue to strive the ministry responsible for labour is responsible for the enforcement of these laws. They will not adequately fund the ministry and they will likewise strive the Industrial court which is now the only court empowered to enforce labour laws. Therefore a concerted struggle by trade unions, sympathetic forces in parliament, civil society and foreign union federations and trade secretariats will be necessary in order to ensure enforcement¹¹¹.

The decentralization labour functions are a problem not only because of lack of funding for labour officers in many district levels but also due to lack of labour officers in many districts. Above all, labour officers are employees of districts and will find it difficult to enforce these laws against their employers and politically connected to employers under their jurisdiction. Non recognition of Unions is one of the major problems facing workers under the National Resistance Movement (NRM) regime and its neoliberal economic policies. As we have seen,

¹⁰⁹The 2006 Labour Act

¹¹⁰ The labour union Act 2006

¹¹¹ Ibid

most privatized enterprises have refused to recognize trade unions and have hitherto either blatantly refused recognition or claim there was no 51% unionization to warrant compulsory recognition. These have included textiles companies, including Tri-Star and Picfare, Nyanza Textile Industries Limited (the former NYTIL), hotels, the new telecommunications companies, Mukwano Industries, Construction Companies and others. Interestingly to date, the government has itself not recognized any public service sector union such as Uganda Medical Workers' Union (UMWU), Uganda Government and Allied Workers' Union (UGAWU), Uganda Nurses and Midwives Union (UNMU), and Uganda National Teachers Union (UNATU) or any other since 1993 when the law allowed public service employees to unionize¹¹². A concerted effort will therefore be required if union recognition is to be achieved in both the public and private sectors.

In practice, the right to freedom of association is still threatened even though the trade unions Act is in place and active. According to a 2008 report prepared by the Uganda African Peer Review Mechanism Commission, only one out of three companies complies with labour and employment laws¹¹³. The number of clients represented by the Platform for Labour Action (PLA), a labour rights non-governmental organization that advocates on behalf of workers with grievances, has been steadily increasing. In the past three years, there have been a number of high-profile cases of companies firing, or threatening to fire, employees for strike action. For example, in 2007 a textile company, Southern Range Nyanza, threatened to sack 1,300 employees for striking. In 2008, the Kasese Cobalt Company fired 116 striking workers.

The phenomenon of unemployment continues to be the biggest threat to unionization generally and to union recognition in particular. According to government statistics, both unemployment and underemployment are major problems in Uganda's economy, with open unemployment affecting 3.2% of the labour force while underemployment affects 65% of all adults in Uganda,¹¹⁴ although unemployment seems to be clearly understated and may be disguised under the head of unemployment. With such unemployment and underemployment, employers have an upper hand in the employment relationship. Those employed wish to retain their jobs at any cost and therefore employers resisting unions face a weak labour force that is under pressure from the unemployed and underemployed.

¹¹² Information from Registrar of Trade Unions, by L.O. Ongaba, S General, NOTU, December 2006

¹¹³ Uganda African Peer Review Mechanism Commission, 2008 report

¹¹⁴ Information from Registrar of Trade Unions by L.O. Ongaba, S General, NOTU, December 2006

3.3 The State Interference with Workers Freedom of Association

The right of all members to participate in trade union activities flows from the right of workers to associate for trade union purposes this right therefore is created under Article 29¹¹⁹. Any unlawful and unjustified action by the public authorities that impairs the right of the unionist to actively participate in union activities will violate the right to free association.

In the *travaux préparatoires* (*Travaux Préparatoires are official documents recording the negotiations, drafting, and discussions during the process of creating an agreement between the trade unions and the employer on the matters concerning the protection of workers' rights*) leading to the adoption of ILO Convention 87, it was noted that;

"Freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another, including freedom of assembly and of meeting, freedom of speech and opinion, freedom of expression and of the press and so forth".¹²⁰

Article 8 of Convention 87 specifically provides that "The law of the land shall not be such as to impair, nor shall it be so applied as to impair the guarantees provided for in the convention." The ILO has identified certain civil liberties as essential for the exercise of trade union rights. In Uganda, unfortunately, the state has continued to deny trade unions the free exercise of these liberties.

3.4 The violation of Freedom of Assembly

It is very important that trade union organizations be able to organize meetings and other activities without having to seek permission from the authorities. ILO Convention 87 recognizes this fact by providing that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".¹²¹

Yet that has not consistently been the case in Uganda. Organizations frequently must seek official authorization before holding a public meeting or gathering. Such a requirement can greatly diminish the exercise of free association, especially when workers seek to engage in activities that the authorities may consider a challenge against their own policies and

¹¹⁹ The Constitution of Republic of Uganda 1995

¹²⁰ ILO: Freedom of Association and Industrial Relations, Report VII, IL Conference, 30th Session, 1947, p. 11.

¹²¹ ILO Convention 87

programs. Unionists could be prevented from gathering to discuss a contemplated strike, for example, or to conduct an election. Giving such wide discretionary powers to a functionary of a state that is openly hostile to trade unions is bound to lead to abuse of power. Without an executive council or committee, a union cannot assemble to discuss and further the interests of members¹²².

3.4 Protection of Trade Union Property

Government and its functionaries should treat trade union property like any other private property: as inviolable without reasonable justification. Searches of trade union offices and the dwellings of trade union members should be carried out only with proper warrant and in strict compliance with the purpose of the warrant. Trade union property should also be safeguarded from unwarranted destruction¹²³.

3.5 International Affiliation.

International affiliation is certainly one of the basic trade union rights enshrined in Convention 87 of the ILO. Article 5 provides that; Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisations, federation or confederation shall have the right to affiliate with international organisations of workers and employers¹²⁴.

However, the Uganda state has continued to deny trade unions the full opportunity to exercise their right to freedom of association in this regard. The present civilian administration is similarly hostile. Large international affiliates have helped trade unions grow in many developing countries. By affiliating with other organizations, a trade union can gain access to financial assistance, training, and other benefits. It is ironic that the same governments that goes about the world seeking aid and debt forgiveness will not let its trade unions freely seek international affiliation so as to benefit from potential assistance.

The international affiliation would bring Uganda trade unions into contact with their counterparts in both industrialized and Third World countries of Asia, the Caribbean, Latin America, and the Pacific, thereby providing a useful forum for the exchange of views and

¹²² ILO: Committee on Freedom of Association, 217th Report

¹²³ \ The Trade Union Movement in Africa Wogu Ananaba (1997)

¹²⁴ Art. 5 of ILO Convention

ideas, mutual cooperation and assistance, alliance on international industrial action, and other ways to find solutions to workers' problems. When it bars such affiliations, the government of Uganda violates freedom of association

3.6 The interference on freedom of Opinion and Expression

The right of trade unions to function freely and properly can be affected by state or other form of censorship. Unionists need to be able to express their views openly, without fear of reprisals from the state or others. The presence of police or other security at trade union meetings could chill the freedom of expression of trade unionists and their participation in trade union activities.

Even though the Uganda Constitution guarantees freedom of expression for every citizen, authorities take brutal measures against those trade unions perceived to be working against their interests. The Uganda Union of Journalists has persistently complained of violations of its members' rights for example the miss handling of the news reporter during elections of Members of Parliament of Budadiri West in 2006¹²⁵. The reason for this threat was plainly articles considered unfavorable to those in power.

The Committee on Freedom of Association believes that a union's Convention 87 rights preclude any requirement that it submit all communications and publications for approval before distributing them.¹²⁶ Any such requirement could both invade privacy and erode the autonomy and independence of trade unions and their members. The Committee on Freedom of Association also considers that the full exercise of trade union rights calls for a free flow of information, opinions, and ideas, and those workers, employers, and their organizations should enjoy freedom of opinion and expression at meetings, in publications, and in the course of other activities.¹²⁷

In conclusive remarks to the above chapter, much as the trade unions have tried to protect the rights of workers not to be violated by the employees and other personnel's, the above chapter addresses areas where some of the rights have been violated and to some extent where the trade unions have failed to protect some rights. The chapter above discusses cases where trade unions have been challenged in trying to establish realizations of workers rights.

¹²⁵ The Uganda Union of Journalists 2006

¹²⁶ General Survey, 1983, Para 68.

¹²⁷ General Survey, 1994, Para. 38.

There are still cases of weak law enforcement in relation to workers' rights protection, trade unions are aware of the laws protecting the rights of workers, and employers are also aware of these rights but the rate of violation of these rights is still high due to weak law enforcement. The Trade unions are still challenged with the problem of unemployment that impacts on labour realization of the role of Trade unions in protection of workers rights.

CHAPTER FOUR

FINDINGS AND ANALYSIS

4.0 Introduction

This chapter provides findings in relation to the current system of operation of Labour union, the laws governing their operation, the rights of workers and the challenges affecting the effective operation of labour unions and the enacted laws.

4.1 Findings of the labour laws and what affects their operation in Uganda

It was not until the United States government threatened to scrap Uganda from the list of the African Growth Opportunity Act (AGOA) beneficiaries that something has to be done.

The existing laws were obsolete and do not address the challenges and needs of the new work environment and modern labour market. This explains the rampant strikes at places of work, increased force and child labour and poor working conditions. Most labourers in Uganda are working under appalling conditions and their rights are being abused. The current level of employment of the right to work, join and form trade unions, work safety and workers protection upon leaving employment, including social security and pension rights.

The new labour laws provide for freedom of association for workers, this is not a reality for most employees in the country. The laws provide strong protection for workers' rights to form or join trade unions and participate in industrial actions but employers' refusal to recognize and negotiate with trade unions remains widespread

The increasing use of casual labour laws further weakened the ability of workers to enforce their rights as these employees are not given written contracts of employment and have no job security or union representation hence compromised safety conditions for workers. Because of shortage of labour inspectors, enforcement of occupational safety and health standards is weak and employers lack the motivation to take preventive steps in the provisions of safety gears of employees.

The industrial court is mandated to arbitrate in labour disputes but currently there is no judge appointed to that court. The lack of a minimum wage has also made it difficult for workers to negotiate better pay and no good work conditions, the minimum wage of 6000sh per month was fixed in 1984 and has never been reviewed since then.

Most workers' rights are being violated by investors who mostly employ casual labourers, this is what has been there for many years, we have people coming in as investors and employing Ugandans but when they ask for better work conditions, they dismissed from the jobs. The absence of union protection employee bargaining power is severely weakened by the high rate of an employment, limited number of labour officers and the industrial courts current state of non-operation.

Examples of labour laws

The labour union Act 2006, employment Act 2006, the labour disputes (Arbitration and Settlement) Act 2006, the 1995 constitution of the republic of Uganda as amended, workers compensation Act Cap 225, occupational safety and health Act 2006.

Examples of labour unions

Uganda teachers association (UTA), National organization of trade unions (NOTU), Uganda medical workers union (UMWU), Amalgamated transport and general workers union (ATGWU), Uganda government and allied workers union (UGAWU)

4.2 The current operation of labour unions in Uganda

Freedom to join and form a union

Labour unions are organizations of workers created by workers to represent their rights and interests. The constitution of Uganda provides for freedom of association while labour unions Act allows the workers to establish and join unions. Workers are allowed to participate in union activities outside working hours. Every worker has a right to form or join a trade union of his or her choice for the promotion and protection of his or her economic or social interest to collective bargaining and representation, and to withdraw his or her labour according to law. Union members are free to elect their representatives and formulate their work program. They may draw up their own statutes and administrative regulations, as long as these are not contrary to laws in effect and public order.

Freedom of collective bargaining

The constitution of Uganda and the labour unions Act allows workers to bargain collectively through their representatives. Collective agreement is a written agreement relating to the terms and conditions of employment concluding between one or more labour unions and one or more employers, or between one or more employer's organizations. The terms of collective agreement must be concluded in writing and contain a reference to the manner and date when it may be reviewed. A copy of collective agreement and any amendment/variation made to the agreement must get registered with labour officer. Even if it is registered, it remains enforceable between the parties to the agreement. Signed agreement must be lodged with registrar of labour unions within 28 days from the date, the agreement is made. A person who acts against these provisions commits an offence and is liable to a fine up to 24 currency points or imprisonment up to one year or both

Right to strike

Right to strike is recognized by constitution however, this right is strictly regulated. According to section 2 of the labour union Act, strike means "to go slow" and "sit down" by a body of persons

employed and active in combination or concerted refusal or refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute done as a mean of compelling the employer to aid other workers, to accept or not to accept terms or conditions affecting the employments. A worker has the right to organize themselves in any labour union and may withdraw their labour and take industrial action. This is a compulsory 30 days mediation period before lawful strike action may be taken

4.3 The current government programs to improve the operation of labour unions in Uganda

Social security/ benefits

The social security and protection sector is regulated by government through the Ministry of Gender, Labour and Social Development (MOGLD). The ministry is responsible for policy functions, including tabling bills in parliament for the enactment of laws. Other ministries providing social security related services include; the ministry of public service for pension management of civil servants, the ministry of health which is developing the national health insurance scheme (NHIS) and the ministry of finance, planning and economic development which oversees the operation of the national social security funds (NSSF). It is provided for in Article 22 of the universal declaration of human rights (1948) which states that everyone as a member of society has the right to social security.

The following are kinds of social security benefits that are provided globally under the ILO convention Article 102 that is, medical care, old age benefit, invalidity benefit, survivors benefit, sickness benefit, maternity benefit, employment injury benefit, unemployment benefit, family benefit. Employees of the private sector who contribute to the national social security fund (NSSF) are entitled to five benefits and they include; age benefit, withdraw benefit, immigration grant, survivors benefit, invalidity benefit. Public servants are only entitled to age or survivor benefit.

Health and safety

Employer cares, in accordance with section 13 of the occupational safety and health act 2006, it is obligatory for an employer to ensure health and safety and welfare of persons at workplace. Employer must take measures to keep the workplace pollution free by employing technical measures, applied to new plant or processes in design or installation or added to existing plant or process or by employing supplementary organizational measures. Employer must ensure safe working environment including his vicinity.

Proper arrangements should be made to ensure and absence of health risks related to the use, handling, storage and transport of articles and substances. The employer owns a duty of a safe place

of work. In the case of **General cleaning contractors Vs. Christmas**¹²⁸, it was held that the employer was liable. He was aware of the danger surrounding the lack of hooks on the building and should not have continued to send its employers to work there.

Free protection

In accordance with the provisions of the occupational safety and health Act, it is the responsibility of the employer to provide free protective equipment including clothing to the workers involved in hazardous work. The type of PPE need varies depending on the nature of the work being performed. The right use of PPE reduces risks of accidents and the advance effects on health. It is also a duty of the employer to provide instructions for the use of personal protective equipment and make sure that they are used whenever required. An employer has a duty to a safe plant and equipment, all machinery, tools and equipment used by the employee must be reasonably safe for use. In the case of **Broadford Vs. Robinson Rentals**¹²⁹.

Training

In accordance with occupational safety and health Act, it is the responsibility of an employer to provide instructions, trainings and supervision as is necessary to ensure health and safety at work of his workers¹³⁰

Labour inspection system

Labour inspection system is present in Uganda, Occupational Safety and Health Act provides for a vibrant labour inspection system (part ii). The commissioner is responsible for the administration of occupational safety and health Act to improve and ensure health, safety, security and good working conditions at the enterprises, inspecting enterprises and ensuring the law enforcement. The national legislation provides inspectors the power to enter, inspect and examine the work premises at any time during day or not, inspect any machinery, plant, appliances, fitting or chemical in the workplace, take measurements, photographs, samples and make recordings for the purposes of examinations and investigations.

¹²⁸ 1953 AC. 180

¹²⁹ (1967)AC 564

¹³⁰ Section 13(2)(c) of occupational safety and health Act

4.4 Challenges in the realization of workers' rights

The challenges discussed below were examined from the employers' perspective as well as that of the employees.

4.4.1 Challenges faced by Workers

Workers were not adequately represented in the trade union. It was reported that some of the workers' representatives to the labour union were weak and had never met workers to discuss their issues. It was further stated that some of the union representatives ended up colluding with employers to stifle workers' issues. Workers were not aware of the role and importance of labour unions, yet they had registered to join them.

Enforcement of occupational safety and health standards in places of work was weak due to shortage of labour inspectors. In addition, some employers lacked the motivation to take preventive steps in the provision of safety gear for employees.

Workers were unaware of labour laws and rights. This was attributed to the lack of popularization of the Employment Act and awareness about the presence of district labour offices and their mandates. It was further observed that the legal and policy frameworks mostly cover the 'elite' workers and not those involved in the informal sector

Some employers were not supportive of their employees joining labour unions. This is against the backdrop that the importance of collective bargaining is to enable the workers negotiate to improve the working conditions and quality of services. The labour laws provide strong protection for workers' right to form or join trade unions and participate in industrial actions. However, the employer's refusal to recognize and negotiate with trade unions remains widespread.

The Medical Arbitration Board which is supposed to handle issues of compensation of injured workers is not functional. Once a worker gets an accident, an employer is supposed to inform the labour officer but this is not done. The labour officer is supposed to take the injured employee to hospital and have the injury assessed so that compensation can be computed

Some of the employers do not have wage structures that consider the grading of workers in accordance with their qualifications, experience, job descriptions and pay. Wages for casual labourers were considered to be meagre as compared to the work done. This could be part of the reason for high turnover of casual laborers.

The availed workers' houses as per the terms and conditions of work that a house would be provided for an employee were dilapidated yet the legal requirement is that the housing provided should be clean and of a habitable quality. The houses in most of the places visited were also not well

maintained and dirty. Some of the complainants about the housing facilities were that they were overcrowded, had poor hygiene, leaky roofs, overfilled toilets and poor drainage facilities.

Lack of facilitation for labour officers to attend to workers' complaints that were reported. Consequently, some complaints remained unresolved.

The tax burden is high as Government taxes employees' meagre income, allowances, and gratuity.

Workers were employed by non-regularized contractors who were at liberty to set the terms and conditions of service for them. It was observed that most companies dealt with contractors to beef up the companies' production. These terms were often unfavorable and it was found that in some of the institutions visited, employees working directly under the factory had better terms and conditions of work including health insurance and a grant of annual leave. Employees working under sub-contractors were paid low wages, had no access to sick leave or any entitlement to annual leave. There was also job insecurity due to the temporary nature of their work.

The employment of casual labourers has further weakened the ability of workers to enforce their rights as employees since casual labourers are not given written contracts of employment and have no job security or union representation.

Poor public relations between the management and staff resulted into a communication gap that made it impossible to resolve complaints affecting staff.

There is politicization of labour issues. It was reported that union officials had been threatened with being reported to the RDC if they intervened to assist workers. The fear of being arrested was said to hamper their work.

4.4.2 Challenges faced by employers

Employees' reluctance to wear protective gear. This was cited in factories like Uganda Clays. This failure to wear protective gear could lead to injuries for which an employer could be asked to pay compensation. The cost implications of periodic sensitization and training of staff on labour laws, rights and responsibilities as some of them did not have the necessary skills to perform the required tasks.

The rising cost of production was making it difficult to increase wages even when workers, especially casual labourers, complained about low wages.

Policies like the industrial policy and institutions like the factories inspector set up by Government have hardly been implemented or followed up.

Target workers were also a challenge as they abandoned work after achieving their goal e.g. raising school fees. This was a challenge because time and resources were spent on training the workers. Managers were forced to train newcomers from scratch as they join the estate with very limited or no skill in plucking tea.

Lack of awareness of staff on their labour rights and duties and felt that they were entitled to their rights without fulfilling their obligations as employees. The consequence of this was the reporting to the labour office petty complaints which would have been resolved internally.

4.4.3 Challenges faced by DLOs

Failure to address complaints raised by workers At times employers either did not respond adequately or did not respond at all to the enquiries raised by the DLO. It was reported that some employers were uncooperative or hid information during investigations thereby slowing down the process of having the complaints resolved.

Failure to enforce labour laws Some employers were adamant in enforcing labour laws especially since they claimed to have the Government backing particularly where the companies were owned by politicians.¹²⁶ As such, a blind eye would be turned to the concerns that workers may have raised.

Inadequate knowledge of labour laws the limited or lack of knowledge of labour laws by both employers and employees which made the realization of workers' rights a challenge. Employers did not know the labour standards they were expected to comply with while employees did not know what rights to claim.

Lack of logistical support for Labour Officers No funds (transport and logistics) were allocated to the labour officers to effectively train, sensitize and disseminate information on labour laws, rights and responsibilities. They were expected to move to all places of work at least once a year and report back to the Commissioner for Labour. However, this was not possible since DLOs lacked facilitation. In most cases the inspections were not carried out.

Non-operationalization of the Industrial Court The non-operationalization of the Industrial Court that is meant to handle labour disputes that a labour officer would not have been able to handle. Attempts to have magistrates assist with implementation are futile as legal counsel tend to object, and rightly so, to the intervention of a magistrate as they have no jurisdiction on labour matters.

Lack of facilitation for Labour Officers the Labour officers are not adequately facilitated and this incapacitated them from effectively handling labour cases.

Inadequate training for Labour Officers Inadequate training for labour officers by Government on their functions, responsibilities as well as labour laws and rights which affects their ability to perform

as efficiently and effectively as if they were trained. Most of the labour officers learned on the job about the requirements of their mandate.

Conclusion

Despite Uganda ratifying several international conventions and enacting domestic legislation aimed at ensuring protection of workers' rights, this has not been sufficient to guarantee such protection. The findings of the systemic investigations showed that both the rights' holders and duty bearers were not very conversant with labour laws while others despite having knowledge of the law, ignored the legal requirements, for instance, for ensuring occupational safety of workers. Labour officers and unions were equally incapacitated in ensuring that workers' rights are respected by employers. In light of the challenges that were raised in this chapter there is need for a comprehensive solution aimed at ensuring that workers' rights are indeed realised.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

Uganda continues to violate trade union rights, contrary to both its own constitution and international standards. A few of the violations have been discussed here, but we must stress that this account is far from exhaustive, for violations of workers and trade union rights are usually unreported.

The Ugandan authorities must provide an enabling environment for freedom of association, in which trade unions can flourish. The status quo, with union leaders and other unionists hounded and arrested with no regard for due process, is unacceptable. Like other liberal democracies, the government of Uganda must respect the rights that trade unions derive from the freedom of association.¹³¹ Indeed, it should encourage and empower unions to help with the task of economic development.

In conclusion with the basis of the cited legislations above chapter two all gives out the authority on the rights of workers basically in Uganda under the trade unions and workers of other capacities. So the government should amend and rectify where it's necessary.

In conclusive remarks to the above chapter three however much the trade unions have protected the rights of workers not to be violated by the employees and other personnel's the above chapter address the areas on the some of the rights the way they have been violated and to some extent where the trade unions have failed to protect some rights. The organisations and the government should put in much effort in protecting the rights of workers as stipulated in the laws of our country.

¹³¹ Sheldon Leader, of Association: A Study in Labor Law and Political Theory (*Yale University Freedom Press*, 1992), p. 269.

5.2 Recommendation

As we have seen, the rights of trade unions in Uganda are routinely violated. The ILO has repeatedly voiced outrage over Uganda's continued flouting of labour rights. The government's actions arise out of arrogance and show contempt for the people. What should be done to solve these problems?

I also recommend that as much the trade unions put in much effort in protecting workers rights they have faced many challenges which must be solved by the rules and regulations governing workers in our country so the government should overlooked into those laws in order to stop the violation of workers' rights by employers and other individuals in Kampala and the whole country.

Judicial Role

The judiciary plays a very prominent role in a society governed by the rule of law. The judiciary has the important tasks of interpreting the law and defining the scope and limits of the powers of both the executive and the legislature. Court represents the last hope of the common man against the powers of government, which makes it essential for the judiciary to exhibit a high sense of duty and commitment to the cause of justice. The judiciary must annul and invalidate any governmental or other action that violates trade union rights in Uganda. It must fearlessly ensure that the constitution and laws of the land are fully complied with. If the courts will intervene in such matters, then we can begin to see a ray of hope for protecting trade union rights in Uganda. As the American **Supreme Court Justice Hugo Black** pointed out in **Chambers v. Florida**,¹³² Courts stand as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or victims of prejudice or public excitement.

Trade union rights must not be allowed to suffer at the hands of the Ugandan state. The time is thus ripe for the Ugandan judiciary to embrace the legitimate authorities of judges and invalidate all acts that violate trade union rights.

¹³² 309 U.S. 227, 241 (1940)

Absolute respect for the Rule of Law

Beyond doubt, the history of military domination of politics and governance largely accounts for the authoritarianism of the Uganda state today. But those times are past. Democracy extols the rule of law. The rule of law seeks to ensure that a government acts within the constraints of its constitution. It also provides for equality before the law and due process of law. Now that Uganda has returned to full-fledged democratic governance, the government must respect the rule of law and the human rights of the citizens, including the rights of trade unionists. The government should be bound by its constitutional provisions. As a constitutional government, it should not take any arbitrary action to violate trade union rights. To do otherwise is to foster an environment where authoritarianism flourishes, the rule of law is negated, and neither officials nor private entities respect trade union rights and dignity.

Compliance with International Labor Standards

There is an urgent need for Uganda to comply with all the ILO Conventions to protect trade union rights. At a time when most countries are fighting to protect the human and trade union rights of citizens, Uganda must not take a retrograde step, one that will deprive it of full standing in the international milieu of states that comply with international labour standards.

The time is ripe for legislative intervention. In line with the ILO's principles and standards, all draconian decrees and laws that have infringed upon workers' and unionist's rights in Uganda should be removed from our statute books immediately. Compliance with international labour standards will do much to ensure the protection of trade union rights in Uganda.

Government

Government should embark on the sensitisation and training of workers on labour laws and their rights as workers. With this awareness, as rights' holders, they would be in a better position to know when their rights are being violated and what rights to claim.

There is a need for government to set a minimum wage for workers in accordance with the type of work done and level of qualifications of the worker. This will help curb the exploitation, oppression and underpayment of workers. Determination of minimum wage should also take into consideration the inflation and costs of living.

Government should consider reviewing taxation on salary, allowances and gratuity, especially for the low income earners.

Government should ensure the respect and effective enforcement of the Employment Act, in particular the observation of stipulated working hours. In situations where workers are expected to work longer hours, their due overtime allowance should be paid. Health and safety regulations in the work place should be strictly complied with.

The Industrial Court should be fully operationalised to efficiently and effectively resolve employer- employee disputes that have been forwarded to it by the DLOs. This would ensure the enforcement of orders made by the labour officer, as well as the expeditious handling of complaints referred to the court.

The public should be made aware of their labour rights through civic education in the media and training. DLOs should be appointed to oversee protection of workers' rights in all districts of Uganda. The labour office should be adequately staffed with support personnel. The district labour offices should be strengthened through adequate funding for them to facilitate their field visits.

Need for the strengthening and adequate resourcing of the labour function in MoGLSD. This way, employee interests will not be disadvantaged by the focus on the ministry's other functions.

Facilitation of the labour office should be centralised rather than being decentralised since most district local governments tend not to have sufficient funding for their operations.

Further, the central government should take over operations of the labour office since there is always no money at the district for the office's operations.

Labour officers should be trained to enable them carry out their work. In particular, they should undertake a diploma in law to assist them as prosecutors so that they are equipped to handle cases themselves.

There is a need to strengthen the inspections of places of work by labour officers. The labour officers should be able to interview workers in companies visited and hold meetings with management at places of employment as well as inspect the general state of workers' occupational health and safety.

Employees

There is need for all workers to ensure their health and safety at the work place. This includes the use of protective gear to minimise their injuries while at the work place.

Employees should be enabled to join trade unions of their choice in accordance with the Constitution and the Employment Act. This way, they would be able to utilise the power of collective bargaining to ensure participatory decision making when making company policy.

Employees should be informed and empowered on their labour rights, duties and responsibilities to ensure that they can claim their rights and fulfil their responsibilities.

Employers

Employers should adhere to the Employment Act and provide contracts of employment for all workers under their employment. This way, workers will be in a position to determine their rights and duties as provided for in the contract.

There is a need for employers to increase wages and give fairer terms of employment for casual labourers. This includes improvement in their welfare and provision of adequate protective gear and equipment. Employers should have formal agreements with contractors which require adherence to basic labour rights for their workers. This would include requiring contractors to observe basic labour standards like granting employees leave, as well as basic and regular pay for work done.

Employers should support the decision of their employees in forming and joining labour unions so that they can benefit from collective bargaining to resolve crucial matters including determination of their basic pay.

There is need for employers to conduct more on job training for workers. This would not only improve their efficiency in executing tasks but would also assist in minimizing accidents as the workers would be better trained on how to handle the machines. Such trainings should also include routine management training to empower managers to handle staff issues better. This would also include communication skills as effective communication would lead to the resolution of any dispute that could arise. For companies that offer housing to their employees, there is a need to ensure that dilapidated buildings are renovated and in other instances, the construction of habitable housing facilities with access to clean water for the workers. There is a need to ensure that the current housing structures are clean to ensure the health of the occupants.

Trade Unions

Trade unions should cultivate and maintain working relationships with management, labour office and workers in order to enhance success in negotiations between the parties to resolve issues affecting workers in a given institution.

There is need for dialogue and meetings with the Federation of Uganda Employers, employers, labour union and the DLO to discuss the issue of sub-contractors and employers' refusal of unionisation of workers. In the case of **J.T. Stratford & Son v. Lindley and Others**¹³³, it was held that a Trade Union can be liable in some cases where it is proved to have acted outside its legitimate functions.

There is need for frequent engagements between the union and employers to harmonise and agree on positions for the betterment of the workers and the employers' business.

Trade Unions should also be efficient in giving relevant and timely feedback/information to their members in order to forestall industrial action triggered by lack of information on how their grievances are being handled.

There is a need for trade unions to increase their national coverage by expanding their services to all districts of Uganda.

There is also need for trade unions to resolve internal wrangles. As was noted, there are two trade unions at the national level, that is, NOTU and COFTU, with COFTU being a breakaway union. The wrangles between the two bodies has been extended to fights for workers. Since these wrangles could minimise efforts to promote and defend workers' rights, there is a need for the conflict to be resolved and harmony to be created between the two bodies for the collective furtherance of workers' rights.

Workers' Representatives in Parliament

Workers' representatives in Parliament should advocate for the operationalization of the Industrial Court. As noted in the discussion, the operationalization of the court would contribute to the effective resolution of complaints on violation of workers' rights.

Workers' representatives should regularly conduct monitoring of work places. This would give them an opportunity to experience first-hand the issues affecting workers as well as enable them engage in discussions with employers on how to improve the workers' conditions of service.

¹³³ (1965) A.C. 269

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