

**A CRITICAL ANALYSIS OF THE RIGHTS OF WORKERS IN UGANDA IN THE
CONTEXT OF LABOUR LAWS**

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DECLARATION

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

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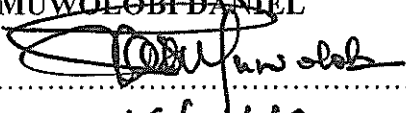
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APPROVAL

This is to certify that this REPORT titled "*A critical analysis of the rights of workers in Uganda in the context of labour laws*" has been submitted to the Faculty of Law with my approval as a University supervisor.

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I am grateful to the God for the good health and well-being that were necessary to complete this report. I would like to express my sincere gratitude to my supervisor Mr. Wolombi Daniel, for sharing his pearls of wisdom during the writing report and for his patience and immense knowledge. I take this opportunity to express gratitude to my parents for the unceasing encouragement, support and attention. I am also grateful to my friends who supported me through this venture.

DEDICATION

Every challenging work needs self-efforts as well as guidance of elders especially those who are very close to hearts. I dedicate my research to the Almighty God. My humble effort I dedicate to my sweet and loving mother Mrs. Serugyendo Patricia and my father Mr. Mugabirwe Jones Edward, my darling sisters, Dorothy, Winfred, Maureen, Karen and Sheila plus my brothers Dan, Edward, Allan and Michael, Angelo and Antony.

LIST OF ABBREVIATIONS

BTVET	Business, Technical, vocational Education and Training
CBR	Centre for Basic Research
COFTU	Central Organization of Free Trade Unions
HIV	Human Immune deficiency Virus
ICESCR	International Covenant of Economic Social and Cultural Rights
ILO	International labour organization
MGLSD	Ministry of Gender Labour and Social Development
NEPAD	New Partnership for Africa's Development
NUICTAW	National Union of Information and Communication Technologists and Allied Workers
NOTU	National Organization of Trade Unions
NRM	National Resistance Movement
OSHA	Occupational Safety Health Act
PEAP	Poverty Eradication Action Plan
UNDHR	United Nations Declaration of Human Rights
UHAWU	Uganda Horticulture and Allied Workers Union
ULRC	Uganda Law Reform Commission
UMA	Uganda Manufacturers' Association
UNDP	United Nations Development Program
UTC	Uganda Tea Corporation
UNAPD	Uganda National Action on Physical Disability

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ABSTRACT

There was need and desire to advocate for the employees' rights, which include right to leave and to improve their working conditions among others. There was a desire to see to it that Employees have freedom of expression and association, reasonable remuneration and allowed to freely participate in other social activities like religious practices, politics and leisure. The study was also motivated toward building a mutual understanding between employers and employees and amongst the Employees themselves.

Combinations of qualitative and quantitative methods have been applied and data collected via interviews, questionnaires, observation and literatures review. The study relied on both secondary sources and government publications related to economic policy and labour rights. Data was summarized and coded into themes and sub-themes from which conclusions and recommendations were drawn. Among the many peculiar findings included the ignorance of employee's rights to leave, to join labour unions.

The study recommended that labour laws and Employees' rights be respected, empower labour courts, rights of employees should be respected and employees should use the in accordance with the law, revival and affiliation of Employees' associations, complying with the ILO standards, consideration of casual Employees in the labour laws, and check on the government policies. Finally, the study affirmed that through collective responsibility, that the plight of Employees can be solved. It is against this well-known fact established in the findings that this study reviews and gives recommendations to the plight of Employees.

CHAPTER ONE

INTRODUCTION

1.1 Conceptual Framework of Labor Rights

From the global scope, labor rights are viewed as a core component of the modern corpus of human rights as captured in article 23¹ to which Uganda is bound. The article stipulates that, 'everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against any discrimination, has the right to equal pay for equal work. Labor rights or workers' rights are a group of legal rights and claimed human rights having to do with labor relations between workers and their employers usually obtained under employment law.

The international labour organization was formed in 1919 as part of the League of Nations to protect worker's rights. The ILO and several other groups have sought international labour standards to create legal rights for workers across the world. Recent movement has also been made to encourage countries to promote labour rights at the international levels through fair trade² The ILO later became incorporated into the United Nations. The UN itself backed workers' rights by incorporating several into two articles of the United Nations Declaration of Human Rights, which is the basis of the international covenant on economic, social and cultural rights.

Uganda is a signatory to several international instruments enshrining labour rights including but not limited to:

- a) *International Labour Organization C87, Freedom of Association and Protection of the Right to Organize Convention*³.
- b) *International Labour Organization C98 Right to Organise and Collective Bargaining Convention*⁴,
- c) *International Covenant on Civil and Political Rights*⁵, and
- d) *International Covenant for Economic, Social, and Cultural Rights*⁶.

¹ Universal declaration of human rights

² Universal declaration of human rights.

³ 1948, 9 July 1948 [ILO 87].

⁴ 1949, 1 July 1949 [ILO 98].

⁵ 16 December 1966, 999 U.N.T.S. 171 [ICC*PR].

⁶ 16 December 1966, GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49 [ICESCRI].

The core labour rights are laid out in Articles 6 - 8 of the International Covenant for Economic, Social and Cultural Rights and include the right to work, the right to just and favourable conditions of work the right to form and join trade unions and the right to social security. From all the above flow several corollary rights such as the right to fair remuneration to safe and healthy working conditions to reasonable working hours and rest and the right to strike.

Most of these rights have been incorporated into domestic laws within the framework of the Constitution of the Republic of Uganda 1995, primarily in Article 40 that protects a wide range of economic rights including:

“the right to work under satisfactory, safe and healthy conditions; to rest and reasonable working hours; for an employee to practice his or her profession and to carry on any lawful occupation and to form and join a trade union.”⁷

1.2 Background of the study

The legislation implementing these constitutionally protected rights includes among others the following key labour laws; the Employment Act,⁸ the Labour Unions Act,⁹ the Labour Disputes (Arbitration and Settlement) Act (the Labour Disputes Act)¹⁰ and the Occupational Safety and Health Act (the OSHA).¹¹ Already in existence at the enactment of these new Acts, and also forming part of Uganda’s battery of labour legislation, are: the National Social Security Fund Act (the NSSF),¹² the Pensions Act,¹³ and the Workers Compensation Act.¹⁴

On paper, these labour laws have brought Uganda largely in line with ratified and core international labour instruments.

1.3 Statement of the problem

While Uganda’s labour laws combined with the Constitution now provide strong legal protection for labour rights, research indicates that in practice, employees largely do not reap the benefits of these legislations. Employees suffer not because the laws protecting the workers are bad but because the social political and economic conditions do not favour implementation of the laws.

⁷Constitution of the Republic of Uganda, 1995.

⁸ 2006, (Act No. 6), replaced the Employment Act, 1977 (Cap 219).

⁹ 2006, (Act No. 7), replaced the Trade Unions Act, 1976 (Ch 223).

¹⁰ 2006, (Act No. 8) [Labour Disputes Act].

¹¹ 2006, (Act No. 9) [OSHA], replaced the Factories Act, 1953 (Ch 220).

¹² 1985 (Ch 222).

¹³ 1946 (Ch 286).

¹⁴ (No. 8 of 2000) (Chapter 225) [WCA], replaced the Workers’ Compensation Act (Ord. 15 of 1949) (Chapter 197).

This essay presents the findings from a research on labour rights in Uganda. Specifically, the study examines the current level of enjoyment of the right: to work; to join and form a trade union; to minimum standards of employment; to a safe and healthy working environment; and to protection upon leaving employment including social security and pension rights. This research goes on to provide a critical analysis of the current obstacles to the successful implementation of the rights of workers in Uganda.

1.4 Objectives of the study

In an effort to monitor the implementation of Uganda's labour laws and the impact they have had on workers in the nine years since their enactment, this research examines the current working conditions in various industries across the country and provides a critical analysis of some of the major institutional obstacles to the realization of labour rights in Uganda.

Also included will be a summary of some of the more pervasive misconceptions encountered during research about the rights and obligations that flow from Uganda's labour laws.

1.5 Research Methodology

The primary research methodology used is reviewing of various secondary materials including: government publications, writings of leading scholars and newspaper reports all of those materials contributed to the analysis of the state of labour rights in Uganda and the resulting conclusions and recommendations and also interviewing selected government officials, statutory bodies, union representatives, employers, employees, scholars and civil society organizations.

1.6 Literature Review

A presentation on Labour Rights in Uganda by the international Law Institute¹⁵ pointed out that Uganda does not have a social protection policy and the current formal social security arrangements do not cater for the informal sector. Overall, social security arrangements are inadequate in meeting the domestic capital formation and social insurance needs of Uganda because of its limited scope. Some categories of workers such as low paid and migrant workers are often exposed to harsh conditions, lack personal security, live in unsanitary conditions and, women in particular are vulnerable to sexual harassment.

A report by the Platform for Labour Action (2010) pointed out that "although Uganda has ratified a number of United Nations human rights instruments and ILO Conventions on the rights of workers

¹⁵Presented at the National Consultation Conference- in November 2006 by Lillian Keene-Mugerwa of Platform for Labour Action.

and its, Constitution also provides for a comprehensive range of human rights as required under the different conventions, workers' rights are not yet fulfilled respected." The absence of a minimum wage has also led to exploitation of workers.¹⁶

On decent work and decent work deficit, the first expression and formal mention of decent work was in the Director General's Report to the International Labour Conference in 1999, where it was referred to as 'productive work under conditions of freedom, equity, security and dignity, in which rights are protected and adequate remuneration and social coverage are provided. Other attributes to decent work include productive and secure work, respect of labour rights, provision for an adequate income, union freedom, collective bargaining and participation, balancing work and family, education for children, absence of child Labour, gender equality, ability to compete in the market place and ultimately human dignity.¹⁷

The year 1998 signals a double anniversary, the adoption of the freedom of association and protection of the right convention and universal declaration of human rights 50 years ago. While the high hopes of the time have not all been released, these instruments have contributed to the substantial progress achieved in human rights. The convention in particular is a continuing means of making progress and opposing backsliding.¹⁸

The issue of workers' freedom of association generally and the right to organize has received only limited attention in Ugandan labour law and industrial relations literature, although internationally, this is a much written about subject. However, no detailed analysis of the right has taken place particularly in light of the labour laws.

The origins of convention no.87 on freedom of association and the right to organise¹⁹, though convention no.87 provides protection for freedom of association of both employers and the workers it is of great importance to workers and something they fought to achieve over a great years. Dunning outlines the history of that effort and provides highlights of the discussions and the gradual process of the institution building including the creation of ILO that finally resulted in the adoption of this major instrument in international labour law. A number of other works by the author were concerned with specific or broader issues of concern to workers but not freedom of association. For instance one compared the policy impact of NOTU (National Organization of Trade Unions) and

¹⁶ Platform for Labour Action Annual report 2010.

¹⁷ Inter American Research and Documentation Centre on Vocational Training (Cinterfor)

¹⁸ 1998/2 special issues; labour human rights(ILO REVIEW)

¹⁹ Ibid Harold Dunning

UMA (Uganda Manufacturers' Association) (2002), another with different aspects of the termination of employment contracts in different African jurisdictions (2004) or the general relationship between trade unions and policies in Uganda particularly since 1986.

Uganda does not suffer the death of instruments highlighting democracy and human rights. Our constitution is called a human rights constitution. It is possible that workers in Uganda are taken for granted because of the absence of a strong trade union movement, in the neighboring countries like Kenya, Nigeria, South Africa, trade union movements are a force to reckon with. The trade unions are so influential in these countries that they determine who should be in power or not. On the other hand, here in Uganda, trade unions are preoccupied with internal squabbles. They have hardly mobilized and recruited members and are appendages to the national resistance movement (NRM) government. If you are deemed not to be a member of the NRM then you will be thrown out of the leadership of the union. In the run up to the 2006 elections, Central Organization of free Trade Unions (COFTU) broke off from National (NOTU). Another labour centre, confederation of labour unions (COLU) has been formed. The leadership of some unions is comprised of semi illiterates whose main purpose is not the betterment of workers affairs but self-aggrandizement. Labour unions should neither be anti-NRM nor pro-NRM but pro- workers, regardless of their political inclinations. That is their *raison d'être*.²⁰

The only other writer that attempted to deal with questions of rights of organization for workers has been Ralph Gonsalves whose work is now rather dated.²¹ Nevertheless, this thesis provides one of the more detailed macro analyses of the development of trade unions, their political role and the hurdles created by the law to workers struggles in the colonial period and over the first decade of independence. The thesis raises questions related to the use of law by the state to control and subjugate or incorporate trade unions within the state structures particularly under the UPC/Obote I regime.

The literature related to or affecting workers' freedom of association in Uganda is not simply Uganda specific. Because labour law and labour rights are historically and in certain respects currently derived or derivable from international sources, reference to relevant workers international work and standards is also pertinent.

²⁰ Article by Vicent Nuwabaga (NOTU intern) in the African Executive. (labour unions in Uganda, a threat to workers' Rights)

²¹ Gonsalves, R. (1974), *The Politics of Trade Unions and Industrial Relations in Uganda 1950 — 1971*, PhD,

The major relevant sources are ILO standards that are applied in Uganda. Therefore, a study on workers' freedom of association in any country that is signatory to the ILO Constitution and Conventions requires an assessment of the extent to which ILO standards are embedded in our laws in general and in this particular case the right to associate or organize specifically. The law itself more certainly the labour laws and the Labour Unions Act are inspired by ILO standards and input. Literature on ILO standards and its relevance to developing countries is enormous. It is of relevance to Uganda as far as in the present case, it deals with the issue of freedom of association for workers. The ILO has been at the subject of workers' freedom of association for several years, the more recent relevant works date from 1992 for instance; ILO's Freedom of Association and Collective bargaining, General Survey, which is a basic treatise on freedom of association and collective bargaining.²²

The book looks at freedom of association for workers and trade union rights as part of traditional constitutional civil liberties and is an expose of Convention 87²³ and Convention 98.²⁴ The book explains the meaning and practice of the right to establish organizations, the right to organize and manage them freely, the right to strike, the right to collective bargaining and the need for protection against acts of anti-union discrimination and for the promotion of collective bargaining.

In addition, it is also clear that in most African countries, "far too many workers in the small business sector are currently not unionized" yet they "present an enormous potential for membership growth". And the poor conditions of employment in large parts of the informal sector "can only be improved through a combination of protective legislation and unionization" while a further challenge for the unions is to pay more attention to the needs of women workers and young workers.²⁵

1.7 The Legal Framework

The 1995 constitution of the Republic of Uganda, The Worker's compensation Act, 2000, The Occupational Safety and Health Act No. 9 of 2006, The Labor Union's Act No. 7 of 2006, The Labor Disputes (Arbitration and settlement) Act No. 8 of 2006, The minimum wages Advisory Boards and wages Councils Act cap 164, Business, Technical, vocational Education and Training

²²International Labour Organization, 1994.

²³ Freedom of Association and Protection of the Right to Organize Convention, 1948

²⁴ Right to Organize and Collective Bargaining Convention 1949

²⁵ *ibid.*

(BTVET) Act 2008, The Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations, No. 62 of 2005.

These laws have become a manifest of transformation in Uganda in 2006. The former Minister of Gender, Labor and Social Development Hon. Bakoko Bakoru, observed that the laws were absolute and did not address the challenges and needs of the new work environment and modern labor market thus explaining the rampant strikes at places of work, increased forced and child labor and poor working conditions. Further, she intimated the need for the harmonization of the Uganda law with regard to the international conventions on labor to which Uganda is a signatory.²⁶

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

²⁶New Employment Laws for Uganda. The New Vision, Tuesday April 4th, 2006

1.8 Structure of the Directorate of Labour

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

The Directorate of Labour, in turn, has three departments:

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

Labour officers, appointed pursuant to the Employment Act, are responsible for conducting workplace inspections and ensuring compliance with the employment standards set out in the Employment Act.²⁷ They are also called upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court in respect of any violation of the Employment Act²⁸ Unfortunately, as will be discussed in detail; the Industrial Court has not been operational since 2006 until 2016 where they started operation. Labour inspectors, appointed pursuant to the Occupation Safety and Health Act (OSHA), are responsible for conducting workplace inspections to ensure compliance with, the standards set out under the OSHA. Proceedings instituted under the OSHA are brought before magistrate courts.²⁹ Labour officers operate under the Employment Services Department but the responsibility for appointing and administering labour officers has been delegated to the individual districts as part of the country's shift towards decentralization.³⁰ Responsibility for labour inspectors, however, has not been delegated to the districts and their appointment and facilitation remains with the Directorate of Labour, under the Occupation Safety and Health Department.

²⁷ Supra note 6 at s. 11

²⁸ Supra note 6

²⁹ OSHA, supra note 9 at s. 9.

³⁰ Employment Act, supra note 6 at s. 9.

CHAPTER TWO

THE RIGHT TO WORK

2.0 Introduction

Enshrined in Article 23 of the Universal Declaration of Human Rights, the most fundamental labour right is the right to work.³¹ Article 6(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR)³² defines the right to work as including “the right of everyone to the Opportunity to gain his living by work which he freely chooses or accepts” and places an obligation on member states of take steps to protect this right. Article 6(2) elaborates on this obligation stating:

*“Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented if necessary, by other means of social protection;”*³³

In Uganda as elsewhere, child labor is viewed as exploitative and cruel, and often and deprives children the right to education. A report by the International Labor Organization (ILO) estimated that in 1998, 44.4 percent of children between the ages of 10 and 14 in Uganda were already working.³⁴ One such group is the Elimination of Child Labor Trust Uganda (ECLATU), a private sector sponsored initiative to stamp out child labor in tobacco growing areas. The ILO leads the International Program on the Elimination of Child Labor (ILO-IPEC).³⁵ More recently, advocacy groups on workers’ rights have comprehensively engaged on the conditions of women workers and helped formulate gender based policies and affirmative action programs. Their efforts have not only created greater visibility for women’s issues but also the attainment of a minimum representation of 1/3 of women in Parliament.³⁶

The Ministry of Gender Labour and Social Development (MGLSD), the National Organization of Trade Unions, the Central Organization of Free Trade Unions, the Federation of Uganda Employers

³¹ Universal Declaration of Human Rights [HR], GA Res. 217 (III), GAOR, 3d Sess., Supp. No. 13, UN Doc A1810 (1948).

³² Supra note 4

³³ Citizens’ Coalition for Electoral Democracy in Uganda (CCEDU)

³⁴ *ibid*

³⁵ *ibid*

³⁶ *ibid*

and the ILO have developed Uganda's Decent Work Country Program (WCP) 2013-17, which identifies three key priorities:³⁷

1. Improved labour administration and adherence to fundamental rights and labour standards
2. Promotion of youth employment
3. Improved social protection for formal and informal sector workers

While Article 40(2) of the Constitution guarantees the right of every person in Uganda to "practice his or her profession and to carry on any lawful occupation, trade or business,"³⁸ the current levels of Unemployment and underemployment in the country present significant barriers to the fulfillment of this right. To address the unemployment issue, government investments focus on strengthening a private sector led economy to spur job creation. Investment in infrastructure and higher education and vocational training will be needed to tackle the issue of youth unemployment.³⁹ Uganda has two social security schemes, namely the Public Pension Scheme managed by the Pensions Department of the Ministry of Public Service, and the Private Social Security System managed by the National Social Security Fund (NSSF). The social security framework only covers workers employed in the formal sector and are silent about the private, self-employed, and informal sector workers who account for the bulk of the labour force⁴⁰

2.1. Unemployment and underemployment

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

The 6th Edition of the Black's Law Dictionary defines unemployment to mean an economic condition marked by the fact that individuals actively seeking jobs remain un hired and on the other hand under employment refers to an employment action that is insufficient in some important way for the worker relative to a standard.

³⁷ILO (2012) Decent Work Country Programme 2013-2017 Uganda,

³⁸The Constitution of the Republic of Uganda, 1995

³⁹ ibid

⁴⁰ ibid

Youth in Uganda are the youngest population in the world, with 77% of its population being under 30 years of age. There are 7,310,386 youth from the ages of 15-24 years of age living in Uganda. The youth Unemployment rate for young people, aged 15-24 is 83 % (World Bank 2008 African Development Indicators 2008/2009).⁴¹ According to the Millennium Development Goal Report for 2010, Uganda has made impressive strides in working towards economic development.

“Uganda’s macro-economic reform programme is generally viewed as having supported economic growth well beyond what could be expected from the recovery and reconstruction process. These reforms, often considered among the most comprehensive in Africa, have reduced barriers to trade and liberalized prices and markets previously subject to state control. Improved management of monetary and fiscal policy has produced stability and has brought down the triple-digit inflation rate of the late 1980s.⁴² According to the ILO, the number of unemployed youth worldwide increased by 10.2 million in 2009 compared to 2007 the largest hike since 1991⁴³.”

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

As at 2002, the overall unemployment rate was 5% and the urban unemployment rate was at 10%.⁴⁴ Although high, this figure is not wholly representative of the unemployment crisis the country is experiencing. More telling is the rate of underemployment (those working less than 40 hours a week) which stands at 65% (75% of women and 55% of men).⁴⁵ Given the high growth rate of

⁴¹ World Bank 2008. African Development Indicators 2008/2009.

⁴² Uganda Ministry of Finance, Planning and Economic Development, The Millennium Development Goals, Report for Uganda 2010 (September 2010) pg. 28.

⁴³ http://www.ucw-project.org/Pages/country_reports.a

⁴⁴ www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/WCMS_120465/lang-en/index.htm

⁴⁵ Ministry of Finance, Planning and Economic Development, State of Uganda Population Report (2010) [Population Report] at pg.9.

⁴⁵ Ministry of Finance, Planning and Economic Development, Uganda’s Poverty Eradication Action Plan (Kampala: 2004) [DEAF] at 24. -

Uganda's population unemployment and underemployment are poised to increase if current trends continue. According to Uganda's Population Report released by the Ministry of Finance in 2010:

In Uganda, like many other African countries, the rate of labour force supply has outstripped that of job creation. Uganda's total labour force was estimated at 10g million persons in 2006 (UNHS 2005/06) and is projected to reach 19million by 2015⁴⁶

The high youth unemployment rate in Uganda and Africa at large can also be attributed to the slow economic growth and small formal labour markets, high population growth rate, lack of sufficient experience and skills, lack of decent work, the rigid education system, rural-urban migration, limited social networks, youth's limited access to capital support systems et cetera. A number of analysts also hold the opinion that the poor Government policies are partly to blame for these youth problems. In recent times, the Government has come up with a number of solutions to youth problems and these are embedded in policies such as the National Youth Policy, Employment policy and so on.

The poor attitude towards certain jobs that both young people in employment and unemployed ones exhibit is also partly responsible for the youth unemployment. Gasper Mbowa, the MTN company youth segment manager, says that on average, about 70% of the young people the company employs to man their call centers show commitment to the work but 30% will care less about their output at work since this is not a permanent placing for them in the company. The 30% will, therefore, be slow and strictly work within the specified working hours (8:00am to 5:00pm). He also attributes the problem to the education system, which is largely theoretical and, therefore, does not quite prepare young people for the working environment.⁴⁷ Studies further show that less than 5% of the total labour force has permanent jobs⁴⁸Further, wage employment (employees earning a regular wage) currently accounts for less than 20% of Uganda's labour force⁴⁹is concentrated in the public sector and by the government's own admission has not been growing as envisaged.⁵⁰Some have speculated that the growing discontent with the level of unemployment is a time bomb for social unrest:

"Go and stand on clock tower on Entebbe road , every morning, you will see a stream of thousands of young men and women flowing to town like water to look for what to do, but in

⁴⁶ Population Report, supra note 68 at pg 8.

⁴⁷ Report on employment policies for Uganda; young leader's perspective.

⁴⁸ Ibid at pg.9

⁴⁹ Ibid at pg.8

⁵⁰ PEAP, supra note 69 at 24

most cases they get disappointed, they don't get the job. What will you expect if the situation remains as it is? They will get tired, and finally, they will revolt, and indeed with the recently completed elections youth demonstrated need for change majorly relying on the need for employment (lack of job)."

The consequence of the high unemployment rate has been to create a labour market wherein workers have no bargaining power. Employees feel lucky just to get work and are therefore reluctant to enforce their statutory rights. Employers are free to dictate the terms and conditions of employment an imbalance that is reflected by the high number of casual labourers and labourers working without a written contract of employment.

2.2 Youth unemployment

Unemployment and underemployment of youth (ages 18-30) is of particular concern in Uganda and with 56% of the population under the age of 18 and the average fertility rate at 7 children per woman, this issue is only expected to get worse.⁵¹ Uganda currently has over 40,000 university graduates entering the job market each year but only 8,000 — 10,000 obtain employment.⁵² This has fostered negative views of the education system, since paying for a university education is not seen as fruitful when so many graduates are unable to find employment. The Population Report notes that despite the high youth unemployment rate there remains a shortage of skilled labour and attributes this to an education system that is not responsive to the needs of the market.⁵³

In an attempt to address the issue of youth unemployment, the government has announced 3 initiatives: (1) decreasing the mandatory retirement age of government employees, (2) creating the Industrial Processing Venture Capital Fund and (3) creating the joint youth venture capital fund.

2.3 Decreasing the Mandatory Retirement Age of Civil Servants

In early 2010 the Ministry of Public Service was directed to reduce the mandatory retirement age of civil servants from 60 to 50 years, in the hope that these positions would be filled by the educated youth. The directive has yet to be debated by Parliament, but there has already been a great deal of resistance to the proposal. Those affected by the directive have argued that it would amount to a fundamental and unilateral change in the employment contracts of public servants.⁵⁴ At 50, many

⁵¹ Supra note 68 at pg. 2 and 4

⁵² William G. Naggaga, Editorial, "Retirement Age: The Government Should Not Rob Peter to Pay Paul," Daily Monitor (25 May 2010) <http://www.monitor&Mg>

⁵³ Supra note 68 at pg. 12

⁵⁴ Naggaga, Supra note 76

people still have children in school and when budgeting for this expense relied on the expectation of working until age 60. Implementing the change without a transition period would be very damaging to these individuals as there is a large variation between what an individual can make in 10 years of public service versus what they will receive in 10 years of pension payments. It is imperative to note that as much as it is hoped that youthful people will fill up these positions. Compulsory retirement will have a negative effect especially in cases where the ones being forced to retire are still physically active, mentally alert and bubbling with experience. Further, there is cause to seriously question whether the government would be able to pay the large number of pensions which would suddenly become due if this change were implemented. As of August 2010, the Ministry of Public Service was short by 300 billion shillings to clear pension payments that have accumulated since the late 1970s.⁵⁵

A spokesperson for the Government and Allied Workers' Union suggested that instead of substituting new graduates for experienced workers, thereby losing much of the public services' skilled labour, the government should focus on filling the 60,000 posts in local government that currently remain empty.⁵⁶ Implementing this suggestion would unfortunately also require government capital that may or may not be available. An alternative and softer measure to reducing the mandatory retirement age would be allowing for voluntary retirement at age 50.

2.4 The Industrial Processing Venture Capital Fund

The second proposed change that may yield a more fruitful outcome is the development of the Industrial Processing Venture Capital Fund. The fund established to provide skilled youth with the necessary startup capital for business a low interest rate.⁵⁷ The aim of the fund is to foster entrepreneurial activities among youth to assist the domestic economy and decrease unemployment. In June 2010, the government announced that it had allocated 4 billion shillings in the 2010/2011 budget for the development of the fund.⁵⁸ How this money is to be spent over the coming year and the impact that it has should be closely monitored.

⁵⁵ Joseph Miti, "Government needs Shs 300b to fix pension affairs," Daily Monitor (28 Aug 2010) <<http://www.monitor.co.ug>.

⁵⁶ Interview of Irene Kaboole, Uganda Government and Allied Workers' Union (UGAWU) -

⁵⁷ Honourable Syda N.M. Bbumba, Minister of Finance, Planning and Economic Development, Budget Speech, Financial Year 2010/11, Delivered at the Meeting of the Fifth Session of the 8th Parliament of Uganda, (10 June 2010).

⁵⁸ Ibid

2.5 Joint Youth Venture Capital Fund

On 21st March, 2012 the government signed an agreement with three commercial banks to create 25 billion shillings youth joint venture fund. The money is meant to support the growth of business ventures owned by the youth aged between 18 and 35 years and help create jobs for young people. The money will target start-up and small businesses to address bottlenecks of accessing affordable loans, the funds will also focus on improving the competitiveness of the business environment to enable the private sector to play a dominant role for employment generation, which will be enforced by vocational training. It is also aimed to support viable and sustainable small and medium-sized enterprises across the country because they comprise over 90% of the private sector.⁵⁹ However, the greatest challenge is that at present, the government does not have any legal policy on the both the Youth Joint Venture Capital Fund and the Industrial processing Venture Capital Fund. There is no legislative framework providing for the aforementioned funds. According to the ILO, the number of unemployed youth worldwide increased by 10.2 million in 2009 compared to 2007, the largest hike since 1991⁶⁰.

In its report, UCW (Understand Children at Work) asks special attention for Child and Youth Labour in Uganda. Almost 1 in 4 children from five to 17 years are fully or partially at work, a situation that puts brings children in precarious positions due to a lack of education and appropriate protection⁶¹. Unfortunately, while the government's neo-liberal economic policy may have resulted in an increase in investment and GDP to date this growth has not translated into a significant reduction in unemployment or improved job security for the citizens of the country. It has also come at the expense of strong enforcement of the country's labor laws, since the government sees protection of labour rights as being at odds with a liberal economic policy. Thus, while the government has fulfilled its obligation under Article 7 of the International Covenant of Economic Social and Cultural Rights (ICESCR) to take steps to implement policies to achieve steady economic development, it has failed to achieve a corresponding social growth.

⁵⁹ <http://www.newvision.co.ug/news/628717-govt-releases-sh25b-youth-fund.html>

⁶⁰ http://www.ucw-project.org/Pages/country_reports.

⁶¹ http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/WCMS_120465/lang-en/index.htm

CHAPTER THREE

UNION REGISTRATION AND RECOGNITION

3.0 Introduction

Article 20 (1) of the Universal Declaration of Human Rights states that “everyone has the right to freedom of peaceful assembly and association.” Article 23(4) provides, “everyone has the right to form and to join trade unions for the protection of interests”.⁶² A number of international instruments to which Uganda is signatory including also protects the right of workers to associate, form trade unions and engage in collective bargaining: the International Covenant on Civil and Political Rights, International Labour Organizations Convention 87 and 98 and the International Covenant on Economic, Social and Cultural Rights.⁶³

Article 8 of the ICESCR protects the right of everyone to form and join a trade union of his/her choice and stipulates that no restrictions may be placed on the exercise of this right other than those necessary in a democratic society in the interests of national security or public order. Important elements of the freedom of association also enshrined in Article 8 of the ICESCR are the right of trade unions to form national federations and the right to strike. An important step towards implementation of its international commitments to protect freedom of association was the enactment of the new *Constitution* in 1995. The freedom of association as enshrined in the *Constitution* includes:

- The right to form a trade union;
- The right to join a trade union;
- The right to union recognition and collective bargaining;
- The right to strike (withdraw labour).⁶⁴

It was not until 2006 that Uganda’s labour laws were brought in line with both its international and its own constitutional commitments to protect freedom of association. The Labour Unions Act and the Labour Disputes Act together establish a strong legal framework for the protection of the freedom of association. These Acts cover both the private and public sectors set out procedures for the formation and operation of Unions, the process of collective bargaining and dispute resolution. Unfortunately, to date these laudable pieces of legislation are poorly observed and enforced.

⁶²Supra note 24

⁶³Supra note 19

⁶⁴Supra note 5

3.1 Registration, The right to form a Trade Union

The current number of registered trade unions in Uganda is approximately 40. Almost all of these trade unions are affiliated with one of the country's two national federations of unions: the National Organization of Trade Unions (NOTU) and the Central Organization of Trade Unions (COFTU). NOTU was established in 1974, under the regime of Idi Amin, and at the time all unions were required to affiliate with it.⁶⁵ COFTU was formed in 2003 by members who had split from NOTU because of differences of opinion on administrative and ideological issues.⁶⁶

Section 3 of the Labour Unions Act, provides that all employees shall have the right to organize themselves in any labour union.⁶⁷ The Case of **R V Miller**⁶⁸ first recognized section 3 of the Labour Unions Act that gives workers an opportunity to form trade unions through which trade disputes considered and a solution is reached. The formation and registration of unions under the labour unions Act unlike its predecessor requires no previous authorization or approval by the Registrar of the Ministry of Gender, Labour and Social Development and there is no requirement for a minimum number of members.⁶⁹

Union registration requires only that an application that includes the following information be submitted to the Registrar:

- Three certified copies of the Union's Constitution and Rules;
- Name, address, office and postal address of the union;
- Number of members;
- Titles, names, ages, addresses and occupations of union officers (which officers must be employees in Uganda); and
- A revenue stamp of the prescribed amount.⁷⁰

Thus, at least on paper, barriers to registration have been largely removed. In practice, however, new unions have not been able to register since January 2007. Since that time, there have been

⁶⁵John-Jean Barya, *Freedom of Association and Uganda's New Labour Laws: A Critical Analysis of the State of Workers' Organizational Rights* (HURIPeC, Working Paper No. 4, April 2007) [Barya, "Freedom of Association"].

⁶⁶Interview of Dr. Sam Lyomoki, the General Secretary of Central Organization of Free Trade Unions (COFTU) on 2nd February 2012

⁶⁷Supra note 7

⁶⁸(1996)KALR

⁶⁹Barya, "Freedom of Association", supra note 87 at 27

⁷⁰See Labour Unions Act; supra note 7 at S. 15.

at least 14 different trade unions that have filed an application for registration with the Registrar all of whom are still awaiting a response.⁷¹

The General Secretary of COFTU Dr. Sam Lyomoki informed the researcher that when the new labour legislation was enacted in 2006, the Directorate of Labour feared a deluge of new union applications and thus mandated an unofficial administrative ban on the registration of new unions.⁷² Dr. Lyomoki posited that the level of discontent with the situation could not be very high however, since a court challenge had not been brought against this registration ban. He argued that the ban had not been challenged because the unions that are currently available are adequate to address workers' needs.⁷³ Not everyone is as optimistic about the situation as Dr. Lyomoki Kenneth Mwayi the Interim General Secretary for the National Union of Information and Communications Technologists and Allied Workers (NUICTAW), informed the researcher that his union had been waiting almost a year to have its registration application processed.⁷⁴

He explained that

"The ban has not been challenged because those who it affects do not have the resources [to bring a legal challenge] since their union is not registered and they cannot collect fees."⁷⁵

Mr. Mwayi was of the view that the two national unions (NOTU and COFTU) were content to let the ban sit fearing a loss of influence both in the workplace and in parliament should other unions be allowed to gain traction.⁷⁶ Far from denying these conclusions, the Chairman General of NOTU Mr. Owere Usher Wilson noted the both NOTU and COFTU supported the ban because "they did not have an interest in seeing unions segmented."⁷⁷ Mr. Owere Wilson expressed concern over the proliferation of unions, which he perceived as threatening to weaken workers' proliferation position:

⁷¹Interview of Kenneth Mwayi, Interim Secretary General of the National Union of Information and communication Technologists and Allied Workers (30 May 2012) [NUICTA W].

⁷²supra note 88

⁷³ibid

⁷⁴supra note 92

⁷⁵ibid

⁷⁶ibid

⁷⁷ Interview of Owere Usher Wilson, Chairman General of the National Organization of Trade Unions (1 April 2012) [NOTU].

*We want a formidable union, which can handle workers issues, not segments where you have ten unions in one sector. No. It will not work.*⁷⁸

In defense of his view that new unions are neither necessary nor desirable, Mr. Owere Wilson cited the example of broadcasters, whom he felt were adequately accommodated under the existing media union.⁷⁹ Those employees who attempted to register the Broadcaster's Union when the government closed down radio stations in 2009 would most likely contest Mr. Wilson's view that the existing unions adequately serve employees.⁸⁰

A third federation of unions has also attempted to register, the Central Organization of Labour Unions, but were advised by the registrar that since there was no procedure set out under the Labour Unions Act for the registration of federations couldn't be done.⁸¹ While it is true that the Labour Unions Act does not set out specific procedures for registration of union federations, as it does with trade unions, the definition of "registered organization" clearly indicates that the Registrar has the power to certify federations to the effect that:

*"Registered organization" means a federation of labour unions as the Registrar may certify in the Gazette or a labour union that is registered under this Act.*⁸²

Section 9(2) of the Act also expressly states, "A federation of labour unions may be established for any lawful purpose," examples of which purposes then follow.⁸³ The Minister of Gender Labour and Social Development Mr. Gabriel Opio, admitted the existence of a ban on registration which he said had been put in place in response to an influx of union registration applications after the Labour Unions Act was passed in 2006.⁸⁴ Mr. Opio and Mr. Wilson both agreed that it was a 'mistake' in legislative drafting to have allowed unions of any size to register:

*"You know the people who made the Constitution, I think they erred somewhere, when they said even two people can register a union."*⁸⁵

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ms Irene Kaboole, supra note 80.

⁸¹ Ibid.

⁸² Supra note 7 at s. 2.

⁸³ Ibid. s. 9(2).

⁸⁴ Interview with Hon. Gabriel Opio, Minister of Gender, Labour and Social Development (15 July 2010) [MGLSDJ]

⁸⁵ NOTU, supra note 106.

Mr. Opio defended the ban as necessary due to what he viewed as an incomplete law and contended that it would remain in place until regulations could be passed setting out a more detailed process of registration.⁸⁶ If and when the Ministry does enact Regulations to the Labour Unions Act it must be careful to ensure that they are consistent with the freedom of association as enshrined in the Constitution. For example, if the Regulations make registration contingent upon the prior recruitment of a minimum number of members this would be incompatible with Article 40(3) of the Constitution that states, “Every worker has the right to join a trade union of his or her choice”.⁸⁷ It would also be contrary to the ICCPR, the ICESCR and the ILO Convention 87, all of which place specific restrictions on arbitrary limitations to union registration.⁸⁸ The MGLSD’s current unofficial ban on the registration of new trade unions is contrary to both the Constitution and the Labour Unions Act, which states in section 18(4) that registrations shall be processed within 90 days from the date the application is submitted.⁸⁹ To address the situation an application for judicial review should be brought pursuant to section 36(1) (a) of the Judicature Act, seeking to compel the Registrar to comply with section 18(4) of the Labour Unions Act.

Although section 20(1) of the Labour Unions Act provides that appeals of a Registrar’s decision should be brought before the Industrial Court, it is the Registrar’s failure to issue a decision that is currently at issue. The problem, unfortunately, is that those unions that are not registered generally do not have the resource for legal challenges. Those unions that have successfully registered face their own challenges in attempting to exercise their rights in the workplace. These can be grouped into three issues: recruitment, recognition and registration.

3.2 Recruitment: The Right to Join a Trade Union

Instilled with a fear of reprisal, employees are often reluctant to join trade unions. There are reports of a range of intimidation tactics used by employers to dissuade employees from joining trade unions, from outright dismissal of employees engaged in trade union activities to threats of relocating to a more investment friendly local union.⁹⁰ Uganda Hotels, Food, Tourism & Allied Workers Union reported that they have often had to intervene to protect employees dismissed as a result of union membership and gave the following example:

⁸⁶Supra note 98

⁸⁷Supra note 7.

⁸⁸ ICCPR, supra note 3 at art. 22; the ICESCR, supra note 4 at art. 8(1); and Convention 87, supra note 3 at art.2

⁸⁹Supranote 1

⁹⁰ 112 The Long Road to Realizing Labour Rights In Uganda, a report for the period September 2010-March 2011 by the Foundation for Human Rights Initiative (FHRI)

*“Shangri La hotel restaurant, in Kampala, We went and addressed workers and the workers started joining the union. Then the managers started dismissing, transferring, demoting, because they had joined the union. When we went there they said, “We don’t want to talk to union people.” The union officers waited there for about three hours, until they ended up into a serious quarrel with him, and he threatened them. That night he wrote a letter requesting peace talks. So we managed to reinstate two of the staff that he had dismissed, and he paid two of them”.*⁹¹

These tactics are directly contrary to section 4 of the Labour Unions Act, which expressly prohibits direct or indirect interference with union organization and section 75(C) of the Employment Act that states that an employee’s membership in a union shall not constitute a fair reason for dismissal or for the imposition of a disciplinary penalty.⁹²

Actualization of labour also presents one of the greatest obstacles to trade union formation.⁹³ Trade Union members are often laid off and replaced with casual workers who are indirectly advised against joining unions.⁹⁴ While there are no legal barriers to the unionization of casual labour, practically, it is very difficult to organize and collect dues from employees who work irregularly or at various Workplaces, have tenuous job security and low incomes.

Section 4(c) of the Labour Unions Act specifically states that an employer shall not “discriminate in regard to hire, tenure or any terms or conditions of employment in order to discourage membership in a labour union.”⁹⁵ This prohibition appears to be aimed directly at discouraging employers from switching to the use of casual labour in order to inhibit union formation.

Employees have every right at law to organize a union, yet employers act as if they have prerogative to allow or refuse union formation in a workplace. This attitude mirrors that government which views labour rights as an impediment to trade and investment. If there is any constituency that is less prioritized in Uganda it is the workers. Yet the workers have five members of parliament thanks to affirmative action. What is disappointing though is the manner in which the workers mps are elected.

⁹¹Interview of Moses R. Mauku, Economic Research & Development Secretary of the Uganda Hotels, Food, Tourism & Allied Workers’ Union on 7 February 2012 [UHFTAWU].

⁹²Labour Unions Act. *supra* note 7 and Employment Act, *supra* note 6.

⁹³Barya, “Freedom of Association,” *supra* note 87 at 3.

⁹⁴Okuku, J. as cited in Barya, “Freedom of Association,” *ibid.* at 32.

⁹⁵*Supra* note 7.

So how representatives are the trade unions to be the channel through which worker's MPs are elected?

They are two labour centers- national organization of trade unions (NOTU) and the central organization of free trade unions (COFTU) from where the five MPs are elected. Another centre, central organization of labour unions (COLU), died before it captured the ground.

The emergency of the diverse labour centers is not so much because of their need to serve workers better. Rather, it is primarily to further their founders' interests or because of the undemocratic tendencies of the mother centre NOTU. Most likely, workers' MPs confuse their electorate with their constituency or else they unpatriotically take their electorate to be more important than their constituency. Consequently, workers' rights remain the most flagrantly abused.

3.3. Right to Recognition & Collective Bargaining

In addition to tactics aimed at dissuading union formation, it is also common practice in both the private and public sectors for employers to simply refuse to recognize trade unions and/or engage in collective bargaining. For example, representatives from the National Union of Educational Institutions (NUEI) stated that private schools are often resistant to the unionization of their workforce.⁹⁶ When NUEI representatives have attempted to meet with the administration of these schools to sign recognition agreements they have often met with dismissive replies and avoidance tactics.⁹⁷ When asked why they did not simply march in as is their right under law NUEI advised that they try whenever possible to avoid beginning their relationship with employers on a confrontational note. While admirable this cooperative attitude is seemingly not shared by the employers in this sector. Refusal to negotiate has also been singled out as a major problem facing the National Union of Plantations and Agricultural Workers:

Tilda has refused to sign an agreement with us, also Kalanga... they have denied us recruitment. Even some in the sugar industry have refused to sign an agreement. The problem is the employers, in most cases the employers do not want to organize trade unions, and therefore deny the rights of workers to belong to the organization they need. Therefore, that is what we have... We have complained to the Minis fry of Labour, we have complained

⁹⁶ Interview of Musa Okello, General Secretary of the National Union of Educational Institutions [NUEI] (20 April 2012).

⁹⁷ Ibid

*to government... but they defy the Ministry, not only us. Many Unions in Uganda are facing that.*⁹⁸

Representatives from both NOTU and COFTU expressed concern over how to deal with a situation where two unions have been organized in the same sector or workplace and agreed that it was desirable to try to cooperate to have only one union per sector.⁹⁹ They also stated their desire to have the MGLSD include a provision to that effect in the Regulations to the Labour Unions Act, which is yet to be drafted.

Historically, under the Trade Union Decree of 1973, in order for trade unions to be recognized by employers the trade union had to recruit 51 % of the total workforce.¹⁰⁰ The Labour Disputes Act removed this requirement mandating instead in section 24(1) (d) that employers are bound to recognize for the purposes of collective bargaining any registered labour union to which any of his or her employees have previously subscribed.¹⁰¹ Pursuant to this clause, if more than one union is registered in a workplace the employee must recognize and bargain with both. If workers in a sector are to be covered by one labour union only, this must be by agreement of union members as opposed to a legislative imposition. If a legislative provision to this effect were included in the Regulations it would directly contradict the Labour Disputes Act. All of the ten unions interviewed reported encountering obstacles to union registration, recruitment or recognition.

Section 24(3) of the Labour Disputes Act provides an avenue of complaint to the Registrar in the event that an employer refuses to deal with a registered union.¹⁰² If such a complaint is made the employer is required to show cause in writing within 21 days for any failure to comply with 'the Act.'¹⁰³ However, unions have reported that their complaints are not followed up on:

The laws are adequate to protect the rights of the workers, but the enforcement is not there... For example, it is an offence for an employer not to recognize a trade union. It is the law.

⁹⁸Interview of Joram Bruno Paj obo, General Secretary, National Union of Plantation and Agricultural Workers on 3rd April 2012.[NUPAW].

⁹⁹COFTU, supra note 88, and NOTU, supra note 98.

¹⁰⁰Trade Unions Act (Amendment) Decree (Decree 29/1973).

¹⁰¹

Q: So why do you think they are not being enforced?

*It is because the government wants the investors. That will mean that they are threatening the investors.*¹⁰⁴

The outright refusal of employers to recognize and bargain with trade unions is one of the most blatant assaults, on labour rights in the country and demands immediate and effective government intervention. Unfortunately, to date the government has given no indication that it intends to take the enforcement of its labour laws seriously. As noted by Jean Barya, an Associate Professor at Makerere University and ILO Consultant:

*“Lack of employment and casualization of labour aside, the government has consistently relied on market forces to deal with employer-employee relations... Government has not only failed to enforce recognition of unions in the private sector but has also failed to recognize and bargain effectively with the public sector trade unions for civil servants, health workers, teachers and others”.*¹⁰⁵

In the absence of effective government enforcement trade unions civil society organizations and union federations will have to work overtime to keep continuous pressure on employers to fulfill their statutory obligations to recognize and negotiate with trade unions. One of the several means at the disposal of employees and unions for exerting such pressure is to strike; others are ‘go slow’, ‘long toilet’ and ‘coasting’.

3.4. The right to withdraw labour

Section 3(d) of the Labour Unions Act states that employees have the right to withdraw their labour and take industrial action. A number of individuals interviewed expressed the view that labour legislation presents a number of administrative barriers to initiating a strike. This is in fact, a bit of a misconception. Employees are free to strike without notice except in the following circumstances:

¹⁰⁴NUFA W, supra note 120.

¹⁰⁵Barya. “Trade Unions and Liberalization”,

- When the matter under dispute is covered by a collective agreement that is still in force and which covers a substantial portion of the employees of the sector involved.¹⁰⁶
- When the employees are part of essential services in which case they may strike by giving notice to their employers in accordance with section 34 of the Labour Disputes Act.¹⁰⁷

Employees who are not part of the essential services and are not working under a collective bargaining agreement are free to strike without notice. There is a disturbing trend in Uganda for strikes to quickly get out of hand; this is due in part to the highly emotional nature of labour disputes and in part to heavy-handed police intervention. As everywhere in the world employees as well as employers are required to notify the other party. The law does not like ambushing the other party.

The Labour Unions Act gives power and right to employees to organize industrial action through sit-down strikes, but just try to strike, in seconds you find that you are engulfed by police firing bullets on people as if they have committed a very serious crime¹⁰⁸. Employees have a responsibility to ensure that strikes are carried out peacefully but they also have a right to peacefully strike. Generally, employers call in police as soon as a strike is initiated. If the strike is peaceful, police must refrain from intervention. In the event that an industrial action does become violent police have an obligation to ensure that excessive force is not used to disperse the employees. Sadly, a peaceful strike seems to be the exception than the norm in Uganda.

¹⁰⁶Labour Disputes Act, supra note 8 at s. 28

¹⁰⁷ibid.

¹⁰⁸Interview with Mr. LyelMoiOdongOngab, former Secretary General for NOTU, on 1st March 2012., supra note 74.

CHAPTER FOUR

EMPLOYMENT STANDARDS

4.0 Introduction

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

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

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

This Chapter examines the current level of enjoyment of the right to just and favourable working conditions as provided in Article 7 of the ICESCR and pursuant to the 1995 Constitution. The right to work under safe and healthy working conditions is discussed in the following chapter of this report: Occupational Safety and Health.

4.1 The contract of employment

An employee's contract of service may be written or oral and the provisions of the Employment Act apply equally to both.¹⁰⁹ If an employee is unable to read and understand the language of the contract of employment, the contract must be attested to in accordance with the Act.¹¹⁰ Except where expressly permitted by the Employment Act, a contract of employment may not derogate in any way from the rights set out therein and any clause, which purports to exclude a provision of the Act, will be deemed void.¹¹¹ Casual labourers and workers employed for a fixed term are rarely given written contracts, a practice which makes enforcement of their rights very difficult. The Platform for Labour Action noted that attempts to sensitize workers about the importance of demanding a written contract have not been fruitful.

They explained that given the current rates of unemployment, employees do not feel they are in a position to make demands "There is no work [so] people work with or without contract letters."¹¹²

Section 59 of the Employment Act stipulates that upon entering into a contract of employment whether written or oral an employee is entitled to receive written particulars of that contract including: hours of work, the date upon which service began, the employee's wages and the interval at which they are to be paid.¹¹³ Unfortunately, this provision of the Act is little known and rarely followed.¹¹⁴

In **Ready Mixed Concrete V Minister Of Pensions (1968) 2 QB497 Mc Kenna J** explained that a contract of service exists if a servant agrees in the performance of his services to another's control in a sufficient degree to make that other person master. Those three factors should be considered; whether the servant agrees to provide work and skill in consideration of a wage or whether he agrees to be subject to a sufficient degree of control whether the other provisions of the contract are consistent with the existence of a contract of service.

4.2. Equal pay for equal work

Pursuant to Article 7 of the ICESCR and Article 40 of the 1995 Constitution, employees are entitled to equal pay for equal work. As stated in the ICESCR, this means that employees are entitled to

¹⁰⁹Supra note 6 at s. 25.

¹¹⁰Ibid. at s. 26.

¹¹¹Ibid. at s. 26.

¹¹²Interview of Betty Akello, Platform for Labour Action, Lira Office (6 September 2010) [Akello, PLA].

¹¹³Supra note 6 at s. 59.

¹¹⁴Interview with Mr. Lyel Moi Odong Ongab, former Secretary General for NOTU, Of 1St March 2012., supra note 74.

equal remuneration for work of equal value without distinction of any kind. Further, pursuant to the Employment Act, employees are entitled to freedom from discrimination in employment on several enumerated grounds including: race, colour, sex, religion, political opinion, national extraction or social origin.¹¹⁵ Discrimination in employment was not one of the more prevalent complaints uncovered by FHRI in its research.

However, the Uganda Horticulture and Allied Workers Union (UHAWU) did report that wages at Tilda do not necessarily correspond to an employee's position and level of experience but are instead set based on the discretion of management, in other words, employees working in the same position for the same number of years may be paid significantly different wages.¹¹⁶ The Uganda National Teachers' Union also noted that discrimination on the grounds of HIV status is an issue in the education sector:

We have many cases where, when the teachers get to know that a teacher is HIV positive and starts maybe falling ill, they go to the district education officers and they tell them to have that teacher transferred to another school.¹¹⁷

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

In **Wily Owacha V Ringa Enterprises Co. Ltd & Patrick Okumuringa SCCA No. 31/1994**. The court held that in our view there was a valid service contract between the appellant and the respondents where under, the respondents were obliged to pay the appellant pound sterling 200 per month as salary among other benefits. It was the responsibility of the respondents to obtain permission for the repayment of the money in pound sterling.

¹¹⁵Supra note 6 at s. 6.

¹¹⁶Interview with Stephen Barasa, General Secretary, Uganda Horticulture and Allied Workers Union on 24 January 2012 [U]HAWU.

¹¹⁷Interview of Teopista Birungi, General Secretary and Juliet Wajega Sasagah, Programme Co-coordinator, Uganda National Teachers Union 2 June 2012 [IJNTU] and UGAWU, supra note 80.

4.3. Reasonable working hours and adequate rest

Part IV of the Employment Act sets out the rights and duties of employees and employers in the employment relationship, including the right to: weekly rest; work no more than 48 hours per week; annual leave and public holidays; sick pay and maternity/paternity leave.¹¹⁸

The case of **Addis Vs. Gramophone Co. Ltd [1909] A.C 488**. This case decided that injury to feelings and reputation cannot be taken to account in assessing damages for wrongful dismissal.

Weekly rest

Employees are entitled to one day of rest for each 6 consecutive days of work.¹¹⁹ In the course of this research, it was observed that the requirement for weekly rest was well adhered to for permanent employees but that casual workers were less likely to get the required day off. This may be attributable to section 52 of the Employment Act, which states that workers whose pay period is one week or more cannot be deducted pay for their mandatory day of rest.¹²⁰ In other words, workers whose pay period is less than one week (i.e. casual labourers) do not have to be paid for their statutory day of rest. As a result, most casual labourers will opt to forfeit their weekly day of rest in order to maximize their earnings.

Red Bridge Borough Council V Fisherman (1971) AC 240 A teacher employed to take charge of a resource centre was asked to work for more hours. It was held that any additional working hours should be paid for.

Workweek

Employees may not be employed for more than 48 hours per week and 10 hours per day without being paid overtime.¹²¹ Although there are several exceptions, such as shift work, even for these employees a limit of 56 hours per week on average is set.¹²² Failure to pay overtime was reported as a problem in the private sector. National Union of Education Institutions has this to say: ...

¹¹⁸Supra note 6 at s. 5 1-61.

¹¹⁹Ibid. at s. 51 and 52; see s. 52(2) for exceptions which include a person holding a high managerial position and a person working in a family establishment employing not more than five dependent relatives.

¹²⁰Ibid. 52.

¹²¹Ibid. at s.53(1).

¹²²Ibid. at s. 53(4) & (5).

*The only problem we have in this area is if people go beyond working hours there is no specific arrangement for paying them extra hours of overtime... in public Universities they are paid overtime. In schools, primary and secondary institutions and colleges there is no specific arrangement for that.*¹²³

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

Koori V Uganda Electricity Board (1981) HCB 52 Duke J held that in view of the court's finding above, the court could not make a declaration that the plaintiff was still an employee of the defendant. A contract of service was not specifically enforceable.

Sick leave

Employees who have performed at least one month of continuous service for their employer and are contracted to work for at least sixteen hours a week are entitled to pay for the first month's absence from work at the full rate of pay.¹²⁴ It was found out that many employees fail to notify their employers of their absence and that this failure sometimes results in dismissal: They [workers] are also dismissed when they get ill and cannot report on time. When they are finally able to get to a phone to call in, they are already dismissed without a fair hearing.¹²⁵

Pursuant to the Employment Act, employees are required to give notice to their employer of their absence, but only as soon as is reasonably practicable.¹²⁶ This provision in the Employment Act seems to take into consideration reasonable causes that may delay an employee from calling in. Even if they are not able to call in at all, this failure does not justify summary dismissal.

Section 41(6) of the Employment Act provides, that an employee who fails to show up for work without notice will not be entitled to be paid for that day, unless they have completed at least 3 months continuous services and the absence is due to an "exceptional event," such as a summons to court, or the death of a family member. The Act also provides that, where requested by employers,

¹²³NUEI, supra note 118.

¹²⁴Supra note 8 at S. 55

¹²⁵Interview of Anita Kiddu Muhanguzi, Legal & Advocacy Officer, Platform for Labour Action (31 May 2012)[PLA].

¹²⁶Supra note 6 at s. 55(2)(a).

employees will provide a medical certificate substantiating their illness.¹²⁷ This is also difficult for some employees with limited access to medical services:

*In addition, the process of getting sick leave is difficult. If you are sick, in order to be paid for your time off, you must access a hospital to document that you are ill.*¹²⁸

In some areas, this takes so long that some teachers are not benefiting.¹²⁹ This section of the Act should be amended to require medical certificates only for absences of one week or more. **Swarborton V Cooperative Wholesale Soc. (1917)1KB 663** court 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 and maternity leave

Employees who have performed more than six months of continuous service for their employer and who are contracted to work for sixteen hours a week or more are entitled to 3 weeks of paid vacation per year, to be taken at a time agreed between the parties.¹³⁰ While this is reasonable on its face, it was found that some employers avoided granting annual leave on ground that the requested times were not convenient. To address this issue, section 4(1) (a) of the Employment Act should be amended to state that annual leave may be taken at a time consented to by the employer, which consent may not be unreasonably withheld. Again, entitlements to annual leave appeared to be well respected in the public sector but less so in the private sector:

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

*A: [Yes] but only in government health facilities. In private facilities, missionary, and NGOs, this is nonexistent.*¹³¹

¹²⁷Ibid. at s. 55(2)(b).

¹²⁸UNTU, supra note 140.

¹²⁹Supra note 6 at s. 54, note: s. 54(4) the Employment Act omits to include after ss. (a) either: 'and' or 'or', thus it is not clear whether an employee must have worked for both or either six months and sixteen hours a week. For the purposes of this report we have assumed it should read 'and' but s. 54(4)(a) should be amended to clarify this.

¹³⁰ Interview of Edith Nassuna, General Secretary and Godfrey Gimei, Administrative Officer of the Uganda Nurses & Midwives Union (2010) [UNMU].

¹³¹Supra note 6 at s. 56 and 57.

Women are entitled to two months of paid maternity leave and their husbands to 4 days paternity leave.¹⁵⁶ Women are also guaranteed the right to return to the job held immediately before taking maternity leave or a suitable alternative on terms no less favourable than the previous employment.

Uganda Commercial Bank V Yerusa Nabudere & AP Nabudere CACA 31/2001. It was held that when one merely goes on leave, he is still on pay roll. He is therefore entitled to all benefits of being employed even when on leave. The purpose of taking leave is to get refreshed and invigorated so that performance is improved on resumption of duty. **In John Otto V UEB (1981), HCB 52** court held that leave is an entitlement and not a privilege. That it is a right that cannot be foregone.

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

*Theoretically, teachers are given leave. Nevertheless, those in the rural areas are vulnerable. When they leave, there is no one to take their place, so when they take leave there is no teacher for that class.*¹³²

The Uganda National Teachers Union reported that it has been advocating for increased funding for the education sector and pay rise for teachers because the low salaries paid to teachers has been an impediment to recruitment resulting in a shortage of qualified teachers.¹³³

4.4. Wrongful dismissal

Wrongful dismissal is where an employee has been dismissed without notice or an employee has not been given the right amount of notice, or the employment is terminated contrary to the contract. Wrongful dismissal is based upon the actual contract between the employer and the employee and so breaches of that contract by the employer could give the employee the right to sue for wrongful dismissal. **Jupiter General Insurance Co. V Shroff [1937] 3 A.E.R 67** in this case the privy council held that summary dismissal is a strong measure justified only in exceptional circumstances. The court also said that the test to be applied in determining whether a dismissal was justified must vary with the nature of the business and the position held by the employee.

¹³²UNTU, supra note 92.

¹³³ibid:

Legislative Framework

Most contracts of employment may be terminated by either party giving the necessary notice of termination. This is what is called dismissal by notice in **Ridge vs Baldwin**¹³⁴ the learned judge held that dismissal on proper notice is lawful regardless of the motive behind it that is to say, at common law there is no obligation upon the employer to give reasons for dismissal.

An employee cannot be terminated without adequate notice, compensation in lieu of notice, or just cause.¹³⁵ Summary termination occurs where an employer terminates the service of an employee without notice or less notice than the employee is entitled to under section 58 of the Employment Act.¹³⁶ Summary dismissal is only justified when an employee's conduct amounts to a fundamental breach of his or her obligations under the employment contract.¹³⁷ Prior to reaching a decision of whether or not to dismiss the employee, the employer must explain to the employee the grounds that may lead to his or her dismissal and the employer must hear and consider any representations of the employee.¹³⁸ Of significance in a country where so many people are paid monthly, where an employee's pay period is longer than the period of notice to which he/she is entitled, the employee is entitled to notice equivalent to that pay period.

Probationary employees

The above restrictions on termination do not apply to employees who are on probation, however probationary employees are entitled to a minimum of 14 days' notice or payment of seven days wages in lieu of notice prior to dismissal.¹³⁹ All other employment standards apply equally to probationary employees, subject to the provisions of the Employment Act. A probationary period can be up to six months with the possibility of a six-month extension with the agreement of the employee.¹⁴⁰ The allowance for a six-month extension is another provision of the Employment Act that leaves employees vulnerable in an economy where employees have little to no bargaining power.

¹³⁴[1964]A.C 40

¹³⁵Supra note 6 at s. 5 8(1).

¹³⁶ibid. at s. 69(1).

¹³⁷ibid. at s. 69(3).

¹³⁸ibid. at s. 66(1) — 66(3).

¹³⁹ibid. at s. 66(1) — 66(3).

¹⁴⁰ibid. at s. 67(2).

Dismissal without just cause

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

*The government has procedures in place to ensure that people are not wrongfully dismissed. However, in some private hospitals they can just dismiss a worker at any time. It is common there, but in government, there are disciplinary measures.*¹⁴¹

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

*“Workers are often dismissed right away when they ask for better working conditions.”*¹⁴²

Prohibited grounds for summary dismissal as set out in the Employment Act include pregnancy, HIV status, initiation of a complaint against an employer, or an employee’s membership in a trade union or participation in activities of a trade union.¹⁴³ This latter ground for dismissal was the most frequently complained of. While employees who are members of a union are more susceptible to wrongful termination they are also more likely to seek redress in the event of summary dismissal. Union representatives will usually act quickly to file a wrongful dismissal complaint with a labour officer where an employee is dismissed without notice. If a labour officer decides that an employee’s complaint of unfair termination is well founded then the labour officer can order that the employee be reinstated or appropriately compensated.¹⁴⁴ Unfortunately, without guidance or facilitation, this remedy is not always practically accessible for non-unionized employees. Other factors inhibiting access to justice include the chronic shortage of labour officer’s and the in operation of the industrial Court, which is the only avenue for appealing the decision of a labour officer.

Shell (Uganda) Ltd V George Ndyabawe SCCA 6/2005; 23/11/06 Tsekooko Jsc (Lead Judge), an employer has a right to terminate the employment of his employee at any time for any reason or for no reason at all. The employer must do so in a manner warranted by the contract, otherwise he will be liable for damages for unlawful dismissal.

¹⁴¹UNMU, supra note 154.

¹⁴²PLA, supra note 149.

¹⁴³Supra note 6 at s. 75 and 76.

¹⁴⁴ibid. at s. 71 77-78

4.5. Foreign Investors.

In addition to issues of wrongful dismissal, one of the most frequent complaints heard on the subject of employment standards is in respect of foreign investors: Many investors come to this country and you wonder whether they have been shown the labour laws of this country. Uganda has one of the best labour laws in Africa, but they come and violate the workers' rights the way they want.¹⁴⁵ Julian Nyachwo, 'Industrial Relations Officer with the Federation of Uganda Employers, defended the larger multinational corporations as being generally respectful of local labour laws explaining that it is the smaller foreign operations that are more likely to be uninformed about their legal obligations.¹⁴⁶

The General Secretary of the Uganda Building Construction, Civil Engineering, Cement & Allied Workers' Union (the Construction Union), stated that foreign investors in the construction industry are notorious for flaunting the country's labour laws: African governments have recently collaborated with the Chinese government. They are coming here to invest in Africa. They have come in a big force. Nevertheless, they abuse workers a lot. They do not accept unionization and human rights. This is something we want to talk about very clearly.¹⁴⁷

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

"The challenge is that some of the foreign investors are not in Uganda for development; they are in Uganda for profit. Sometimes politicians guarantee them protection. So we have the laws, and when we come to enforce them, the investors hide behind the promises of the politicians. There are times when some political leaders say that the investors should not be disturbed.¹⁴⁸

The current practice of government insulating business is not limited to foreign investors. As explained by the former Secretary General of NOTU, most politicians in Uganda are receiving political and financial support from local and international companies and, in a bid to retain their

¹⁴⁵Interview of Catherine Aneno, General Secretary of the Uganda Textile, Garment, Leather & Allied Workers' Union (7 June 2012) [UTGLAWU].

¹⁴⁶Interview with Julian Nyachwo, Industrial Relations Officer with the Federation of Uganda Employers (25 January 2012) [FUE].

¹⁴⁷Interview of Oloka Mesilamu, General Secretary and Ochwo Okiimu, Organizing and Education Secretary of the Uganda Building Construction, Civil Engineering, Cement & Allied Workers' Union (18 June 2012) [Construction Union].

¹⁴⁸Interview of (anon), Labour Inspector (12 June. 2016) [Labour Inspector].

support, they will sometimes intervene on their behalf to see that investigations into labour related issues are dropped.¹⁴⁹ In addition to poor enforcement of employment standards, a common concern with foreign investors is the failure of business owners and management to engage translators to communicate with the workers.

4.6. Minimum Wage

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

“The President kept saying that he was consulting to get the right figures. Up to now we have put pressure, but still waiting... For him he just says he is consulting. He has been consulting since 1997. He has been consulting for 17 years.”¹⁵⁰

Union representatives and employees unanimously expressed the need for enactment of a law providing for a minimum wage. The UDHR states, “Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worth of human dignity.”¹⁵¹ Uganda has ratified the ILO Minimum Wage Fixing Machinery Convention that requires member states to “create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain trades.”¹⁵² The last minimum wage in Uganda was set in 1984 at 6,000/= per month. However, in 1986 there was a currency fold, so today this would equate to 60/= per month (roughly USD \$0.03).¹⁵³ In 1997 the Minimum Wage Advisory Board, established two years prior, recommended a minimum wage of 75,000/= (USD\$32) but “the President and the Ministry of Finance rejected the Board’s proposals, and indeed any idea of a minimum wage at all.”¹⁵⁴ Nevertheless, with the new parliament elected we hope they set a minimum wage.

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

¹⁴⁹Interview with Mr. Lyel Moi Odong Ongab, former Secretary General for NOTU, on 1St March 2016., supra note 74.

¹⁵⁰COFTU, supra note 41.

¹⁵¹UDHR, supra note 58 at art. 23(3).

¹⁵²International Labour Organization C26 Minimum Wage-Fixing Machinery Convention, 16 June 1-92 8, (entered into force 14 June 1930, ratified by Uganda 4 June 1963).

¹⁵³COFTU, supra note 88.

¹⁵⁴Barya, John-Jean. “Trade Unions, Liberalisation and Politics in Uganda” in Bjorn Beckman, Sakhela Buhlungu & Lloyd Sachikonye, eds., *Trade Unions & Party Politics: Labour Movements in Africa* (Human Sciences Research Council, 2010) [Barya, “Trade Unions and Liberalization”] at 94.

were among those employees at the bottom end of the pay scale, making as little as 2,000¹⁵⁵ per day (thereby putting these employees below the world poverty line).¹⁵⁵

However, after a long struggle that involved numerous labour disputes, the flower sector has emerged as rare good news, having recently signed both recognition and an industry wide collective bargaining agreement with the Uganda Horticulture and Allied Workers Union (UHAWU).¹⁵⁶ This has resulted in an increase in pay for flower sector employees. Low wages have also led to 'brain-drain' (emigration of the country's most educated workers). For example, a report compiled by the Ministry of Health revealed that in 2010, 808 nurses left the country to seek higher-paying work abroad despite the country's shortfall of 2,290 nurses in government hospitals alone.¹⁵⁷ This exodus of nurses is representative of the larger trend with Uganda reportedly losing at least 1,400 skilled professionals each year.¹⁵⁸

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

"They say they cannot fix the minimum wage because this is a liberalized economy. Therefore, they want the market to fix the wages, which is very unfortunate. When you leave it to the market to fix the wage, then you are subjecting these workers to exploitation."¹⁵⁹

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

¹⁵⁵According to the World Bank, persons living below the poverty line are those living on less than \$1.25 a day <http://www.worldbank.org>

¹⁵⁶UHAWU, *supra* note 139.

¹⁵⁷Al Mahadi Senkibirwa, "Over 800 Nurses trek to work abroad," Daily Monitor (8 October 2010) <http://www.monitor.co.ug>

¹⁵⁸*Ibid.*

¹⁵⁹Construction Union, *supra* note 122.

On 1 December 2010, Cabinet passed the National Employment Policy, which had been under review since 1998.¹⁶⁰ Among other things, the Policy recommends the establishment of a Minimum Wages Advisory Board to undertake research on the impact of minimum wages on employment and wage trends in key sectors. For employees who have watched the government drag its feet on implementing a minimum wage for the last two decades under the presence of seeking feedback, the time for research is long past. It is hoped by all, and will be closely watched to see, that the promises made under the National Employment Policy shall swiftly turn into action.

4.7 Occupational Safety and Health

*Another problem is acute unemployment in this country. The workers do not have bargaining power, especially workers who are not in the union. They will go in for anything, because they are desperate, as long as they get a job. -And the employers, of course, are not observing these laws. They do not provide proper tools, they do not provide protective gear it is a problem that can even - result in death. Sometimes when there is an accident employees are not treated, sometimes they are not compensated. Therefore, this is a big challenge.*¹⁶¹

4.7.1

The Universal Declaration of Human Rights states, “Everyone has the right, to just and favourable conditions of work and to protection against unemployment.”¹⁶² The International Covenant on Economic, Social and Cultural Rights further obligates member states to “recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular safe and healthy working conditions.”¹⁶³ In addition to these international human rights instruments, the government of Uganda has ratified a number of ILO conventions for the protection of workers’ safety and health.¹⁶⁴

¹⁶⁰Faridah Kulabako “Employers want say on minimum wage talks,” Daily Monitor (3 December 2010) - [p://www.monitor.co.ug](http://www.monitor.co.ug)

¹⁶¹Oloka Mesilamu General Secretary, Uganda Building Construction, Civil Engineering, Cement & Allied Workers’ Union, [paraphrased].

¹⁶²Supra note 64 at art. 23(1).

¹⁶³Supra note 58 at art. 7(2).

¹⁶⁴e.g. The Workmen’s Compensation (Agriculture) Convention, 1921 (C12), the Workmen Compensation (‘Accidents’) Convention, 1925 (C 17), the Labour Inspection Convention, 1947 (C8 1) excluding part II, the Employment Policy Convention. 1964 (C 122), and the Vacationed Rehabilitation and Employment (Disabled Persons) Convention, 1983 (C 159).

Uganda's international commitments are reflected in section 40 of the 1995 Constitution, which states that Parliament shall enact laws "to provide for the right of persons to work under satisfactory, safe and healthy conditions."¹⁶⁵ This constitutional obligation was realized with the enactment of the Occupational Safety and Health Act and the Workers Compensation Act.¹⁶⁶ On paper, these laws provide broad preventive and restorative measures to protect the safety and health of workers at the workplace. The OSHA sets out the duties of employers and minimum standards of workplace health and safety while the Workers Compensation Act establishes employer liability in the event of workplace accidents and injuries and an obligation to carry insurance to provide compensation for these incidents.

The Key common Law principle is that the employer owes a duty of care to his employees as individuals. In **Paris V Stephen Bough Council**,¹⁶⁷ Mr. Paris worked as a cleaner, part of his duties consisted of scrapping rust from the underside of vehicles, this was not a normal practice for each employer to provide goggles for this task. Mr. Paris had only one good eye and when a splinter of rust entered his only functioning eye, Mr. Paris was totally blinded. Court held that the employer owes a duty of care to the employee as an individual Mr. Paris's employer should have foreseen that there was a great risk to injury and acted accordingly.

In **Wilson & Cycle Coal Co. Vs US English**¹⁶⁸ it was held that the liability for safety and health of employees must lie only on the employer Thus though performance of safety duties may be delegated the responsibility remains with the employer, in other words, the vicarious liability principle operates to hold the employer liable.

4.7.2 Preventive measures

As pointed out by the General Secretary for the National Union of Plantations and Agricultural Workers (NUPAW), when it comes to occupational safety and health, enforcement of preventive measures should take priority. In **Berry Vs Stone Nanganese Co. Ltd.**¹⁶⁹ The employees worked in an area of the works in which noise level was high, the employer provided ear defenders but little effort was made to ensure that employees actually wore them. Court held that in view of the known danger to employees from the high noise level and in view of the fact that the danger may not have

¹⁶⁵Supra note 59 at art. 40(1)(a).

¹⁶⁶Supra notes 9 and 12.

¹⁶⁷(1951) All E R

¹⁶⁸(1938) AC 57

¹⁶⁹(1972)1 Lloyd's Rep 182

been apparent to many of the employees, the employer had a duty to ensure that protective equipment was not only supplied but that the employer must see to it that they were actually used. Employers have to often not be reluctant after providing protective wears; they should ensure that proper use of the same safety equipment is implemented.

“A lot of workers... are injured, others die, and they are cut by machines. Even compensation becomes a problem because they engage their lawyers and there is always a problem to compensate. Nevertheless, compensation is not the thing because to compensate when you have lost your arm, you have lost one eye... the thing that should be done is to protect the worker, not to compensate. It may not be enough.”¹⁷⁰

The Occupational Safety and Health Act requires all employers to take “as far as is reasonably practicable, all measures for the protection of his or her workers and the general public from the dangerous aspects of the employer’s undertaking at his or tier own cost.”¹⁷¹ These measures include provision of protective equipment where required, maintenance of machinery, employee education on preventing workplace accidents, and medical monitoring of employee health. The OSHA further requires employees to report workplace hazards, and stipulates that employers shall not require employees to continue working in hazardous situations.¹⁷² Employer compliance with these requirements is varied at best. Reports from the agricultural sector, where employees are often living in collective housing at the plantation, were particularly dismal:

You find that what is supposed to be given at the factories and the plantations, workers are not protected. When they are not protected the workers will operate dangerous machines, which are in poor condition. They are living in poor houses, no proper sanitation, no proper toilet faculties. You know, they are drinking water, which is from unhygienic sources. All these are issues of health and safety. Even the inspectors from the Ministry of Labour are supposed to inspect the places to ensure that they follow the safety regulations and, but they do not.¹⁷³

The above comment from the General Secretary of the National Union of Plantation and Agricultural Workers highlights some of the primary safety and health issues observed, including

¹⁷⁰NUPAW supra note 72

¹⁷¹Supranote 11 ats. 13(1)(a).

¹⁷²Supra note 11

¹⁷³NUPA W, supra note 72.

unhygienic drinking water, insufficient protective gear and a general lack of enforcement of legislated Occupational Safety and Health standards.

Protective Equipment

Section 13 of the OSHA obligates employers to provide adequate personal protective equipment to guard against the risk of accidents or adverse effects on health.¹⁷⁴ Compliance with this requirement is low. Employee failure to keep and/or wear protective equipment was frequently cited by employers as an excuse for non-compliance with the requirement to provide protective gear.

On a tour of the Uganda Tea Corporation's plantation it was noted that none among a group of sprayers working in the field were wearing masks, gloves or goggles.¹⁷⁵ Sprayers at UTC use a blend of two chemicals to control the growth of weeds: Roundup (glyphosate) and 2-4D (a phenoxy herbicide). Overexposure to 2-4D may cause a variety of side effects including nausea, vomiting, abdominal pain, decreased blood pressure, muscle weakness or muscle spasms.¹⁷⁶

Exposure to these chemicals has also been linked to increased risk of Parkinson's disease.¹⁷⁷ When asked about this Vikram Singh Giauhan General Manager at Uganda Tea Corporation noted that protective equipment is provided to employees¹⁷⁸ as well as training on the proper handling of chemicals but explained that the company was faced with the problem of employees selling their equipment:

"For them they get gumboots and after that it is sold. You give it to them again and they sell it again. They also have to realize the difficulties, which can come if you do not use the gumboots. We are providing them with soap and everything, but if someone takes the soap and sells it what can I do?"¹⁷⁹

As frustrating as this may be the responsibility to ensure that employees are wearing the required protective gear ultimately rests with the employer. This is even explicitly set out in the section of

¹⁷⁴Supra note 11 at s. 13(2)(g).

¹⁷⁵Tour, Uganda Tea Corporation, Lugazi, (6 July 2012).

¹⁷⁶Nufarm, Material Safety Data Sheet/or 2, 4-D L. V. 4 Ester (10 May 2007). pg 7

¹⁷⁷R.J. Denis-Oliveira, F. Remião, H. Carmo, J.A. Duarte, A. Sanchez Navarro, M.L. Bastos and F. Carvalho, Parquet exposure as an etiological factor of Parkinson's disease", Neuron Toxicology, Vol. 27, No. 6, Dec.2006,pp. 1110 1122.

¹⁷⁸Note: employees at UTC advised that only permanent employees were provided with safety equipment.

¹⁷⁹Interview of Vikram Singh Giauhan, General Manager, Uganda Tea Corporation, Lugazi (6 July 2010).

the OSHA that mandates the provision of protective clothing and equipment where the level of pollution and chemical substances in a working environment exceed exposure limits:

Section 19(2) states that it shall be the duty of an employer to ensure that personal protective equipment provided under subsection (1) is used wherever it is required. In **Wilson & Cycle Coal Co. Vs English**¹⁸⁰ court held that the liability for safety and health of employees must lie only on the employer. Thus though performance of safety duties may be delegated the responsibility remains with the employer.

Enforcement of the use of protective equipment can be accomplished through the development of a workplace policy that sets out progressive disciplinary measures for employees who fail to wear their equipment. In fact, the OSHA obligates any employer with 20 employees or more to have a workplace health and safety policy in place that is known to employees and enforced.¹⁸¹ The alleged practice of employees selling their equipment could be curbed by requiring employees to leave protective equipment with their supervisors at the end of each day or check equipment in and out of a designated storage space on a daily basis.

Case Study 4.2: Failure to Provide Protective Gear

John, Uganda Tea Corporation, Lugazi (not real name)

John is a chemical sprayer at Uganda Tea Corporation. He was told he had been hired as a contract employee; however he has not been given a written contract containing the terms of his employment. Joseph has been spraying Roundup 2-4D for the past eight months wearing only overalls and a pair of plastic sandals. Joseph eats his lunch with his hands and rinses his hands with water but no soap before eating. Joseph does not know the health risks of exposure to the chemicals he has been spraying.

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

¹⁸⁰(1938)AC57

¹⁸¹Supra note 11 ats. 14.

*When you look at a factory, it is creating jobs. Yet it needs to profit. The employer is responsible to look after the workers' health, but it cannot continue without making a reasonable profit. Therefore, the employer needs to look at how to make profit.*¹⁸²

Lack of funds or a decreased profit margin is similarly not an excuse for the failure to provide required safety equipment. If employers cannot afford to operate safely then they cannot operate legally. Employers arguing that safety can be traded-off for profit are a reflection of the current attitude of government which prioritizes investment over enforcement of labour rights and which views the two objectives as being at odds. As discussed elsewhere in this report, labour rights should be enforced primarily because they are rights and because it is the law, but also because failure to enforce employment standards will only provide savings in the short term. The ultimate cost of non-compliance can be tenfold the short-term savings. This is particularly true of the consequences of failing to enforce minimum safety standards as workplace accidents could result in damages, ranging from expensive lawsuits to the closure of the business while accidents are investigated or employees on strike. In the case of fatal workplace accidents, employers must pay the family of the deceased a sum equal to sixty times the employee's monthly earnings as well as expenses of medical treatment and burial of the deceased.¹⁸³

Enforcement

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

Proceedings instituted under the OSHA are brought before magistrate courts.¹⁸⁴ Due to the funding constraints faced by the Ministry of Gender, Labour and Social Development there are presently only 22 labour inspectors in the entire country.¹⁸⁵ Training programs for labour inspectors have also been slashed; new labour inspectors now receive only one month of training after being appointed.¹⁸⁶ The obstacles faced by labour inspectors in attempting to fulfill their mandate were summarized as follows:

¹⁸² Interview with a Manager of Phoenix Logistics, Kampala (15 July 2010).

¹⁸³ WCA, supra note 14 at s. 4.

¹⁸⁴ OSFIA, supra note 11 at s. 9.

¹⁸⁵ Labour Inspector, supra note 123.

¹⁸⁶ *ibid.*

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

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

I remember in the past, the Ministry of Labour had a department of Occupational Safety and Health. They used to go to workplaces and even check workers, especially in the government sector, [but] I do not see it being done anymore.¹⁸⁷

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

There are employers who threaten employees that 'if you report about an accident we will terminate your contract' and in most cases they do when you get an accident and you report, instead of treating you, you may be issued a termination letter.¹⁸⁸

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

¹⁸⁷UTGLA WU, supra note 120.

¹⁸⁸Interview with Mr. Lyel Moi Odong Ongab, former Secretary General for NOTU, on 1st March 2012..

4.7.3 Liability and compensation for workplace injuries

The Workers' Compensation Act establishes absolute employer liability for any personal injury resulting from accidents that occur in the course of a worker's employment including accidents occurring while an employee is travelling to or from their workplace.¹⁸⁹ Compensation for workplace accidents may include up to five years' salary replacement (including the value of benefits such as food, accommodation, and other benefits in kind supplied by the employer), as well as the cost of medical treatment associated with the illness or injury.¹⁹⁰ Employers are required by the WCA to maintain insurance to cover compensation claims.¹⁹¹

Under common law, a master is liable for his personal acts and omissions together with breach of his primary duties to supply hours of work, health and welfare, a safe system of work, proper appliance and efficient personnel. In **Jurna VS NYTIL**¹⁹² an accident had occurred involving a laboratory assistant who was mixing sulphuric acid and using new containers for the purpose of some industrial process. In the process the container collapsed, the mixture of the acid poured on the floor and his boots and as he tried to avoid it and was later hospitalized for 2 months and he claimed damages for permanent disability. It was held that at common law, an employer owes a duty of care to his employee to maintain safe premises, a safe system, safe appliances, implement and plant. The duty consists of the employer taking reasonable, precautions for the worker's safety.

Workplace accidents must be reported to employers who are then obligated to report them to the labour district officer.¹⁹³ The employer must then arrange to have the employee examined by a qualified medical practitioner at no charge to the employee.¹⁹⁴ The employer and employee may with the approval of a labour officer, come to an agreement as to compensation, provided the amount is not less than that stipulated under the WCA.¹⁹⁵ If the employee and employer fail to come to an agreement within 21 days from the date of the accident then the worker may make an application to enforce his/her claim to the court having jurisdiction in the district in which the

¹⁸⁹Supra note 14 at s. 3. Note: Employers are not liable for injuries which do not incapacitate the worker for at least three consecutive days from earning full wages. In such cases employees can take paid sick leave pursuant to the Employment Act.

¹⁹⁰OSHA, supra note 11 at s. 1, 4—6, and 24.

¹⁹¹WCA, supra note 14 at s. 18.

¹⁹²(1975)HC8292

¹⁹³Ibid. ats.9and 10.

¹⁹⁴Ibid. ats. 11.

¹⁹⁵Ibid. ats. 12.

accident occurred.¹⁹⁶The unfortunate reality for most employees, however, is that a workplace injury means unpaid time away from work.

*I was a victim one time - I was cut by a machine... the time I spent on treatment was not paid for tried negotiating for it but they refused and told me to leave the company if I wanted. I was forced to come back to work before getting better.*¹⁹⁷

In **Byarugaba VS Kilembe Mines Ltd**¹⁹⁸ the plaintiff who was a minor employed by the defendant claimed damages for injuries sustained in a rock fall in the mine as a result of which both legs were amputated, aged 22 years earning 350Ugx he was fitted with artificial limbs. It was held that provided that he was working this was merely on unauthorized method of doing work and his employers were liable in negligence.

¹⁹⁶ibid. ats. 12.

¹⁹⁷interview of employee (anon), Aroplast Enterprises (29 November 2010).

¹⁹⁸[1972] EA 339

Case Study 4.3 — Non-Compensation for Workplace Injuries

Mr. Segawa Henry, Swift Bus Company

Mr. Segawa Henry, a former employee of Swift Bus, was shot by highway robbers while on duty driving a bus from Kampala to Mbarara in 2007. His injuries left him in great pain and with only limited mobility. Unable to work, his family was forced to sell their home and abandon their burgeoning business. His employers have refused to provide with compensation, pointing to the fact that he does not have a written contract of employment to defend their assertion that he was never an employee. This argument reflects a prevailing misconception about the requirement for a written contract of employment. As codified by the Employment Act, both written and oral contracts of employment are legally binding and import all of the obligations of an employer-employee relationship. Organizations such as the Transport Union Association and UNAPD (Uganda National Action on Physical Disability) have attempted to assist him in enforcing his statutory rights but to date, their efforts have not borne fruit. His struggle represents that of countless other employees who have been denied compensation for workplace injuries because they lack the resources to pursue a legal action on their own.

For those employees who sustain injuries resulting in long-term disabilities, a company's failure to provide compensation according to the law can mean a lifetime of struggling to make ends meet. Such has been the case for Mr. Segawa Henry (Case Study 4.3) a former employee of Swift Bus who was shot by highway robbers on the road from Kampala to Mbarara while on duty in 2007.

The government has failed to address the issue of employers who fail to compensate for workplace injuries and, without the threat of penalty, many employers simply neglect to maintain the required insurance policies. The problem is compounded by a situation where; employers do not want to maintain insurance because the premiums are high but, insurance premiums are high because so few employers have subscribed.¹⁹⁹ Failure to carry workers compensation insurance is an issue, which extends even to the public sector. Dr. Sam Lyomoki, the Chairman of COFTU, recalls the tragic deaths of 39 health sector workers in 2007/2008:

We have cases of workers who died because of the Ebola virus in different hospitals, but getting compensation for those workers was very difficult because the government had not provided for the money in the budget.²⁰⁰

Enforcement of the requirement to carry insurance could be achieved by requiring employers to show proof of an up to date insurance policy in order to have their trading licenses renewed.²⁰¹

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CHAPTER FIVE

SUMMARY, CONCLUSION AND RECOMMENDATIONS

Uganda is a signatory to several international instruments enshrining labour rights and has incorporated these rights into domestic law by way of the Constitution of the Republic of Uganda, 1995, primarily in article 40, which protects a wide range of economic rights. Until recently, however, the legislation implementing these constitutionally protected rights was badly in need of reform. It was not until 2006, after several aborted attempts at legal reform, that four crucial pieces of labour legislation were enacted. These were the Employment Act, the Labour Unions Act, the Labour Disputes Act and the Occupational Safety and Health Act. While Uganda's labour laws combined with the Constitution now provide strong legal protection for labour rights, this research indicates that in practice employees largely do not see the benefits of this new and improved legislation.

This essay presents the findings from a research project on the rights of workers in Uganda. Specifically, the study examines the current level of enjoyment of the right: to work; to join and form a trade union; to minimum standards of employment and to a safe and healthy working environment. This research also goes on to provide a critical analysis of the current obstacles to the successful implementation of labour rights in Uganda.

5.1 Conclusion

It is clear from the failure of government to allocate necessary resources to the Directorate of Labour. This is predominantly due to the prevailing liberal economic policy, pursuant to which the protection of the rights of workers is viewed as being at odds with development.

For the same reason the Government of Uganda has long dragged its feet on the implementation of a badly needed Minimum Wage Act. Pursuant to the National Employment Policy, passed in 2010, a Minimum Wages Advisory Board should be established. Employees everywhere will be waiting anxiously to see if this latest development finally leads to the establishment of a minimum wage.

Freedom of association is not yet a reality for most employees in the country. Although the labour laws provide strong protection for workers' rights to form and join trade unions and participate in industrial actions, employer refusal to recognize and negotiate with trade unions remains widespread and the Ministry of Gender Labour and Social Development has put an unofficial ban on the registration of new trade unions and federations. In the absence of union protection,

employee bargaining power is severely weakened by the high rate of unemployment, limited number of labour officers and the Industrial Court's current state of in operation.

The increasing use of casual labour and associated misconceptions about the definition and rights of a casual labourer has further weakened the ability of workers to enforce their statutory rights as these employees are not given written contracts of employment, have no job security and are less likely to have union representation.

Employers are currently a long way from meeting legislated occupational safety and health standards and complying with compensation requirements for workplace injuries. Due to a shortage of and lack of funding for labour inspectors, enforcement of occupational safety and health standards is weak and employers therefore lack the motivation to take crucial preventive steps such as the provision of protective gear, maintenance of equipment and education of their employees. Failure to maintain occupational health and safety insurance as required by the Workers Compensation Act is also endemic.

Foreign investors regularly violate Uganda's labour laws and are being sheltered by the government against enforcement of these laws.

5.2 Recommendations:

To Government:

- Re-evaluate the rationale that enforcing labour rights is at odds with a strong economy and may discourage Investment and cease sheltering foreign investors from enforcement of labour rights.
- Expedite the appointment of a judge to the Industrial Court and provide the Court with adequate funding.
- Increase funding to the Ministry of Gender Labour and Social Development and ensure that an adequate percentage of the funds are earmarked for the Directorate of Labour.
- Empower Magistrate Courts to hear minor labour disputes or, in the alternative, establish regional labour-specific courts or tribunals.
- Sponsor mandatory seminars for employers, on the content of and duties imposed by the country's labour laws.
- Increase focus on and funding for vocational training for youth.

- Instead of lowering the mandatory retirement age from 60 to 50, allow for voluntary retirement.
- Increase teachers' salaries to improve quality of services and realization of labour rights for teachers currently experiencing labour shortages.
- A minimum wage law should be enacted without further delay.
- Make renewal of trading licenses contingent upon proof of an up to date insurance policy covering workplace accidents.
- Including programs targeting unemployment.
- Amend the Employment Act as follows:
 - ✓ Shift control of labour officers from District Service Commissions back to the Ministry of Gender Labour and Social Development;
 - ✓ Include provisions that address more clearly the rights of casual workers and restrict the length of time a casual labourer can be hired by the same employer before becoming entitled to notice prior to dismissal and entitlements to leave.
 - ✓ Amend section 52(1) to require employers to give all employees, regardless of their status as casual or permanent, a weekly day of paid rest;
 - ✓ Amend section 55(2)(b) to allow employers to require provision of a medical certificate only for absences of one week or more;
 - ✓ Amend section 54(1)(a) to state that employer consent to times requested for taking annual leave may not be unreasonably withheld; and
 - ✓ Amend section 67(2) to remove the possibility of an additional six- month extension of the probationary period.
- Pass Regulations to the Labour Unions Act that:
 - Include specific procedures for registration of union federations;
 - Do NOT make union registration contingent upon prior recruitment of a minimum number of members as this would run counter to the Constitution and several international legal instruments; and
 - Do not limit the number of unions, which can be present in one workplace or sector as this would directly contradict S. 24 (1)(d) of the Labour Disputes Act and the freedom of association as articulated in the Constitution.

To the Directorate of Labour:

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

To the Judiciary:

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

To Civil Society and Unions:

- High Court decisions referring labour cases to the defunct Industrial Court should be appealed.
- Continue efforts to sensitize employees about their rights and duties under the new labour laws and provide procedural information on how to access justice.
- A radio program could be an effective means of achieving these ends.
- Monitor the implementation of the Industrial Processing Venture Capital Fund and expenditure of allocated funds to ensure effectiveness.
- Increase sensitization of employers, employees, union representatives and government officials about the rights and definition of casual labourers.
- The formation of co-operatives among business owners in the informal sector should be facilitated in order to foster better working conditions in this sector.
- Bring an application for judicial review pursuant to section 36(1)(a) of the Judicature Act, seeking to compel the Registrar to comply with section 18(4) of the Labour Unions Act and respond to pending labour union applications for registration.
- Increase employee education about occupational safety and health risks, preventative measures and employee rights and obligations under the Occupational Safety and Health Act (OSHA);

- In the absence of regular labour inspections, report violations of the OSHA to labour inspectors for prosecution in magistrate courts.

REFERENCES

BOOKS

- Barya, John-Jean. (1991). *Employees and the Law in Uganda*. CBR Working Paper (2001). *Trade Unions and the Struggle for Associational Space in Uganda: The 1993 Trade Union Law and Article 40 of the Constitution*. CBR Working Paper No. 63. (2006). *Trade Unions, Liberalization and Politics in Uganda, 1986 to 2006, A paper Presented at the International Sociological Association (ISA), held in Durban, South Africa between 23-29 July.*(2007). *Freedom of Association and Uganda's New Labour Laws: A critical Analysis in the State of Employees' Organizational Rights*. HUREPIC Working Paper No. 4.
- Angeret, Stephen. (1998). *Trade Union Law in Uganda*. (Unpublished). (1998a). *Principles and Cases on the Termination of Contract of Employment*. (Unpublished).
- Gonsalves, Ralph. (1974). *The Politics of Trade Unions and Industrial Relations in Uganda 1950-1971*, Ph.D, Manchester university.
- International Labour Organization. (1992). *Technical Memorandum to the Government of Uganda- Mission to Advise on the Reform of Ugandan Labour Law in Relations to Trade Unions and the Resolution of Trade Disputes*, ILO, Geneva.(1996). *Freedom of Association and Collective Bargaining, General Survey*. ILO, Geneva.(2008): *Global wage report 2008/9*.
- International Labour Organizations of Employers. (Nov 2006). *Labour Law and Micro and Small Enterprises (MSES)*.
- Lumumba, B. (2005). *Summary Report of Basic Study on the Employees' Rights and Gender Perspectives in the Cut-flower Industry in Uganda*, Uganda Employees' Education Association. (Unpublished).
- Lyomoki Sam and Baguma, Arthur. (2000-2009). *Employees Need a Better Deal*. Kampala: New Vision Publications. enteruganda.com/brochures/labour05.htm Ministry of Gender Labour and Social Development (MGLSD). (Friday, 1st May 2009). *Promoting Local Investment for Increased Employment Opportunities*. Kampala: New Vision Publications. <http://enteruganda.com/brochures/labour05.htm>

- Okuku, Juma. (1995). *Employees' Conditions and Struggles at Nyanza Textiles Industries Jinja 1970-1990*, CBR Working Paper No. 47.(2005). *Trade Union and Democratic Transition in Uganda*. Draft Paper under the Project —Trade Unions Transitions in Southern Africa: Prospects for Alliance Building and Policy Impact University of Witwatersrand.
- Opio, Fred and Pajobo, Bruno. (1998). *Symposium on Employment and Employees' Issues in Privatization and Investment in Uganda*. In the National Organization of Trade Unions, International Confederation of Free Trade Unions Africa Regional Organization.
- Opio, Gabriel and Baguma, Arthur. (1st May 2009). *East Africa wants Labour Laws Harmonised*.
- Ouma, Fred. (2000-2006). *Uganda Employers Still Exploit Employees*. Kampala: New Vision Publications. enteruganda.com/brochures/labour05.htm
- Honourable Syda N.M. Bbumba, Minister of Finance, Planning and Economic Development. Budget Speech, Financial Year 2010'11, Delivered at the Meeting of the Fifth Session of the 8th Parliament of Uganda, (10 June 2010).
- Ministry of Finance, Planning and Economic Development, State of Uganda Population Report (2010).
- Ministry of Finance, Planning and Economic Development, Uganda's Poverty Eradication Action Plan (2004).
- Ministry of Gender Labour and Social Development, National Child Labour Policy (November 2006).
- Platform for Labour Action "Enhancing Voices of NSSF Contributors in Decision Making" (Policy Brief, Issue No. 1, May 2008).
- The World Bank, Directions in Development, Human Development, "Youth in Africa's Labour Market" (2008).
- Uganda Bureau of Statistics (2009), the 2009 Child Labour Baseline Survey October 2009 Kampala, Uganda.

Uganda Ministry of Finance, Planning and Economic Development, the Millennium Development Goals, Report for Uganda 2010 (September 2010).

CASES

1. R v Millervoe (1 996)KALR
2. Paris Vs Stephen Bough Council (1951) AIIR
3. Wilson & Cycle Coal Co. Vs US English (1938) AC 57
4. Paris Vs Stephen Bough Council
5. Wifson & Cycle Coal Co. Vs English
6. Jurna vs Nytil (1975) HCB 292
7. Byarugaba vs. Kilembe Mines Ltd [1 972] EA 339
8. Ridge v Baldwin [1964] A.C 40
9. Shell (Uganda) Ltd V George Ndyabawe SCCA 6/2005: 23/11/06

APPENDIX A

OBSTACLES TO LABOUR RIGHTS

Introduction

In the course of its research FHRI encountered a number of recurrent themes from which a few core issues emerged that hinder the successful implementation and enforcement of Uganda's labour laws.

The Government's Economic Policy

Since the late 1980s the Ugandan government has pursued a policy of economic liberalization. Limiting the role of the state and relying on market forces to regulate the workforce. Due in large part to this policy, several previous attempts to revise Uganda's labour laws were unsuccessful.

The ultimate success of these efforts and enactment of the labour laws in 2006 was due not to a hospitable industrial and political climate, but rather to intense pressure from the United States. Dr. John-Jean Barya, a professor of law at Makerere University, contends that the government views the labour laws as populist laws that are a hindrance to investment and economic growth. Although it is still early to assess the Government's commitment to implement and enforce these new laws, to date it has taken few of the critical steps necessary to do so. Specifically, inadequate resources have been committed to the Ministry of Gender, Labour and Social Development (MGLSD); there is a debilitating shortage of labour officers and inspectors. The government's failure to prioritize the protection of workers' rights and enforcement of its new labour laws is an attitude echoed by a great number of employers who cite the need to attract investment and make a profit as excuses for failing to fulfill their statutory obligations towards their employees. The shift in attitude needed for the realization of labour rights will not occur unless it is top-down

Structure and Funding of the MGLSD

Under the first Poverty Eradication Action Plan (PEAP), introduced in 1997, various government departments were restructured; including the Ministry of Labour, which was made a Directorate under the Ministry of Gender, Labour and Social Development (MGLSD).

The MGLSD submits an annual departmental budget, which includes operational funds for the Directorate of Labour. The MGLSD complains of chronic underfunding resulting, in inadequate operational funds being provided to the Directorate. The Minister of the MGLSD stated that at

present the Ministry is operating with about 40% of the required employees but is unable to recruit more due to budget constraints.²⁰² Some have pointed to the reorganization of labour under the umbrella of the MGLSD as being at the root of the Directorate is funding problems:

*In the world over, the ministry of labour operates as a full ministry. The case of Uganda is different. We have the Ministry of Gender, Labour, and Social Development. Labour is merely a department. Therefore, there is a very big mismatch where the country is pushing for the process of industrialization and on the other, hand the mother ministry that is supposed to direct the country on how to develop industries is marginalized.*²⁰³

As pointed out by one labour inspector, however, the organization Of the Directorate is of secondary concern to the amount of funds it is receiving:

*I do not think being a separate ministry is the answer to the problem of facilitation. We could have our own ministry, and the government would give us enough funds to sit at our desks, but if we do not have enough money to get out on the ground, we are in the same position we are in the Ministry of Gender. The issue is not being together, the issue is facilitation. As long as you do not have the facilitation to deliver the services, it will be as well separately as it is together.*²⁰⁴

Labour officers and inspectors both complain of an acute shortage of funding, but the source of these difficulties is different as labour officers are appointed and managed by individual districts, while labour inspectors are appointed and managed directly by the Directorate of Labour.

Decentralization of Labour Officers

Pursuant to the Employment Act, every District Service Commission has the responsibility of appointing a district labour officer responsible for administering the Employment Act. Every district is required to have at least one labour officer Labour officers are responsible for conducting workplace inspections and ensuring compliance with employment standards.²⁰⁵ They are also called

²⁰² MGLSD supra note 105.

²⁰³ UHF TA WU, supra note 112.

²⁰⁴ Labour Inspector, supra note 123.

²⁰⁵ Employment Act, supra note 6 at s. 11.

upon to facilitate the settlement of employment disputes and are empowered to institute criminal or civil proceedings in the Industrial Court in respect of any violation of the Employment Act.²⁰⁶

The management of labour officers by districts has not been ideal for a few reasons. First, this new structure has put labour officers in the difficult position of having to carry out inspections and “enforce these laws against their employers (the local government) and politically-connected employers under their jurisdiction.”²⁰⁷ It is understood that labour officers would be better able to enforce labour laws against local governments and employers if they were not biting the hand that feeds them in the process. Secondly, a number of districts do not have adequate funding to hire, train and pay a full-time labour officer. Despite the requirement in the Employment Act that every district has a labour officer, at present there are over 120 districts in Uganda and only 35 labour officers.²⁰⁸ Limiting the jurisdiction of labour officers to a single district has left 85 districts without this first line of recourse in the event of a labour dispute. Furthermore, some districts have considerably less industry than others do and, in light of the limited resources; more than a single labour officer could serve one such district if restrictions on jurisdiction were removed.

Even those districts with labour officers struggle to sufficiently support them. Didas Tibingwa, a labour officer with the Kasese District reported, that he has had to stop conducting workplace inspections altogether due to lack of funding.²⁰⁹ Funding constraints have also led to labour officers being given the responsibility for labour on top, of their other duties:

They may be the officer in charge of gender, or community development, or social development, and the job of labour, officer is added to those other duties. They usually must attend to those other responsibilities first, since that is their first responsibility. They usually are getting funding for their other position, but often do not get additional funding to carry out their labour responsibilities. Thus, they need to be a little bit ingenious in order to look after labour with the funding they get for the other position.

Adding the, role of labour officer onto the existing duties of civil servants instead of hiring and training full-time staff has severely compromised the value of the position since “some of the labour

²⁰⁶ *Ibid.* at 12–14.

²⁰⁷ Barya, “Freedom of Association.”

²⁰⁸ MGLSD, *supra* note 60.

²⁰⁹ Interview of Didas Tibingwa, District Labour Officer of Kasese District (7 February, 2016) [Tibingwa].

officers don't have very good qualifications to hold the office²¹⁰ and don't know what is expected from their office.²¹¹ Returning responsibility for labour officers to the Directorate of Labour would result in additional resources being available, but would at the very least allow for more efficient use of the limited available resources.

i. The Industrial Court -

The function of the Industrial Court is to arbitrate labour disputes and adjudicate on questions of fact and law.²¹² If a dispute arises between an employee and his/her employer, it is initially referred to a labour officer.²¹³ In the event that the labour officer cannot resolve the dispute, the matter is referred to the Industrial Court.²¹⁴ The Industrial Court is the apex organization for resolving labour specific disputes. Decisions of the Industrial Court may only be appealed on point of law to determine whether the Court had proper jurisdiction over the matter.²¹⁵ The Court is made up of a Chief Judge and a Judge, to be appointed by the President on the recommendation of the Judicial Service Commission (JSC), a representative each of employers and employees and an independent member, to be appointed by the Minister responsible for labour.²¹⁶ The existence of the Industrial Court serves as an important recognition of workers' need for access to justice. The Court is set up in a manner that is intended to be more accessible and expedient than proceeding through the civil court system. Its procedures are simplified and legal representation is optional.²¹⁷ Unfortunately, since the mid-1990s, the court has been marginalized and poorly funded.²¹⁸ In 2006, the tenure of the judges and independent panelists expired and replacements were not appointed. When the current Minister of Gender, Labour and Social Development, Hon. Gabriel Opio, came into office he was pressured to operationalize the Court. In response, Minister Opio appointed an interim judge. After securing funding for training of the interim judge, the Minister was advised by the JSC that any case heard under the interim judge is at risk of being appealed, since the appointment did not follow the statutory procedure for judicial appointments to the Court. Upon learning this, the

²¹⁰Labour Inspector, *supra* note 123.

²¹¹Interview with Mr. Lyel Moi Odong Ongaba, former Secretary General for NOTU, on 1st March 2012.

²¹²Labour Disputes Act, *supra* note 10 at s. 8(1).

²¹³*Ibid.* at s.3.

²¹⁴*Ibid.* at s. 5.

²¹⁵*Ibid.* at s. 22.

²¹⁶*Ibid.* at s. 10.

²¹⁷*Ibid.* at s.18 and 20.

²¹⁸Barya, "Trade Unions and Liberalization", *supra* note 129 at 93.

Minister submitted a request to the JSC to make the required recommendation to the President.²¹⁹ However, to date the courts were officially opened on 22 April 2016, but they are only operational in Kampala District.

Pursuant to section 8 of the Labour Disputes Act, the Industrial Court has jurisdiction to arbitrate on labour disputes referred to it under the Labour Disputes Act and adjudicate upon questions of law and fact arising from references to the Industrial Court by any other law.²²⁰ In its absence, however, labour matters have been brought before the High Court.

Moses Mauku, of the Uganda Hotels, Food, Tourism & Allied Workers Union stated that one High Court Judge would hear labour issues while others refused:

*We have had several problems, because we instead have had to go to these ordinary courts, some of which refer the matter to the industrial Court, which is not there, and all those cases are piling. As and when it opens, we shall have one million files pending for that Court. Some judges in the High Court handle, other judges refer them to the ministry responsible for labour.*²²¹

Case Study 6.1 Access to Justice in labour related matters.

The complete barrier to justice created by the Industrial Court's current state of paralysis recently drew media attention when Associates in Rural Development, an international corporation working in Uganda, sued the Ugandan government for its failure to operationalize the Court. The company had been ordered to pay 150 million shillings to two of its former employees and, in the absence of the Industrial Court, appealed the labour officer's order in the High Court. Their appeal was dismissed for lack of jurisdiction, and they subsequently filed a suit against the government for its failure to establish the Industrial Court. (See: Lydia Mukisa, "Uganda: Firm Sues Government Over Industrial

Reports that the High Court is refusing to adjudicate labour matters are distressing. Pursuant to Article 139(1) of the Constitution and section 14(1) of the Judicature Act, the High Court has unlimited original jurisdiction in all matters. The jurisdiction granted to the Industrial Court

²¹⁹MGLSD, supra note 60

²²⁰Labour Disputes Act, supra note 10 at s. 8.

²²¹UHF TA WU, supra note 64.

pursuant to the Labour Arbitrations Act does not derogate from the broader jurisdiction of the High Court. Thus, any original claim such as a wrongful dismissal complaint, still falls within the jurisdiction of the High Court

Article 139(2) of the Constitution further states that the decision of any court lower than the High Court shall be appealable to the High Court. Accordingly, although section 94 of the Employment Act states that the decision of a labour officer may be appealed to the Industrial Court, it follows that in its absence the High Court retains the jurisdiction to hear these appeals. In addition to the jurisdiction granted to it under the Constitution, the laws of equity demand that individuals be given an avenue to adjudicate violations of their labour rights and appeal the decisions of labour officers. Section 14(4) of the Judicature Act clearly stipulates that if there is a conflict between the rules of equity and the rules of common law the rules of equity shall prevail. One solution to the current situation would be to amend the Labour Disputes Act to allow for the appointment of an interim judge. Even if operationalized, however, with chronic under-funding and only one current location, the Court's ability to fulfill its mandate is questionable. The effective enforcement of labour rights requires access to remedies at the regional level. For example, it is not realistic to expect that an employee who has a labour dispute for an amount as low as 10, 000/= would travel to Kampala to bring it before the Industrial Court. A more practical alternative, or addition, to the Industrial Court would be to enable the magistrate courts to hear labour disputes with financial implications below a certain threshold.

Worker's MPs

There are five Members of Parliament elected by NOR) and COFTU to represent workers (3 from NOTU, one from COFTU and one female representative elected by the Electoral College comprising NOTU and COFTU). Following the 2011 elections, the five workers' MPs are -

- Mr. Charles Bakabulindi (NOTU);
- Ms Teopista Nabulya Ssentongo (NOTU);
- Dr Sam Lyomoki (COFTU);
- Mr. Arinaitwe Rwakajara Rutambuka (NOTU); and
- Ms Marion Tunde (female representative).²²²

²²²Mercy Nalugo & Annah Nafula, 'One new face as four Workers MPs,' Daily monitor (16 February 2011) p://ru.monitor.co.ug.

All five of the incumbent workers' MPs contested on the NRM ticket.²²³ The function served by workers' MPs in Parliament has often been questioned, as the position is perceived to create a conflict of loyalty for workers' MPs between representation of their workers and their employer (the government). Due to their political affiliation workers' MPs are under pressure to support government interests in Parliament rather than workers' interests:

*They therefore see themselves more as agents of NRM-O and the government than of workers and the trade union movement. They raise issues related to workers' interests only as far as such issues do not antagonize the government or the president.*²²⁴

Various workers' advocates have noted the challenges created by this system of representation:

*The trade union movement has gone too deep into politics. Most of the leaders... are being compromised with the government system and they are full of praises for government yet the people they represent are suffering a lot. Provided workers' leaders are being elected under the political party system, it means you expect nothing new in the labour sector in Uganda.*²²⁵

It has been suggested that trade union federations will have to form alliances with members of the political opposition in Parliament if they are to obtain a legitimate platform for representation of workers' interests.²²⁶

Insufficient Sensitization

A key ingredient to the implementation of any new law is adequate sensitization of the affected parties, in this case employers, employees, unions, civil society organizations and key government officials. Numerous unions and NGOs stressed the degree to which workers' lack of awareness of their rights is a debilitating issue. This is especially true of casual labourers. Even when aware of their rights, workers do not know where to turn or what steps to take in the event these rights are violated:

²²³ Author Unknown, "Workers' MPs retain seats," New Vision (14 February 2011).

²²⁴ Barya, "Trade Unions and Liberalization"

²²⁵ Interview with Mr. Lye! Moi Odong Ongab, former Secretary General for NOTU, on 1st March 2012. *supra* note 74.

²²⁶ Barya, "Trade Unions and Liberalization", *supra* note 247 at 105.

Most workers in Uganda are ignorant about where to go in case of labour abuse, surprisingly not only for uneducated even the educated people in the country. For example, if someone has been unfairly discontinued from work he/she may not know what next and where to go.²²⁷

Previously the ILO ran a program entitled 'Strengthening Labour Relations in East Africa' that held workshops across the country to educate people about labour issues. The funding for this programme has unfortunately ceased and although various unions and civil-society organizations are working independently to sensitize employees there is no coordinated national-level education initiative. The District Labour Officer for Gulu reported that they used to run a radio program, which had proven to be an extremely effective method of sensitizing citizens about labour rights and the procedures to be followed to pursue a complaint.²²⁸

Many employers also lack awareness about the legal duties imposed on them by the country's labour laws. The Federation of Uganda Employers (FUE) offers periodic training programs to its members both in Employment Relations and in Occupational Safety Health and has developed a useful publication entitled "The Employers' Guide to the Labour Laws." Attendance at these courses is optional, however, and depends on the goodwill of employers. If the government were to initiate and fund similar training sessions, which were free and accessible to all employers, and possibly even mandatory, this would go a long way towards improving industrial relations and enforcing the new labour laws. Unfortunately, the government's failure to allocate adequate resources to the MGLSD, and in turn to the Directorate of Labour, has severely crippled sensitization efforts.

Casualization of Labour

The ready availability of labour created by high unemployment and underemployment rates in the country has also led to increased use of casual workers, a phenomenon that has had a profoundly negative effect on labour rights. In the course of FHRI's research it became clear that there are prevalent misconceptions, both among employees and employers, about the definition of a casual labourer and their associated rights (see Case Study 6.2)

²²⁷ Interview with Mr. Lyel Moi Odong Ongab, former Secretary General for NOTU, on 1st March 2012., supra note 249.

²²⁸ Interview of Christine Akello, District Labour Officer for Gulu District (19th March 202)

Definition of a casual labourer

A casual labourer is defined by the Employment Act as a person who works on a daily or hourly basis where payment is due at the completion of each day's work.²²⁹ Pursuant to this definition, an employee who is paid on a monthly basis and/or engaged to work for a period of more than one day, would not meet the definition of casual labourer. In the eyes of the law a casual labourer is an employee who enters into a new contract of employment with their employer every day. Casual labourers, just like individuals engaged under yearly contracts of employment, are employees towards whom employers carry statutory obligations. Casual labourers and employees with contracts for longer defined terms are often confused for 'independent contractors'. Distinguishing between a contractor and an employee engaged for a defined term is important as it determines against whom the worker can enforce their statutory rights. An independent contractor is his/her own employer and thus responsible for his/her own employment standards. Whether a worker is a contractor or an employee depends not on the term used by the employer when they engage the individual but on the nature of the relationship as a whole. The presence of some or all of the following factors may suggest a worker is an independent contractor.

The worker:

- Has a registered business
- Supplies his/her own tools.
- Makes his/her own schedule
- Is not subject to disciplinary measures of the contracting company
- Has more than one contract at once
- Remits his/her own NSSF and WCB Contributions
- Provides his/her own insurance
- Has invested start-up capital in the business
- Bears the risk of loss
- Is paid for the completion of specified tasks

Almost without exception, individuals engaged in Uganda on short-term contracts (whether for one day or longer) are properly categorized as employees and not contractors.

²²⁹Supra note 6 at s. 2.

Rights of a casual labourer

Beyond defining the term 'casual employee' the Employment Act does not include specific provisions dealing with this category of workers and the application of the Employment Act to casual labourers is less than clear. Casual labourers do have some clear statutory entitlements however.

First, like any other employee, casual labourers have the right to form and join labour unions and participate in collective bargaining. Section 3 of the Labour Unions Act states that "employees have the right to organize themselves in any labour union" and section 1 of the Act defines an employee as "any person who has entered into a contract of service or a contract of apprenticeship as defined in the Labour Disputes (Arbitration and Settlement) Act."²³⁰ The Labour Disputes Act defines "contract of service" as "any contract, written or oral, where a person agrees to perform work for an employer in return for remuneration."²³¹ Pursuant to these definitions, casual labourers are equally entitled to exercise their freedom of association to form and join trade unions.

Secondly, casual labourers are equally entitled to the same standards of occupational safety and health facilities in the event of a workplace accident. Section 3(1) of the Workers Compensation Act states: "If personal injury by accident arise out of and in the course of a worker's employment, the injured worker's employer shall be liable to pay compensation in accordance with this Act." Section 1 of the WCA defines 'worker' as "any person who performs services in exchange for remuneration, other than a person who performs services as an independent contractor." As discussed above, casual employees are employees, and not independent contractors, and thus fall within the parameters of this definition. Finally, employers are obligated to make contributions to the NSSF on behalf of casual labourers based on the number of days worked by the casual labourer in a month.

Section 6 of the NSSFA states,

"Subject to this section, on and after the appointed day, every contributing employer shall, for every month during which he or she pays wages to an eligible employee, pay to the fund, within fifteen days next following the last day of the month for which the relevant wages are paid, a standard contribution of 15 percent calculated on the total wages paid during that month to that employee."

²³⁰Supra note 8.

²³¹ibid at S.2

Pursuant to the definitions of ‘contributing employer’, ‘wages’, ‘eligible employee’ and ‘contract of service’ at section 1 of the National Social Security Fund Act, casual workers are captured by section 6.²³²

The main distinction between the rights of casual employees and other employees is the right to notice prior to termination. A true casual labourer — that is, an employee engaged and paid on a daily basis - has no entitlement to notice or guarantee of being hired the next day, since that is one of the terms of the agreement under which they are hired. What is less clear is whether casual employees also benefit from statutory provisions governing paid leave. Entitlements to annual leave and sick pay are based on the requirement that an employee has provided a specified length of continuous service²³³ and any week in which an employee works for 16 hours or counts in the calculation of continuous service.²³⁴ It is not clear from this section of the Employment Act, whether the daily nature of a casual employee’s contract would be deemed to interrupt continuous service. If it does, then employees would be able to evade requirements for sick pay, weekly and annual leave by hiring casual labour.

Case Study 6.2 — Interviews with IT Workers re: Casualization of Labour

Casualization has been affecting us a lot, the IT. We have been getting a lot from the public sector, but most of the companies, they are using people as casual workers:

However, they pay them monthly, but they do not give them identity cards and they don’t give them appointment letters. They are just there. They can be fired at any time, and there is no way they can claim they work there, because they do not have any letter, they don’t have any contract, nothing like that. That is the biggest problem in the IT work here. In fact, 90% of the IT workers in this country are like casual workers.

John Doe, (NOT HIS REAL NAME) IT Worker

²³²NSSFA, supra note 10 at s. 1 and 6.

²³³Employment Act, supra note 8 at s. 54(1)(a) and (4)(a) and s. 55(1).

²³⁴ibid at S. 83(3)

I have worked here for one and half years and I do not have an assignment letter contract. I make 250,000 shillings a month. I am paid in cash. I am single, and work to support my family. There are four others in my house who depend on me. My income is not enough to support u. The shop opens at 9:00 am and 'closes at 6:30.work from Monday to Saturday, with a thirty-minute break for lunch. I do not get any leave for public holidays or annual leave.

Stella, IT Worker

I have worked here for one year and I do not have an assignment letter or contract make 150,000 shillings a month and receive commission based on my monthly sales. I am paid in cash. I am working to support my family. There are three others in my house who depend on me. My income is not enough to support us.

My employer does not contribute to NSSF. I do not get any leave for public holidays or annual leave. There is no medical coverage, so we are not provided with my assistance if we fall sick. At my workplace I am required to go heavy lifting when stocking the shelves with computers and other goods. I have not received any safety training or am provided with any protective equipment at work.

Source: FHRI's interviews of Kenneth Mwayi, Interim Secretary General, National Union of Information and Communication Technologists and Allied Workers (30 June2010)

Excessive casualization of the labour force and associated misconceptions about the definition and rights of casual employees present one of the biggest threats to labour rights in Uganda. It is important that employers and employees alike are sensitized as to the true definition and rights of casual labourers and that unions and civil society organizations begin advocating more forcefully for the enforcement of these rights.

Furthermore, to guard against some of these problems, the Employment Act should speak more clearly to the rights of casual workers and include a restriction on the length of time a casual labourer can be employed.

ii. Informal Sector

Monitoring and regulating the labour market is complicated by the high percentage of employees who are engaged in work in the informal sector. The informal sector is currently estimated at 59.3% of the labour force for adults and 90.9% for youth.²³⁵ The informal sector is that portion of the

²³⁵The World Bank, Directions in Development, Human Development, 'Youth in Africa's Labour Market' (Washington: 2008).

economy which is unregistered with the tax authorities and unmonitored by government. Members of the informal sectors most often deal in barter or cash. Dominant activities in the informal sector include product production (such as wood products and handcrafts), market vendors, subsistence agricultural workers and workers in the transport sector. The majority of workers in the informal sector are self-employed. Different informal sectors may be subject to varying levels of self-regulation or even limited government regulation. For example, market vendors pay a daily fee for use of market space to their respective market associations, who in turn pay a fee to their municipal council for management of the market. Similarly, boda-boda (motorbike) drivers pay a fee to join a stage, which is distributed among the existing stage members and are also required to maintain insurance and annual registration in the district.

Because they fall outside institutional frameworks for pensions, national social security and workers compensation, informal workers and their families are vulnerable in the event of job loss, injury, sickness or death.

They also frequently lack organized and recognized representation to advocate on their behalf to government and address problems affecting the sector such as issues of ownership rights, taxation, and safe conditions of work.²³⁶ As explained by Dr. Lyomoki, “these are people who have very little capital, very little education and people who are very marginalized and vulnerable”²³⁷

Recently, COFTU has taken steps to try to unionize members of the informal sector. Newly formed unions in the informal sector include the Uganda Markets and Allied Employee Union (UMAEU), the Uganda Artisan and General Workers’ Union (UAGWU) and the National Union of Drivers, Cyclists and Allied Workers Union (NUDCAWU).²³⁸ In May 2010, NOTU wrote to the MGLSD requesting that these unions, along with 13 others, be deregistered on grounds that informal sector workers are not ‘employees’ as defined by Labour Unions Act, and therefore not entitled to organize.²³⁹

This is true to the extent that those who are self-employed cannot unionize; however, employees of informal sector workers would be qualified to join (e.g. an employee working for the owner of a

²³⁶COFTU, supra note 41

²³⁷ibid

²³⁸ibid

²³⁹Al Mahdi Ssenkibirwa “NOTU wants 16 labour unions deregistered,” Daily Monitor (19 May 2010) <http://www.monitor.co.ug>.

shop or a boda driver working for a boss). As suggested by NOTU, it is open to business owners in the informal sector to form cooperatives to add less their concerns.²⁴⁰

²⁴⁰ibid