



PLATFORM FOR LABOUR ACTION

"Advocates for vulnerable and marginalized workers"

Plot 14 Martyrs Lane Ntinda Off Old Kira Road, P.O. Box 9714, Kampala - Uganda,
Fax: 256 - 414 - 230142, Tel: 256 - 393 - 260196, 256 - 414 - 253383, Email: info@pla-uganda.org
Lira District Agricultural Block Office, Erute Road: Tel: 256 - 473 - 320101, 256 - 473 - 420009
Bulolo Road, Iganga District Tel: +256 392177078
Website: www.pla-uganda.org

PLATFORM FOR LABOUR ACTION SUBMISSION ON THE PROPOSED EMPLOYMENT AMENDMENT BILL 2022 (Bill No.2) TO THE PARLIAMENTARY COMMITTEE ON GENDER, LABOUR AND SOCIAL DEVELOPMENT

ABOUT PLATFORM FOR LABOUR ACTION

Platform for Labour Action is a duly registered and certified National non-government organization founded in 2000 to promote and protect the rights of vulnerable and marginalized workers in Uganda. It makes significant contributions to changes in the labour-sector landscape in Uganda and is recognized as a leading civil society actor in the areas of labour and employment.

PLA is a member of the National Steering Committee on the Elimination of Child Labour in Uganda. She is also a member of National Child Protection Working Group chaired by the Ministry of Gender, Labour and Social Development. PLA is also part of the National Institutional Framework for Alliance 8.7 in Uganda as a member of the National Coordination Committee chaired by the Ministry of Gender, Labour and Social Development which is responsible for Promoting the development and implementation of innovative actions against child labour, modern slavery, forced labour and human trafficking; Providing guidance on strategies for effective mobilization and accountable application of resources; Receiving and considering reports from the Alliance 8.7 National Action Groups. PLA is a member of the Steering Committee Social Protection Platform Uganda and serves as the vice chairperson; an opted member of the National Task Force on Trafficking in Person coordinated by the Ministry of Internal Affairs Uganda, a member of the Thematic Area Working Group on Employment, Productivity and Industrial Relations under the Ministry of Gender, Labour and Social Development; PLA is a founding member of the Coalition Against Trafficking in Person Uganda. She is a member of the Legal Aid Service Providers' Network where it chairs the Social Justice Cluster. As a stakeholder in labour and employment sector of Uganda for over years, PLA has reviewed the Government Bill.

PROS OF THE EMPLOYMENT AMENDMENT BILL.

PLA welcomes the progressive proposed amendments proposed in the Bill. In this submission, PLA shall put emphasis on areas where the Bill is lacking and can be strengthened. These are elaborated as follows;

a. Stripping the Labour office of the Arbitration powers (Clause 3).

The current Section 13(1) of Employment Act 2006, provides that a Labour Officer to whom a Complaint has been made under this Act shall have Power to investigate the

Board Members:

Ms. Sarah Banenya – Chairperson

Ms. Sarah Nannyanzi - Treasurer

Mr. Abdullah Mayanja Kambugu - Board Member

Ms. Lilian Keene-Mugerwa - Advisor

Prof. Rwabukwali. B. Charles - Vice Chairperson

Ms. Judith Nalumu Lumu - Board Member

Ms. Beatrice Ngozi Mulindwa – Board Member

Ms. Grace Mukwaya Lule –Board Secretary

Ms. Rita Sembuya - Board Member



complaint and any defence put forward to such a complaint and to **settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable.**

The position of the law currently empowers the labour officer to “adjudicate, arbitrate or conciliate” the parties to a labour dispute. It is proposed, in the amendment, to only make the labour officer resolve disputes by conciliation.

By stripping its arbitration powers, the labour office cease to be the court of first Instance in the Labour related matters. It should be noted that Section 94 of the Employment Act 2006 provides for Appeals from the labour office by any party to a dispute and thereby making the Industrial Court a court of reference. It therefore follows that the Industrial Court does not have original jurisdiction of the labour matters, it is the labour office that holds the original jurisdiction. Stripping the labour office of the arbitration powers would then require further amendments in other cross -ponding legislations such as the Labour dispute Arbitration and settlement Act.

Conciliation is a voluntary, confidential, and interest based process of dispute resolution. The main difference between conciliation and mediation proceedings is that, at some point during the conciliation, the conciliator will be asked by the parties to provide them with a non-binding settlement proposal.

With this understanding of What Conciliation as a means of dispute resolution in mind, it therefore means that sections 70, section, 13 (1) b), c), d) and 13 (2),, Section 7(2), Section 93, Section 78 of the Current Employment Act 2006 become irrelevant and also the proposed amendment clauses Amendment of section 70 of principal Act and Replacement of section 78 of the principal Act will by default become redundant if the labour office is stripped of the arbitration powers.

The proposed Amendment is hinged on addressing the capacity gaps of the officers appointed as Labour officers. This inference is drawn from the reports that have indicated that some of the labour officers lack the capacity to dispense the mandate and power of the labour office as per the current provisions of the Employment Act 2006. This capacity gap on the part of the officers so appointed should not be used to strip the office of its powers but rather it should be used to set the minimum qualification for the person to be appointed by the district service commission as a district labour officer. **This would require an amendment of Section 9 of the Employment Act by adding a subsection immediately after Section 9 (4) the following sub section:**



‘The person to be appointed as district labour officer shall have prior training and qualification in Law’

However, without stripping the labour office of its powers, we further recommend and amendment under section 13 legislate on the 2015 precedent of the Industrial Court with regard to use of the different means of dispute resolution by the labour office. .

The industrial court in 2015 set precedent with regard to the powers of the labour officer. This was ***in Civil Appeal 008/2015 SURE TELECOM VS BRAAIN AREM CHAD*** the industrial Court held that; “We form the opinion that under section 13(i)(a) the labour officer has power to choose either of the four methods of resolving the complaint before him. Whereas he or she could abandon the method of adjudication and engage the parties in arbitration or conciliation, once he or she has done this, it would be improper to return to adjudication once either of the two fails. In the same way, once the labour officer has engaged the parties in either arbitration or conciliation, it is improper for him or her to at the same time engage them in adjudication”.

We propose a clause to read: ‘The labour Officer while exercising the powers under section 13(1) (a), he or she shall choose and use only one mode of dispute resolution’

b. The period of terminating an employee’s contract due to sickness is unreasonably long (Clause 8)

Much as the move to strengthen job security of employees is welcomed, the period of absence from work due to sickness is unnecessarily long from the employers’ view point. Reasonable observation is that such a provision will stall performance which is detrimental to the employer. Surely, the law cannot be seen to bring about retardation or a disruption in the performance of services. We propose that the clause should read,

‘if, at the expiry of the third month, the sickness of the employee continues, the employer and the affected employee shall agree as to whether to extend the sick leave with or without pay or end the contract of employment.



The employer while ending the contract of an employee who has been sick for three months or more, shall comply with all the terms of contract of service and the provisions of this ACT up to the time of dismissal from employment.”

c. Inadequate clear Provisions on breast-feeding mothers (Clause 9).

The Bill seeks to introduce section 57A in the Principal Act to oblige employers to create time and space for breast feeding mothers. This move is welcomed as a progressive step towards making work places comfortable for all kinds of employees. However, insofar as breast feeding mothers are concerned, the intended amendment is short of key provisions and also not clear as to the entitlements of the breast feeding employee. In particular, in the proposed provision, it is not clear whether, A woman shall be provided with the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child and the hours/ breaks are not determined by the proposed amendments as well as the amendment has remained silent as whether those hours and breaks shall be counted as working time and remunerated accordingly.

We recommend that for clarity, in addition to the current proposed provisions, the committee adopts the provisions on breast feeding in the private members Employment Amendment Bill 2022 presented by Hon. Agnes Kunihira- Workers Member of Parliament because they the provision in there on this regard create clarity.

d. Lack of provisions that re-inforce the protection of Uganda Migrant Workers Abroad (Part IVA)

The Bill, much as it legislates on recruitment of Ugandans abroad, it doesn't legislate on the responsibility of government as a primary duty bearer in protection of its Citizens Rights as per the Constitutional mandate. In addition, the Bill has not addressed the current challenges faced in externalization of labour program, in particular, the Bill falls short of provisions empowering the Minister of Gender, Labour and Social Development to set up labour service centers and appoint labour attachés to be deployed in the countries of destination of Uganda migrant workers particularly in those countries where the government concludes Bilateral Labour Agreements. This would go along away in providing support services, monitoring the working conditions



of the migrants, enforcement of the provisions of both the Bilateral Labour Agreements where they exist and the contracts of employment.

We recommend that the committee bench marks the legislation of countries like the ***Republic of the Philippines (Republic Act No. 8042 An Act To Institute The Policies Of Overseas Employment And Establish A Higher Standard Of Protection And Promotion Of The Welfare Of Migrant Workers, Their Families And Overseas Filipinos In Distress, And For Other purposes)*** that have demonstrated over the years enhancing the protection of their citizens in the countries of destination

The Bill still lacks comprehensive provisions to address the challenges of reporting and apprehending sexual harassment incidents in work places;

Despite the amendment of section 7 of the Employment Act,

- The Bill did not increase the scope of sexual harassment as elaborated under the International Labour Organization Convention: Elimination of Violence and Harassment in the World of Work 2019 (190) which Uganda Signed. For example The Bill also does not cover the acts of sexual harassment at the initial stages of employment where applicants for a job are asked to subdue to the potential employer's sexual demands if he or she must be given a job.
- The challenges faced in reporting by the victims of sexual harassment at the work places and procedures of handling sexual harassment survivors' report have remained unchanged by the Bill. It is important to note that it is only sexual harassment complaints that have bar to be reported immediate to the labour officer and requires that the affected person should report first to the employer which has for long hindered the reporting of these cases.
- Like the current Employment Act 2006, the Bill does not contain Punitive Penalties for perpetrators of Sexual harassment which are necessary to demonstrate the seriousness of the vice.

Inadequately provisions on the Employment of migrant workers working in Uganda.

At Policy level, government acknowledges that Uganda is also faced with an influx of migrant workers and it is likely to increase with the free movement of labour within the East African Community (National Employment Policy 2011). In the premises, data on



immigrant workers is hardly accessible and therefore it is difficult to regulate the inflow and working conditions of both skilled and less skilled immigrants. The evidence available from workers organizations indicate that some of these migrant workers are confined and work under very poor terms and conditions of employment (National Employment Policy 2011). These violations are a result of inadequate legal provisions regulating the recruitment, employment and monitoring of working conditions of migrant workers in Uganda.

The Employment Act 2006 currently lacks comprehensive provisions legislating the recruitment, employment and monitoring of the Migrant Workers arriving and working Uganda. The Bill also has not provided clauses relating to employment and monitoring or migrant workers in Uganda. *The only proposed* clause ‘the Minister responsible for Gender, Labour and Social Development declares certain jobs not available for employment for non- Ugandans’, dose not itself legislate on the employment and monitoring of migrant workers in Uganda.

It is our recommendation that the Committee adopts the provisions on the Employment and monitoring of migrant workers working in Uganda in the private members Employment Amendment Bill 2022 presented by Hon. Agnes Kunihira- Workers Member of Parliament.

Denial of the right to be heard for workers on probation.

Amendment 16, 71(2) An employee whose services are under a probationary contract shall not lodge a complaint under this section.

The right to be heard is a fundamental basic right. It is one of the cornerstones of the whole concept of a fair and impartial trial. The principle of **“Hear the other side”** or in Latin: **“Audi Alteram Partem”** is fundamental and far reaching. It encompasses every aspect of fair procedure and the whole area of the due process of the law. It is as old as creation itself, for even in the Garden of Eden, the Lord first afforded a hearing to Adam and Eve, as to why they had eaten the forbidden fruit, before he pronounced them guilty: This principle is now of universal application. Article 10 of the Universal Declaration of Human Rights, 1948 provides that **‘Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him’**, Article 7 (1) (c) of the African Charter on Human and Peoples’ Rights also provides that **‘Every individual shall have the right to have his cause heard’**

In Uganda, the traditional saying, that one ought not to decide a dispute between a boy and a girl without first having heard the case of each side, goes to show that even our forefathers in Uganda also embraced and practiced this universal principle of justice. The principle is currently constitutionally provided for in Uganda by Article 28



(1) of the Constitution. This Article provides that in the determination of civil rights and obligations, or any criminal charge, one is entitled to a fair, speedy and public hearing before an adjudicating body established by law. This right is so fundamental that Article 44 of the Constitution prohibits any derogation from its enjoyment. The right to be heard has been extensively discussed by Uganda's courts of law and just to mention; *Carolyne Turyatema & 4 Ors v Attorney General & Anor* (Constitutional Petition 15 of 2006) [2011] UGSC 13 (08 August 2011).

We commend that the committee removes clause 71(2) from the Bill

Other General recommendations

- i. The provisions on sexual harassment are still based on the assumption that sexual harassment can only be from the employer to the employees. If the fight against sexual harassment is to rage on, the same should be on a horizontal basis where the law treats all employees and the employer as potential victim and perpetrator of sexual harassment.
- ii. The amendment does not properly stipulate the role of the employer insofar as provision of facilities to breast feeding mothers is concerned. At least the law should set a minimum number of breaks that an employer should give to a break-feeding mother other than leaving the provision blanket as it.