



ANALYSIS OF THE EMPLOYMENT (AMENDMENT) BILL NO.2 OF 2022

IN EXTENDING PROTECTION TO
REFUGEES IN UGANDA.

Platform for Vendors in Uganda (PLAVU)

Plot 1850, Lubawo Zone,
Kamuli-Namugongo Road, Kampala (U).

Phone: +256 393 256 627

E-mail: plat4m4vendors.ug@gmail.com

Website: www.plavu.org .

ABOUT PLAVU.

Platform for Vendors in Uganda (PLAVU) is a National Federation of member organizations of urban poor working in the informal economy. PLAVU's mission is to organize vendors & informal traders and workers so as to strengthen their organization's capacities to fully participate, lobby, network and contribute towards creating opportunities for decent and productive work.

In partnership with International Rescue Committee (IRC), PLAVU is implementing a

program entitled "Refugees in East Africa: Boosting Urban Innovations for Livelihoods Development (Re: Build)". Re: Build is committed to generating and sharing evidence for innovative, sustainable livelihoods solutions that can be adopted to support refugees and host residents in other cities in East Africa and beyond. The program aims at achieving the goal of changing policies, practices, and investments to better support urban refugee livelihoods.

LEGAL AND POLICY FRAMEWORK GOVERNING THE SOCIO- ECONOMIC RIGHTS OF REFUGEES IN UGANDA.

Uganda is currently home to more than 1.5 million refugees making it the host of one of the largest populations of urban refugees globally.

According to this Act, a recognized refugee in Uganda has the right to be allowed to remain in Uganda and the right to be issued with an identity card...

The Refugee Act, 2006 is the major law relating to refugees in Uganda. The law provides for the process for determining a person's refugee status. The Refugee Act defines a refugee as a person who has been granted refugee status under the Refugee Act; or a person who is a

member of class of persons declared to be refugees under the Refugee Act.

Under the Refugee Act, 2006, A person qualifies for refugee status if:

- a) S/he has left the country of his/her nationality because of a well-established fear of being persecuted due to his/her tribe, sex, religion, nationality, membership of a particular social group or political opinion. The person should be unable or unwilling to return to his/her country because of this fear.
- b) S/he is forced to leave his/her country and seek refuge in another country as a result of violence by a foreign country or other actions by a foreign country which disturb public order in some parts or all of the person's country of origin.

...strengthen statistical data collection and use to support refugee planning and **THE JOBS AND LIVELIHOODS INTEGRATED RESPONSE PLAN (JLIRP) FOR REFUGEES AND HOST COMMUNITIES 2020/2021-2024/2025**

According to this Act, a recognized refugee in Uganda has the right to be allowed to remain in Uganda and the right to be issued with an identity card which indicates his/her refugee status for purposes of identification and protection; be entitled to fair and just treatment without discrimination on grounds of race, religion, sex, nationality, ethnic identity, membership of a particular social group or political opinion, access to education, health and most importantly engage in agriculture, industry, handicrafts, and undertake business according to laws of Uganda, practice his/her profession

as long as the refugee's qualifications are recognized in Uganda and access employment opportunities and engage in gainful employment among others.

This regulatory framework is complemented by a number of policies for instance the **Comprehensive Refugee Response Framework (CRRF) in Uganda** – a multi-stakeholder coordination model on refugee matters focusing on humanitarian and development needs of both refugees and host communities. **Third National Development Plan 2020/21 – 2024/25** – the country's short-term planning framework, which commits to integrate refugee planning in national, sectoral and local government plans, and to strengthen statistical data collection and use to support refugee planning and the **Jobs and Livelihoods Integrated Response Plan (JLIRP) for Refugees and Host Communities 2020/2021-2024/2025**, which lays out a path for a secure, self-reliant and resilient refugee and host community in refugee hosting districts with a goal of ensuring refugees and host communities that are socially, economically and financially included in a sustainable manner in local development by 2025.

SALIENT FEATURES OF THE EMPLOYMENT (AMENDMENT) BILL NO.2 OF 2022

The Bill provides for recruitment agencies and seeks to streamline the process of recruitment of employees for employment abroad; further provide for severance allowances where by it allow workers to receive an allowance at the end of the employment relationship with the employer; child care and breastfeeding facilities by employers; requires all employers to put measures in place that prevent sexual harassment at workplace; dismissal from employment and termination of a contract of service so as to eliminate the ambiguity caused by using the two words in the Act interchangeably; introduces a new Part IXA on employment of migrant workers within Uganda and regulate which jobs may not be offered non-citizens and other related matters.



The Bill provides for recruitment agencies and seeks to streamline the process of recruitment of employees for employment abroad....
....regulates which jobs may not be offered non-citizens and other related matters.



CLAUSE SPECIFIC VIEWS AND RECOMMENDATIONS.

1. *Clause 2 of the bill amends section 7 of the Principal Act by requiring every employer to have in place measures to prevent sexual harassment at the work place to display the measures in a conspicuous place at the work place.*

Analysis

This is a positive legal reform towards the protection of all workers from sexual harassment irrespective of the size of the enterprise or number of employees an enterprise employs. The Principal Act only required Employers with over 25 employees to undertake these measures. However, this amendment is not adequate to prevent and protect workers from sexual harassment. The scope of liability for sexual harassment remains tagged to only representatives of employers with a supervisory role or authority over the

victim yet sexual harassment can also be done by an employee at a junior level but having an advantage over another or not necessarily an advantage or benefit. Refugee workers are more likely to be sexually harassed not only by their managers but also their fellow employees who have an advantage of citizenship.

Further the reform does not extend liability to informal workers under informal arrangements and yet many of the refugees find themselves in informal employment.

Lastly, the reform does not also address sexual harassment during access to employment. It only addresses sexual harassment that occurs

during the subsistence of an employment relationship.

Recommendation

The scope of who an employer's representative is in the principal Act should be widened not only to include a person who is employed by that employer who either has authority over the employee alleging sexual harassment or in position of authority over other employees in the workplace of the employee alleging sexual harassment but to *“persons not directly employed by the Employer but having a working or business relationship with the Employer and also employees with no “authority.”. The employer’s duty of care to ensure the safety of workers should also include a duty to take steps to prevent violence and harassment committed by third parties, such as clients and customers that occur in the course of, connected to or arising out of work.*

We therefore recommend that the scope of liability extends not just to direct employees, but to anyone connected to the business. This recommendation is consistent with Articles 2 and 4.2 of the ILO Convention 190 on

The government has an obligation to design policies and preventative measures for workers in the informal economy who do not have a formal employer.

...REFUGEE WORKERS ARE MORE LIKELY TO BE SEXUALLY HARASSED NOT ONLY BY THEIR MANAGERS BUT ALSO THEIR FELLOW EMPLOYEES WHO HAVE AN ADVANTAGE OF CITIZENSHIP...

Elimination of Harassment and Violence at the workplace.

The government has an obligation to design policies and preventative measures for workers in the informal economy who do not have a formal employer. ILO Convention 190 calls on governments to extend protections against violence and harassment to *“all workers, regardless of contractual status”* and to *“take appropriate measures to prevent violence and harassment in the world of work, including recognizing the important role of public authorities in the case of informal economy workers.* This is in line with Uganda’s vision 2040 and the National Employment policy of 2011.

We further propose that the bill puts in place measures that prevent and protect sexual

harassment during access to employment because research has revealed that sexual harassment rate at the entry of employment is high. This places refugee workers in a much

more vulnerable position due to their status and it is even worse for the un document refugees.

2. ***Clause 3 of the bill amends section 13(1)(a) of the principal Act by repealing the words “ arbitration and adjudication”.*** Section 13(1)(a) of the Principal Act provides as follows;

“A Labour officer to whom a complaint has been made under this Act shall have the power to investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any Labour union present at the place of work of the complainant”.

Analysis.

The amendment removes arbitration and adjudication powers from Labour officers and leaves them with only conciliatory powers. It should be noted that reduces Conciliation is a “non- binding procedure in which an impartial third party assists the parties to a dispute in reaching a mutually agreed settlement of the

However, it should be noted that currently the Industrial Court has only 2 sitting judges dispensing Labour justice in the whole country. In the year 2022, Industrial court of Uganda disposed of only 434 cases out of the thousands of cases that had been registered and brought forward to that year. How much backlog will the court have if the said amendment stands?

Labour officers currently play a significant role in expeditiously resolving labour disputes using the current methods under the principal act.

Notably, Labour officers currently play a significant role in expeditiously resolving Labour disputes using the current methods under the principal Act. There have been concerns on their capacity and competency but this is something the reform can address by requiring extra qualifications and training for purposes of adjudication and arbitration.

dispute”. It is voluntary and parties have a choice to reject it. This means that Parties to Labour dispute or grievance may elect to bypass the office of a Labour officer and file their cases directly in the industrial Court.

It is also imperative to note that some refugees working in Uganda are working in distant districts of Uganda near their resettlement camps or villages. Industrial Court is situated in Kampala. At least, the Labour officers are situated in almost every district and if left with their powers, access to labour justice for all can be an achievable goal.

RECOMMENDATION

Labour officers should remain with their power to adjudicate and arbitrate as provided for in the principal Act. They should only be empowered to use the said methods through training and continuous professional development.

3. Clause 4 and 5 repeal sections 37 and 38 of the Principal Act.

Section 37 of the principal Act prohibits illicit or clandestine movement of migrants for employment for purposes of departing from, passing through or arriving in Uganda or giving assistance to any organization for that purpose. It further prohibits a person from employing a person whom he or she knows to be unlawfully present in Uganda and a person who contravenes the same commits an offence.

Section 38 of the Principal Act provides for a recruitment permit. It prohibits any person or his or her agent or messengers from engaging in the business of operating a recruitment agency unless he or she is in possession of a valid recruiting permit issued by the

... “an employer shall not employ a person whom he or she knows to be unlawfully present in Uganda” ...

Commissioner. The permit is to be issued subject to such terms and conditions as given by the Commissioner.

The said two repealed sections are replaced by new parts in the bill under clause 7 as follows;

PART 1V(A): Recruitment of Persons for Employment Abroad

This new part is created by clause 7 of the bill and provides for new sections highlighted with our opinions below;

- a) S39A provides for illicit or concealed movement of persons. *Section 39A(1) provides that a “ person shall not facilitate the illicit or concealed movement of persons for employment abroad by organizing the departure, transit or arrival of the persons in Uganda, or give assistance to any organisation for that purpose. Whereas section 39A (2) of the bill provides that; “an employer shall not employ a person*

whom he or she knows to be unlawfully present in Uganda”.

Analysis

The word illicit or concealed movement if not defined may have ambiguous interpretations. Further, it may be important that this section is re- aligned with the provisions of the Refugee Act, 2006 to allow the freedom of movement of refugees.

Recommendation

“Illicit or concealed movement needs to be defined and the term “person” under section

39A(1) should include a “ company” as well for purposes of clarity. This provision should be re- aligned with the provisions of the Refugee

Act, 2006 to allow the freedom of movement of refugees.

- b) ***39B prohibits a person from transacting the business of a recruitment agency in Uganda without a licence issued by the Commissioner responsible for employment services. Such a licence may be subject to conditions as the Commissioner may determine and may be revoked at any time.***

Analysis

“ When not regulated, temporary agency work is very precarious and exploitative.

The amendment does not clearly define what a recruitment agency is especially in terms of the different roles the said agencies are currently undertaking on Uganda’s Labour market. There are many recruitment firms or agencies undertaking both internal and external supply of labour. Under internal supply of labour, there are those carrying on labour brokerage or temporary agency work where they supply labour to user undertakings but retain an employment relationship with the workers they supply yet the user undertaking directs and controls the same workers so supplied. This kind of arrangement has led to the growth of triangular employment relationships in the labour market

which are currently not regulated by the Principal Act. In essence, these recruitment agencies share employer roles/functions on the workers they supply to clients or user undertakings.

When not regulated, temporary agency work is very precarious and exploitative. It comes with the difficult challenge of identifying who the real Employer is in case of liability, discrimination, denial of trade union rights, job insecurity and so on.

Recommendation

- ❖ The term “recruitment agency” needs to be defined broadly. The definition should be aligned with the definition of a private employment agency under the ILO Private Employment Agencies Convention. Article 2(3) of the ILO Private Employment Agencies Convention 181 defines a private employment agency as ***“any natural or legal person, independent of the public authorities***

which provides one or more of the following labour market services;

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise there from;
- (b) services consisting of employing workers with a view to making them

available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;

(c) other services relating to job seeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.

- ❖ The bill should put in place a strong measure that protects temporary agency workers against

exploitation and that ensures protection of their employment rights. To this end, we propose that the amendment places joint and several liability on both the recruitment agency undertaking temporary agency work and the user undertaking in the event of any violations of worker's rights. Alternatively, a joint employer status would also be placed on both the recruitment agency and the user undertaking.

This is important especially when it comes to extending protection to the marginalized workers who often find themselves in those kind of employment arrangements like the refugee workers.

GENERAL ANALYSIS AND RECOMMENDATIONS ON PART IV(A)

- ❖ This part of the bill only focuses on externalization of Ugandan workers and does not offer protection to workers who are internally supplied by the recruitment agencies with in Uganda yet it is now a common practice on the labour market but remains unregulated.
- ❖ It is therefore recommended that a separate part regulating internal supply of labour or internal recruitment practices be introduced including clauses that protect the rights of workers so recruited and supplied under temporary agency work arrangements including outsourcing.

8. *Clause 8 amends the section 55 of principal Act. Section 55 of the principal Act is amended in subsection (1) by substituting for paragraph (b) the following—*

“(b) if, at the expiry of the sixth month, the sickness of the employee continues, the employer is entitled to dismiss the employee upon complying with all the terms of contract of service up to the time of dismissal from employment.”

Analysis

Sickness is deemed as a ground of dismissal which is completely wrong. Dismissal arises in instances where there is a fundamental breach in an employment contract. Sickness does not amount to that. The ideal word to be used should be termination and not dismissal.

Recommendation

The word “dismiss” should be replaced with “terminate”

9. *Clause 9 inserts a new section 57A in principal Act. It provides that The principal Act is amended by inserting immediately after section 57 the following— “57A. Establishment of breastfeeding and child care facilities.*

(1) Every employer shall make available at the place of work, time, space or a facility for breastfeeding and child care for children of the employees.

(2) The facility referred to in subsection (1) shall be for children between the age of three months and thirty-six months.

(3) The Minister shall, by regulations, prescribe operational standards for the breastfeeding and child care facilities.”

Analysis

This is a positive reform that seeks to reduce the burden of care work especially for the female workers. However, the provision does not state whether the time breaks to nurse the children will be part of the working hours.

Recommendation

- ❖ There should be an addition to the clause that “breaks or the reduction of daily hours of work for breastfeeding shall be counted as working time and remunerated accordingly”.
- ❖ The word “adequate or reasonable” should be added to clause 9(1) i.e "adequate time" or "hygienic, private and otherwise adequate space or a facility"

...“a positive reform that seeks to reduce the burden of care work especially for the female workers.

10. *Clause 10 inserts a new section 65A in principal Act. It Provides that; The principal Act is amended by inserting immediately after section 65 the following—*

“65A. Dismissal from employment.

(1) An employer may dismiss an employee from employment on any of the following grounds—

- (a) Inability of the employee to perform duties assigned by the employer in the contract of employment;
- (b) redundancy of the employee;
- (c) disobeying lawful orders or instructions;(these should be deleted)... this is very subjective

- (d) sickness which lasts more than six months and renders the employee unable to perform his or her duties under the contract of service;
- (e) abandonment of duty by the employee;
- (f) where the employer establishes that the employee presented forged documents or did not possess required qualifications at the time of recruitment;
- (g) Where the continuous employment of the employee may lead to breach of a statutory obligation;
- (h) where the conduct of the employee inside or outside the employment may have an

adverse effect on the business of the employer;
or

(i) any other ground specified in the contract of employment.

...the grounds are so subjective, vague and ambiguous that they are most likely going to be used by the employer to the detriment of employees.

Analysis

Some of the grounds enlisted under this clause as grounds for dismissal are grounds for termination, for instance sickness and redundancy. The rest of the grounds are so subjective, vague and ambiguous that they are most likely going to be used by the employer to the detriment of employees.

In any case, it would bring about more clarity if the bill draws a clear distinction between termination and dismissal rather than attempting to distinguish the two using grounds in the end cause more ambiguity.

For instance sub clause (h) i.e ***where the conduct of the employee inside or outside the employment may have an adverse***

(2) An employer who is considering to dismiss an employee on the ground of redundancy under subsection (1) (b) shall show proof that, the employer—

(a) has ceased business operations;

(b) has ceased to carry on business in a place where the employee was employed; or

(c) due to reorganization of work, introduction of labour saving devices or change in work pattern, the employer requires fewer employees for the existing work.”

(3) An employer shall, before dismissing an employee on the ground of sickness under subsection (1) (d) seek the opinion of the medical doctor of the employee relating to the medical condition of the employee.

(4) For purposes of paragraph (e), abandonment of duty is deemed to have occurred when an employee is absent from work without the permission and knowledge of the employer for a consecutive period of more than thirty days.”

effect on the business of the employer is very vague and ambiguous. It should be more specific, to guard against lawful actions taken by employees but could be seen as 'adverse' do not create a grounds for dismissal

Further sub- clause which gives an Employer

(i) any other ground specified in the contract of

... “breaks or the reduction of daily hours of work for breastfeeding shall be counted as working time and remunerated accordingly”.

employment allows employers to have any other reason as a valid reason as long as it is in the contract.

Recommendation

This whole clause ought to be deleted. It does not remedy any mischief in the current law rather it brings more confusion and ambiguity. This clause will lead to massive unjustified and

unfair dismissals of workers especially the marginalized like the refugees.

Additionally, the redundancy clause should be separated from dismissal. It should be under termination of employment. Section C should be deleted as a ground of redundancy. Before redundancy the Union if in place and the employee to be affected by the said redundancy and the labour officer should be consulted.

12. Clause 12 provides for insertion of new sections 66A and 66B in principal Act. The principal Act is amended by inserting immediately after section 66 the following—

“66A. unfair dismissal.

Dismissal shall be unfair where the employer dismisses an employee for any reason other than the reasons specified in section 65A.

Analysis

By stating that a dismissal shall be unfair where the employer dismisses an employee for any reason other than the reasons specified in section 65A is a contradiction to the very

provision of section 65A(i) of the Amendment bill which allows the Employer to dismiss an employee on any other ground specified in the contract of employment.

Recommendation

A more clear description of unfair dismissal should be adopted and Section 65(A)(i) should be deleted.

13. Clause 13 provides for a replacement of section 68 of principal Act. For section 68 of the principal Act there is substituted the following—

“68. Reasons for dismissal.

(1) An employer shall, in any claim arising out of dismissal, give reasons for dismissal of the employee, and where the employer fails to do so, the dismissal shall be deemed to have been unfair.

(2) The reasons for dismissal shall be which the employer, at the time of dismissing the employee, genuinely believed to exist and caused the employer to dismiss the employee.

Recommendation

For clarity, the requirement that an employer give reasons for dismissal should include a requirement that the reasons be given in writing.

14. *Clause 14 provides for replacement of section 69 of principal Act and substitutes the following;*

“69. Summary dismissal.

- (1) Summary dismissal shall occur where an employer dismisses an employee without notice or with less notice than that which the employee is entitled to, under a statutory provision or contractual term.
- (2) An employer may, summarily dismiss an employee, where the conduct of the employee constitutes a fundamental breach of his or her obligations under the contract of employment.
- (3) An employee who is dismissed summarily is not entitled to claim for payment in lieu of notice.”

Recommendation

The term “fundamental breach” ought to be defined to avoid several interpretations that might disadvantage employees. Additional clarification should include, at a minimum, that the breach be also serious and intentional, to ensure that only the most severe misconduct gives ground for summary dismissal.

16. *Clause 16 provides for replacement of section 71 of principal Act.*

For section 71 of the principal Act, there is substituted the following—

“71. Complaint to labour officer.

- (1) An employee may lodge a complaint to a labour officer within three months from the date of the employee’s dismissal or such later period as the employee shall show to be just and equitable in the circumstances.
- (2) An employee whose services are under a probationary contract shall not lodge a

(3) The right of an employee to make a complaint under this section is in addition to the right an employee may enjoy under any agreement between an employer or group of employers and a labour union.

(4) A labour officer shall, upon receipt of a complaint, handle the complaint in accordance with this Act and Regulations made thereunder.

(5) Where in accordance with this Act, a labour officer or an employee has referred the complaint or dispute to the Industrial Court and the Industrial Court finds that the dismissal was unfair, the Industrial Court may—

- (a) subject to subsection (6) (a), order the employer to reinstate the employee; or
- (b) order the employer to pay compensation to the employee.

(6) The court shall require the employer to reinstate or re-employ the employee unless—

...the marginalized categories of workers like refugees are more likely to suffer from the negative effects of this de-regulation.

complaint under this section.

(a) the employee does not wish to be reinstated or reemployed;
(b) the circumstances surrounding the dismissal of the employee are such that a continued employment relationship may be intolerable;

(c) it is not reasonably practicable for the employer to reinstate or re-employ the employee; or
(d) the dismissal is unfair only because the employer did not follow a proper procedure.

Analysis

Sub-section 2 which denies an employee whose services are under a probationary contract to lodge a complaint to the labour officer is contrary to articles 42, 28 and 44(c) of the Constitution of the Republic of Uganda in as far it denies such employees a right to be heard.

17. Repeal of section 73 of principal Act.

Recommendation

Employees under probationary contracts should be allowed to have the same rights as the confirmed employees to lodge complaints and access remedies where their rights under the Employment Act are violated. This is important since the deregulation of probationary contracts promotes more temporary work on the Labour market and the marginalized categories of workers like refugees are more likely to suffer from the negative effects of this de-regulation.

17. Lastly clause 24 inserts a new Part IXA of in principal Act. It provides for employment of migrant workers seemingly within Uganda. The clause empowers the minister by notice in the gazette to declare a range of jobs that migrant workers shall not be offered for employment. The clause further prohibits the National Citizenship and immigration Board not to issue an entry permit to a migrant worker who is offered a job declared by the Minister under section 92B, except where the migrant worker possesses an exemption Certificate issued by the Commissioner responsible for employment services.

...21 percent of employers in Uganda reported knowing that refugees are allowed to move freely and 23 percent of employers are aware refugees have the right to work, respectively.

Analysis

Although this clause seeks to provide for employment of migrant workers with in Uganda, it is discriminatory in nature and it is likely promote marginalization of migrant workers when it comes to access to decent employment opportunities. Further, it would be prudent for a migrant worker to be differentiated from a refugee worker in this part to avoid marginalization of

refugees who often misclassified as migrant workers.

Recommendation

We propose that this part should not only focus on limiting the categories of jobs offered to migrant workers but it should also include clauses that protect the rights of migrant workers. Further this section should explicitly exempt refugees from the application of this clause and provide for additional protective measures for refugees so as to create a clear distinction of the two categories.

GENERAL OBSERVATIONS, RECOMMENDATIONS AND CONCLUSION

Neither the Principal Act nor the Amendment makes specific provision for protection of employment rights of refugees in Uganda. Whereas the Refugee Act gives refugees a right to work in Uganda, it would be prudent for the primary legislation governing employment relationships in Uganda to provide for protection of refugees at the workplace. Providing a specific clause or clauses in the amendment to provide for protection of refugees as a special category of workers would perhaps create awareness to the Employers in Uganda about the right of refugees to work.

Research has shown that Ugandan firms are disinclined to hire refugees and seem to lack information about their legal status and specifically their right to work. A recent survey highlighted that just 21 percent of employers in Uganda reported knowing that refugees are allowed to move freely and 23 percent of employers are aware refugees have the right to work, respectively¹.

We therefore recommend that the current bill includes a clause(s) that extends protection to refugees at the workplace.

¹ IRC(2022): Analysis and Evaluation of refugees related policies and legislation