BASELINE SURVEY ON THE IMPLEMENTATION OF NEW LABOUR LAWS IN UGANDA: A CASE STUDY OF KAMPALA, WAKISO, JINJA, GULU AND MBARARA DISTRICTS

(A REPORT ON THE FINDINGS)

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Abbreviations and Acronyms

AFL-CIO	American Federation of Labour-Congress of Industrial Organizations
AGOA	African Growth and Opportunity Act
ATGWU	Amalgamated Transport and General Workers' Union
CBA	Collective Bargaining Agreement
COFTU	Central Organization of Free Trade Unions
CTUC	Commonwealth Trade Union Council
DLO	District Labour Officer
DNEP	Draft National Employment Policy
EAC	East African Community
EATUC	East African Trade Union Confederation
FASERT	Foundation for Advancement of Small Entrepreneur and Rural Technology
FES	Friedrich-Ebert-Stiftung
FUE	Federation of Uganda Employers
FOA	Freedom of Association
ICFTU-AFRO	International Organization of Free Trade Unions-African Regional Organization
ILO	International Labour Organization
ITGLWF	International Textile, Garment, Leather Workers' Federation
ITUC-AFRO	International Trade Union Confederation-African Regional Organization
MGLSD	Ministry of Gender, Labour and Social Development
MoFPED	Ministry of Finance, Planning and Economic Development
NOTU	National Organization of Trade unions
NUDCAW	National Union of Drivers, Cyclists and Allied Workers
NUEI	National Union of Educational Institutions
NUICWW	National Union of Infrastructural, Civil, Workers and Wood Workers
NULGW	National Union of Local Government Workers
NUMSCO	National Union of Micro–Finance, Saving & Credit Organization Workers
NUPAWU	National Union of Plantation and Agricultural Workers of Uganda
NUTEACCAW	National Union of Theatrical, Art, Culture, Crafts &Allied Workers
OSH	Occupational Safety and Health
SEWA	Self Employed Women's Association
SEWU	Self Employed Worker's Union
SPSS	Statistical Package for Social Scientists

UAGWU	Uganda Artisans and General Workers' Union
UBCCCAWU	Uganda Building, Construction, Cement, Civil, Engineering &Allied Workers' Union
UBOS	Uganda Bureau of Statistics
UCPAWU	Uganda Chemical Petroleum and Allied Workers' Union
UCSWO	Uganda Civil Society Organization Workers' Union
UEAWU	Uganda Electricity and Allied Workers' Union
UFAWU	Uganda Fisheries and Allied Workers' Union
UGAWU	Uganda Government and Allied Workers' Union
UHAWU	Uganda Horticultural and Allied Workers' Union
UHFTAWU	Uganda Hotel, Food, Tourism and Allied Workers' Union
UMEU	Uganda Market Employees' Union
UMMAWU	Uganda Mines, Metal and Allied Workers' Union
UMU	Uganda Media Union
UMWU	Uganda Medical Workers' Union
UNAMU	Uganda Nurses and Midwives Union
UNATU	Uganda National Teachers' Union
UPEU	Uganda Public Employees' Union
UPTU	Uganda Private Teachers' Union
URWU	Uganda Railways Workers' Union
UTGLAWU	Uganda Textile, Garment, Leather & Allied Workers' Union

EXECUTIVE SUMMARY

This baseline survey report presents findings on the prevailing circumstances surrounding the implementation of the new labour laws in Uganda. Its purpose was to examine the extent to which labour laws have been observed both on paper and in practice since 2006 when the 7th Parliament finally passed them. The new labour laws included: Employment Act, Occupational Safety and Health Act, Labour Unions Act and Labour Disputes (Arbitration and Settlement) Act of 2006. The new labour laws were meant to be in conformity with minimum labour standards as espoused by the ILO Fundamental Declaration of Principles and rights at work, and the National Constitution of Uganda (1995). The survey relied on both primary and secondary data particularly relevant official documents, as well as interviews with District labour officers in five Districts (i.e. Kampala, Jinja, Mbarara, Wakiso and Gulu), labour union leaders, employers' representative, rank and file members from labour Unions, representatives from the informal sector, officials from Ministry of gender, labour and social development, workers' MPs and labour experts.

The report gives a description of the labour law reform process showing the important part played by national and international organizations in and outside the labour movement, the time and resources put into the reform process thereby justifying why the survey was commissioned. It also specifically outlines important new provisions in the four labour laws, showing their implications and how they have been implemented. A discussion on the present challenges and future obstacles faced by the three social partners i.e. workers, employers and the MGLSD in the implementation of the new labour laws has also been presented out of which recommendations have been made specifically to assist labour unions. Lastly, a number of areas that may need further research have also been highlighted to facilitate the process of labour laws implementation.

Concerning the Labour Unions Act, the majority of labour union leaders submitted that the new labour law had greatly empowered them especially as regards to freedom of association. The law opened up space for more unions that were registered and removed the monopoly of NOTU as the sole National Centre both of which led to a rise of labour unions from 24 to 40 and the formation of the Confederation of Free Trade Unions (COFTU). The law also expanded the scope of unionization bringing in workers from the informal sector and other prior restricted areas such as the police and prisons. However, some union leaders interviewed admitted that employers still demanded for the 51 per cent of the eligible employees duly recruited before recognition in their enterprises which is contrary to provisions of the new Labour Unions Act.

The Labour Dispute (Arbitration and Settlement) Act was examined and a number of issues emerged. The survey revealed that concluding and reviewing Collective Bargaining Agreements (CBA) was still not an easy task despite the new provisions in the law that are meant to provide for a smooth conclusion and review of the same. The survey further noted that labour officers at all levels were not well facilitated in terms of logistics for execution of their duties. The study brought to light the fact that the Industrial Court which deals with labour related cases has not functioned since 2006 to date (2011). As a result, a lot of labour disputes have piled up in the Ministry in charge of labour, many workers are denied legal redress and the work of labour officers is overstretched because of being few in number coupled with inadequate facilitation. The survey puts forward a number of recommendations to include: immediate reinstatement of the Industrial Court, recentralisation of labour administration and increase funding for the Ministry of Gender, Labour and Social Development.

Concerning the Employment Act, the survey noted that there was anecdotal evidence of perpetuation of sexual harassment; but child labour prevalence and discrimination on basis of HIV status were still visible. Where sexual harassment existed, the respondents said it was perpetuated by male supervisors and the victims feared to come out in the open to report for fear of losing their jobs. They further said that those who reported the vice only did it after facing a disciplinary action on them and they were using it (sexual harassment) in their defence.

The fourth and last law reviewed was the Occupational Safety and Health (OSH) Act, 2006. The major objective of this Act was to provide for health and safety of persons at work and for the health and safety of persons in connection with the use of plant and machinery. It was also meant to prevent accidents and injuries to health at work and minimizing the causes of hazards inherent in the working environment. Some of the new areas included: change of name from *factory* to *workplace*, formulation of National Advisory Committee on OSH and Establishment of OSH Board. The survey noted that this is the least understood law among workers, union leaders and employers.

The major challenges faced in the implementation of the new laws included inadequate facilitation of labour officers, non-recognition of labour unions by some employers, non-functioning of the Industrial Court, informalisation of labour, ignorance of the new laws, unemployment and lack of capacity by Government (through the Ministry of Gender, Labour and Social Development) to enforce the laws.

The overall conclusion is that the new laws have not significantly improved the status quo in regard to protecting the rights of workers. On this note, Government, employers and employees (through labour unions) need to put in more effort to sensitise the workers and the general public about the new labour laws. More pressure should be exerted on Government to cause enforcement of the laws if the objectives upon which they were established are to be realised.

CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introduction

This report constitutes a survey on implementation of the four new labour laws in Uganda namely; Employment Act 2006, Labour Unions Act 2006, Labour Dispute (Arbitration and Settlement) Act 2006 and Occupational Safety and Health Act 2006. It covers six Districts to include: Kampala, Wakiso, Jinja, Kasese, Gulu and Mbarara.

The President of Uganda, Y.K Museveni assented to all the four labour laws in May 2006 after nineteen years of consultation. In the same year the Minister of Gender, Labour and Social Development (MGLSD) issued a Statutory Instrument to operationalise them. Hitherto the enactment of the new laws, workers in the country were not enjoying their rights as enshrined in the National Constitution articles 29 (e) and 40 (3) (a) – (c) and the old laws were not in compliance with the core conventions of the International Labour Organization (ILO) which the Government had ratified. It was therefore expected that by the coming of the new laws, workers would enjoy their rights as provided for in the labour laws.

The critical problem is that workers are still not enjoying their rights as provided for by the new labour laws and there is minimal enforcement of such laws. As one of the recommendations made by ILO-SLAREA, Consultant Elizabeth Ssali[1] asked for a review of the new labour laws to be made by the MGLSD, employers and workers through their federations after a suitable period to assess their impact and effectiveness. It was further recommended that periodic reviews of new labour laws should be part of an on-going reform in order to remain relevant. However, since their enactment, there have been no reviews and/or specific studies on the extent to which the new labour laws have been implemented.

1.2 Objectives of the Study

The general objective of this study therefore is to establish the state of labour law implementation in Uganda and to find out whether the labour laws have been implemented in full and if not what are the reasons behind this shortfall.

[1] Ssali was a Principal Labour Officer in the MGLSD

Specific Objectives of the Study

(i) To describe and analyze the law reform process, in view of understanding why it took the country a lot of time (nineteen years) and resources for the labour laws to be revised and enacted. Showing particularly the contribution of labour unions, employers, Government and ILO among other players in Uganda to the whole process of labour law reform.

(ii) To identify new provisions in each new law, stating its objectives and provide an analysis of their applicability.

(iii) Analyze the challenges faced by the three social partners in the implementation of the new Labour laws, i.e. employers, Government and labour unions.

(iv) Provide recommendations to the stakeholders to assist the realization of the objectives of each law.

The study is therefore tasked to answer the following questions:

(i) Have the new labour laws been implemented fully?

(ii) If not where and why not?

1.3 Justification of the Survey

The lack of progress i.e. monitoring and evaluation of the implementation of new labour laws is surprising. Five years have passed since such laws were passed but the level of ignorance and non-compliance on the side of both the employers and employees is high. Government through the Ministry responsible for labour administration has not done enough to enforce compliance of the new labour laws. It should be emphasized that the exercise took the Government of Uganda, employers, workers and international organizations a lot of time (nineteen years) and resources both technical and financial to update them in accordance with the ILO Principles and the Constitution of Uganda.

The baseline survey therefore attempts to establish the state of labour law implementation in Uganda and to find out whether the labour laws have been implemented in full and if not what are the reasons to explain this anomaly.

1.4 Study Scope

The study analyses new provisions in the new labour laws in relation to their application of principles embedded in the ILO declaration on fundamental principles and rights of work (1998) that relate specifically to:

(a) Freedom of Association and effective recognition of the right to Collective Bargaining[2].
(b) The elimination of all forms of forced or compulsory labour[3];
(c) The effective abolition of child labour[4] and
(d) The elimination of discrimination in respect of employment and occupation[5].

The study therefore, tries to assess those opinions of the various social actors in as far as they have applied the new labour laws and the challenges they have faced.

It shows that non implementation of new labour laws means that millions of Ugandan workers are being denied their basic and fundamental human rights at work. This reduces their quality of life, self respect, dignity and self-determination.

1.5 Methodology

The study was based on a descriptive survey in which information was sought through face to face structured interviews with individuals as well as groups of respondents.

Structured interviews were conducted with five Government District officials from Wakiso, Jinja, Mbarara and Gulu; two officials from the Ministry of Gender, Labour and Social Development, two top leaders from NOTU and COFTU, nineteen (19) General Secretaries of labour unions, three Workers Members of Parliament and four experts in the field of labour relations. Structured interviews were also held with one officer from the Federation of Uganda Employers (FUE), the Executive Director of Foundation for Advancement of Small Entrepreneurs & Rural Technology (FASERT), two project officers from Uganda Youth Network and three officers from JAAK Credit Scheme Ltd.

[2] See ILO Conventions 87 and 98; j
[3] See ILO Conventions 29 and 105
[4] See ILO Conventions 138 and 182
[5] See ILO Conventions 100 and 111

Structured interviews were used because the issue of labour laws is a complex and sensitive one since it covers workers, employers and Government and therefore honest answers were needed from the respondents. Structured interviews were also helpful in getting documentations from the respondents for further clarification and to observe the respondents' reactions to the subject under discussion. Over the course of seven (7) months, 46 interviews were conducted.

In terms of questions, the line of questioning was different for each category of interviewees. For instance, labour union leaders were asked the same questions covering all the four labour laws while District labour officers were asked only questions pertaining to the Labour Dispute (Settlement) and Arbitration Act 2006[6]. Labour experts were sought for their general knowledge and were asked general questions on labour law implementation in Uganda.

Another method used was Focus Group Discussions. This method was used for rank and file members[7] and union leaders to enable the survey get information not only from labour union leaders alone but also from employees so as to reflect the opinions from both groups.

In essence this method was applied to cross check facts given by both groups – leaders and those being led since the interviewer was part and parcel of both discussions participating as a participant observer[8]. It was also used to provide a healthy discussion especially the one exclusively for rank and file members.

The findings from both the interview guides and Focus Group Discussions were complemented with participant observations made by the interviewers which are pointed out later in the study.

1.6 Instrumentation and Data Collection Methods

The labour unions leaders, labour officers, and workers MPs were interviewed using interview schedules to address the different aspects of the survey. The schedule for labour unions was pre-tested using 3 union

[6] This law brings the labour officers into direct contact with employers, workers and labour unionists as opposed to the other three labour laws. As the name suggests, it is meant to resolve employment disputes and at the same time brings out issues related to the operation of the Industrial Court (IC) which is the last resort in dealing with industrial disputes.

[7] These are general members of labour unions who are not at leadership level in their respective unions.

[8] Participant observation is a method in research where the interviewer participates and the respondents are well aware that someone is watching them. The advantage with this method is that it minimizes chances of digression since the interviewer is around to provide guidance.

leaders and workers' MPs. Subsequently minor adjustments were made for purposes of clarifying some questions before data collection. For instance, *question 2 was how has the new provision of removing 51 percent for union recognition strengthened or weakened unions?* This was changed to, *has the new provision of removing 51 percent for union recognition been implemented i.e. respected by employers?* (Appendix2). Interviews with labour officers were guided by an interview guide (Appendix 3), Employers were guided by (Appendix 4), and labour commissioner (Appendix 5) was used as the interview guide. Focus Group Discussions and interviews with labour experts were guided by one general question, ***"What do you have to say about the new labour laws and their implementation in the country?"*** Other appendices include: list of people interviewed (Appendix 6) and Terms of Reference (Appendix 7).

1.7 The Study Coverage

Six Districts were chosen for the study on new labour law implementation, namely: Kampala, Wakiso, Mbarara, Kasese, Jinja and Gulu. The criterion for selecting Districts was based on the presence of labour unions, nature and number of economic activities and to some extent regional representation. Kampala and Wakiso Districts are both in Central region and have a high density of industrial activities. Jinja in Eastern Region was selected because it was once an industrial hub of the country. Mbarara and Kasese are both in Western Uganda. The former is an upcoming industrial base with a number of new industries coming up. The latter is a home to one of the major factories producing cement and has a few plantation companies. Finally Gulu being in northern Uganda but most importantly of all its coming to map as an industrial base and other economic activities for the region. In the final study five districts participated because no response was got from Kasese despite all efforts made.

1.8 The Study Population

The study targeted the following main populations totalling 46 – appendix 6:

(i) Labour Union Leaders to include General Secretaries and their deputies, workers MPs and top leaders of NOTU and COFTU
(ii) District labour officers
(iii) Federation of Uganda Employers
(iv) Rank and file members
(v) Informal sector and Private Sector

(vi) Labour experts

1.9 Selecting Samples: Sampling Procedures

Out of a total of 40 labour unions[9] registered in Uganda, and considering the time frame of the study, it was imperative to select a sample of unions as a representation of the major industries in Uganda falling under the International Standard Classification of Industries (ISCI). With this method, it was easy to select and balance unions affiliated to NOTU and COFTU and to give a fair representation of all the economic activities.

According to the ISCI method, eighteen sectors were covered as indicated in Table 1 appended as Appendix 1. Interviews were conducted with all the selected unions save, the Uganda Electricity and Allied Workers' Union. After failing to get a response from this union, they were replaced with Uganda Media Union which was among the three unions that were selected under the transport, storage and communication sector. From this method, fourteen (14) unions affiliated to NOTU were selected while eleven (11) unions affiliated to COFTU took part in the survey as seen in Table 1.

1.10 Field work and Data processing

The field work covered twenty five (25) labour unions mainly in Kampala, Wakiso and Jinja Districts; five District labour officers i.e., Mbarara, Wakiso, Gulu, Jinja and Kampala; three workers' MPs in Kampala; one official from FUE in Kampala; and two private sector organisations (UYONET and JAAK C.S.) and FARSET representing the informal organizations.

Data gathered by interview schedules from labour union leaders was analyzed using the Statistical Package for Social Scientists (SPSS) to produce quantitative information. The data gathered from labour experts, Focus Group Discussions, employers and private and informal sector organizations was subjected to thematic analysis and treated as qualitative in nature.

[9] See The Uganda Gazette, Vol. C. No. 9, 23rd February 2007, General Notice No. 75 of 2007

1.11 Research limitations

The concept of labour law in Uganda is generally under-researched and very few publications in the same areas are found. Particularly no known study has been done on the implementation of new labour laws in Uganda. It is important to note, however, that Professor J.J. Barya made a critical analysis of the state of workers' organizational rights with particular focus on "Freedom of Association and Uganda's New labour Laws."[10] The objective of his study was limited to freedom of association – the extent to which the rights of workers to freely organize is recognized, protected, enjoyed and enforced in light of the new labour laws of 2006.

Primary data gathered covering a wider section of the country would have enriched this study; nevertheless, this being a baseline survey[11] the information and data that was generated can be of help to Government, employers, policy makers and basically labour union leaders in this country.

To give the research an even wider scope, more interviews could have been conducted with an even broader diversity of interviewees within this topic, but due to time constraints this was not possible. This limitation however, has been taken on as an opportunity for future study from other researchers.

1.12 Challenges

The following are among the major challenges faced while carrying out the survey:

(i) This being the first survey on new labour laws implementation, much time was taken convincing labour union leaders (respondents) on the importance of the study and reasons as to why particular labour unions were selected to be in the sample.

(ii) A number of new unions[12] were not aware of the contents of new labour laws leave alone the old labour laws. It was therefore difficult for them to understand the background of this study and this made it necessary to first explain the history of the labour law reform process and provide copies of the new labour laws before questions could be answered.

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[10] John-Jean Barya (2007), Freedom of Association and Uganda's New Labour Laws – HURIPEC Working Paper No. 4, April, 2007

[11] Starting point from which other research work can be generated.

[12] By "new unions" the researchers refer to those unions that were registered starting 2006, after enactment of the new labour laws.

(iii) Another challenge was that the survey took place at a time (August-September) when the ruling party National Resistance Movement (NRM) primaries for elections of the party-flag bearers were taking place. This event involved some of the target groups which affected the administration of our structured interviews. In other words a number of call backs were made for purposes of seeking audience with such respondents.

(iv) One difficulty in attempting to interview a diversity of respondents (i.e. in the private sector and civil society organizations) was the relative ignorance about labour laws of many officials in organizations outside of the labour movement. This had to be circumvented by way of first explaining some of the contents within the new labour laws.

Despite these difficulties, the variety of interviewees has been sufficient and has provided for an unbiased and factual account of various events that have transpired in the implementation of new labour laws in Uganda.

CHAPTER TWO: LABOUR LAWS AND REFORM PROCESS

2.1 Introduction

This chapter briefly covers the process of legislative reforms of the labour laws which started in 1987 and ended in 2006 showing the contribution made by the three social partners including International Labour Organisation (ILO), United Nations Development Programme (UNDP) and World Bank (WB) among others. It indicates the conflict of interest and lack of coordination among the various players plus the assumptions of what these laws constituted. A lot of time (nineteen years) and resources both technical and financial were spent on hiring experts, seminars and workshops, printing of materials, among other expenditures before they were finally enacted.

2.2 The labour law reform process

It had long been recognized by trade unions, employers and Government that the Ugandan labour legislation was outdated to the point of being unworkable and was in urgent need of reform. The ILO was invited in 1987 to assist Uganda with a tripartite revision of the labour legislation which was even then considered antiquated, and to ensure ILO compliance. As such, Professor Brian Napier, a UK Law Professor and practicing Barrister was commissioned to assist and facilitate the process. The labour laws that needed to be repealed included: Employment Decree 1975, Trade Union Decree 1974, Factory Inspectorate Act 1964 and Trades Dispute (Arbitration and Settlement) Act Cap 224. A commission, chaired by Anna Magezi, the then President of the Industrial Court, comprising tripartite[13] representation from the Ministry of Labour (Government), employers' organization (Federation of Uganda Employers-FUE) and workers' organization (National Organization of Trade Unions-NOTU) was set up and consensus was reached between the social partners on the above four mentioned Acts to be repealed and be compliant with both nationally and internationally accepted minimum labour standards.

Stacey (1990)[14] noted that agreement was concluded in 1996/7 on all four bills and the exercise included the drafting and negotiation between the social partners on every clause in the proposed legislation so that final draft bills could be prepared.

[13] Tripartism in the labour fraternity refers to the three social partners namely: Government, Employers and Workers.

[14] Commonwealth Trade Union Council report by Mary Stacey in 1999 commissioned to examine the extent to which ILO core labour standards were observed in Uganda.

Whilst the Ministry of labour with ILO assistance was conducting its review of the labour legislation, the Ministry of Justice sought assistance from WB in updating its commercial laws which included a brief on labour legislation. To that end consultants were engaged by WB to update the same labour laws that the Ministry of labour and ILO had already updated. The WB exercise was done without reference to the work already done by the Ministry of labour, the trade unions and the employers' federations.

According to a policy rejoinder by NOTU, in 1998 the WB had classified all labour laws as commercial laws, giving the authority of revision to the Ministry of Finance, Planning and Economic Development (MoFPED), and urging the Ministry to ensure flexibility in the new laws[15]. Out of this mandate from the World Bank came the labour aspect of the Deregulation project which dealt with a number of regulatory issues. The proposed revisions by the Deregulation project led to the drafting of the four new bills, however the labour movement did not agree with many of the proposed changes.

NOTU's scathing policy rejoinder to the proposed changes charges, "The Deregulation project would rather (sic) this function of offering workers adequate social protection were left out by the Government."[16] Of course, it is not surprising that the Deregulation project would seek to deregulate, especially in the labour market. However, as the rejoinder says, "the deregulation project paper begins and ends on a wrong premise…that all what matters for job creation is low costs of operation for the employer" (ibid).

Ogaram (2003) observed that during a consultation session disagreement between MGLSD, representing labour, and MoFPED could be found in seven areas; collective terminations and severance pay; waiver of prescribed standards, penalties on default; rights and duties in employment; powers of the minister; rights and responsibilities of registered organizations; and industrial court[17]. In each instance, MoFPED favoured flexibility for employers so that labour laws were either weaker or had less impact in terms of enforcement. MGLSD, on the other hand, favoured a strengthening of labour by affirming various rights. The divergence is most apparent on the issue of rights and responsibilities for the unions.

[15] NOTU-Uganda (2002) "A rejoinder to the policy and strategy framework for labour regulation by the Deregulation Project " n. p. Kampala.

[16] Research Paper by Nick Krafft (2008) "No Investor Left Behind: Economic Policy and its impacts on Trade Unions"

[17] Ogaram David (2003). "Labour law review: status report on Bills", Presented at consultation workshop for trade union leaders, March 2003 pp 2-8.

In this area, there was utter disagreement on the right to strike, right to be recognized, and the obligation for employers to bargain collectively with trade unions[18].

All the above led to frustration by trade unions which manifested in a NOTU Memorandum to the President in 2004 which read in parts:

> "*We have been informed that the impasse between the Ministry of Finance and that responsible for labour is on three areas namely: (i) the proposal to remove the right to withdraw labour which is a constitutional provision (Article 40(3) (c)), (ii) the proposal to abolish the Industrial Court and be replaced by normal courts of law and (iii) the proposal to massive lay-offs by employers without prior and adequate arrangement for workers*"[19].

Furthermore the trade unions through their umbrella organizations raised the concerns of the urgent need to amend the labour laws on a number of May Day celebrations between 1995 and 2005.

Study by United Nations Development Programme (UNDP)

To resolve the impasse, the United Nations Development Programme (UNDP) was invited in 1999 to assist in reconciling the two parallel exercises undertaken by different Ministries within the Ugandan Government and the different international bodies. The Ministry of labour, the employers' federation and the trade unions were unanimous in seeking to reject outright the WB sponsored Employment and Industrial Relations draft legislation in their entirety and sought the earliest possible enactment and implementation of the ILO sponsored draft legislation which had been agreed upon by the three social partners.

The new proposals by ILO sought to overhaul the old law, give meaningful and unrestricted rights of freedom of association to workers, have a better and more efficient labour dispute settlement process, and expand safety and health rights at work, and above all create new labour rights in the employment relationship.

[18] Ibid pp 6.8

[19] Memorandum submitted by NOTU to H.E the President of Uganda in 2004 as a way forward in handling labour relations.

2.3 The final passing of the four labour bills[20]

Considering all of the above mentioned obstacles in passing of the new labour laws, the fact that they were *"... passed in a record one week is one of the most interesting episodes in modern day neo-colonialism*" (Barya 2007) and brought a lot of questions with regards to the Government's commitment towards this undertaking.

A number of labour experts[21] have argued that the bills were passed due to pressure by the United States of America (USA) Government on the Ugandan Government courtesy of the US African Growth and Opportunity Act (AGOA). A Ugandan labour expert, Dr. J. Barya, submitted that *"AGOA had been taken advantage of by the Ugandan Government which supported some investors from Sri Lanka to set up the Apparel Tri-Star Ltd, a private company in Kampala employing more than two thousand (2,000) female workers in the textile factory. The Uganda Textile, Garment, Leather and Allied Workers' Union (UTGLAWU) had mobilised over 90 percent of the workforce at Tri Star by June 2003 to join the union. The company refused to recognize the union, claiming that the union had to certify that it was representative of 51 percent of the workers at Tri-Star"* (Barya 2007:25) as stipulated by the old Trade Unions Act still binding then.

A complaint was filed with the ILO and the ILO Committee on Freedom of Association gave a damning report and requested, *inter alia*, that Government takes steps to amend the Trade Unions Act to bring it "unto conformity with the freedom of association principles."[22]

The Textile Union continued its international campaign for union recognition and enlisted the support of the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) and the International Textile, Garment, Leather Workers' Federation (ITGWLF). These two international unions took up the matter with the US Government. In particular, the AFL-CIO urged the US Government to expel Uganda from AGOA for not respecting labour rights.

In the meantime, the Ugandan Government led by the Deputy Attorney General together with the Chairman General of NOTU, the labour commissioner at the MGLSD and the Chairman of FUE went to

[20] A significant portion of this part is derived from Barya (2007) ,Working Paper on New Labour and Freedom of Association

[21] These include Mr. Martin Wandera former MP for Workers, Dr. Ogaram, former labour commissioner and Dr. J. Barya, an expert on labour matters.

[22] See ILO: Complaint against the Government of Uganda presented by the International, Garment, and Leather workers' federation (ITGLWF), Case No. 2378, complaint dated 25 June and 29 August 2004 as quoted by Barya (2007).

the US Congress to negotiate the stay of Uganda in AGOA. During that December 2005 meeting, the American Government gave the Ugandan Government an ultimatum up to March 2006 to pass all the pending labour laws; otherwise Uganda would be struck off the AGOA. Faced with this threat[23], Government mobilized parliament despite the ongoing presidential and parliamentary election campaigns before the 23 February vote to scrutinize the bills. Following the national elections, and in a record time of one week in April 2006 all four bills were tabled, debated and passed with minor amendments.

[23] Uganda's expulsion from AGOA could have resulted in losses in terms of employment generation, export proceeds and open market accessibility.

CHAPTER THREE: FINDINGS

3.1 Introduction

As indicated in the introduction, the four new labour laws examined in this study were: 1) Labour Unions Act, 2) the Employment Act, 3) Labour Union Dispute (Arbitration and Settlement) Act, and 4) Occupational Health and Safety and Working Environment Act all of 2006. This chapter will expound on each of these laws by pointing out those new areas that were incorporated and at the same time indicating their effects on the target groups upon which they were established. Challenges related to their implementation are also discussed in the same chapter.

3.2 Labour Unions Act 2006

This law is very important for labour unions in protecting the rights of workers in the country. As seen in chapter two, labour unions through their federation (NOTU) were vigilant in ensuring that this law was in line with the Constitution of Uganda (1995) and the ILO Convention 87 on Freedom of Association (FOA). Much time and resources from the donor community outside were sought for assistance to the labour movement and it was not surprising that the Act brought in many changes affecting the organization and running of trade unions in the country. Some of the new changes included: change of name from *trade union* to *labour union*, removal of 51 percent of the eligible employees for union recognition in a work place, removal of 1,000 members for labour union registration and permitting unionization of all workers save members of Uganda People's Defence Forces, among other changes.

3.2.1 Change of name from trade union to labour union

The term trade union has often been defined by the majority of union activists both at national and international level as,

> *"a continuous, permanent, voluntary and democratic organization formed by employees themselves at the work place for purposes of promoting and safeguarding the socio-economic rights and interests through collective bargaining."*

According to the new law, the term trade union was dropped and replaced by labour unions which is defined as,

> "*…any organization of employees created by employees for purposes of representing the rights and interests of employees…*"[24]

In both concepts, it is recognized that whether it is a trade or labour union, the ultimate objective is to represent employees' interests. The only major difference is that the latter does not explicitly recognize the aspect of collective bargaining. This implies that the new labour law does not emphasize collective bargaining as the major objective for which employees are organized by labour unions. Labour unions can therefore offer other services for instance, representation, training and education.

The study also aimed at finding out the opinions of labour leaders on this change of name and the question asked was: ***What is your opinion about the change of name from trade union to labour union?***

All labour leaders acknowledged the fact that the term 'labour union' is wider in terms of coverage since it opened up space for employees and workers in the informal sector to be organized.

The study revealed that COFTU and its affiliates had already taken advantage even before the laws were enacted to reach out workers in the informal economy[25] to be able to enjoy their labour rights as enshrined in the National Constitution Article 29(e) and ILO Convention 87. Indeed five unions from COFTU draw their membership from the informal economy. These include among others, Uganda Market Employees Union (UMEU), Uganda Artisans and General Workers' Union (UAGWU), National Union of Drivers, Cyclists and Allied Workers (NUDCAW), Uganda Farm and Agro-Based Workers' Union (UFBAWU) and National Union of Infrastructural, Civil Works and Wood Workers (NUICWW).[26]

On the side of NOTU, initial steps had been taken to organize informal sector employees and a pilot study had been done as a basis on how to reach out such workers. [27]

[24] See The Labour Unions Act 2006 p.6

[25] Informal economy in this study refers to all those economic activities that are not regulated or guided by the legal framework in the country. The majority of such workers are self-employed e.g. domestic workers, those in garages and markets, and sole proprietors with one, two or three employees.

[26] Informal interview with Hon. Dr. Sam Lyomoki, Secretary General of COFTU.

[27] Direct interview with the Chairman General, NOTU on 3rd June 2010.

Observations from this study confirm the fact that COFTU was a step ahead in organizing the informal sector employees and it is imperative for the two National Federations (NOTU and COFTU) to work together and share expertise on organizing this heterogeneous sector. It would also be important for both Federations to learn and copy from the notable successful experiences elsewhere [28] if labour unions are to remain relevant in view of the declining formal sector and the contemporaneous growth and scope of the informal sector. In the same study it was observed that one of the advantages in organizing this sector is that it could be a source of employment if it were formalised. Figures from the Private Sector Foundation (PSF) indicate that over 4 million people eke their living directly from the informal sector.

From the above observation, this study points to the fact that the informal sector is a significant area of economic activity that generates employment for the majority of Ugandan workers. This view was also observed by the Uganda Manpower Survey (1989), that the informal sector was a viable alternative source of employment for the growing labour force especially in the situation where the size of the formal sector is very small and prospects for its growth in the near future are limited (Uganda Manpower Survey- 1989, pp. 188-9).

All in all, the change of name from trade to labour union has largely served its objective and labour unions have grabbed this opportunity to organize a wider section of workers especially in the informal sector as discussed above**.**

3.2.2 The right to trade union recognition

The Labour Unions Act 2006 was a major land mark as it positively responded to one of the greatest hitherto impediments to recruiting and organizing employees into organizations of their choice. Before amendment of the law, labour union leaders claimed that employers were denying them recognition on the premise that they had to prove that 51 percent of the workers in a workplace have duly consented to join a labour union. This corroboration proved difficult since the labour commissioner had to be involved in a verification exercise that was viewed as risky[29] by the affected workers.

Besides the hindrances it caused for the growth of labour unions, the old law contravened ILO Convention 87 Article 2 on Freedom of Association (FOA) which states in parts that,

[28] SEWA in India and SEWU in South Africa are classic examples of success in organizing the informal sector.

[29] Workers feared this exercise as it was likely to expose them to their employers who could decide to terminate their services after learning that they wanted to join a workers' organization.

> "*…workers and employers shall have the right to establish and to join organizations of their own choosing"* (*ILO,* Freedom of Association 5th Rev.Ed. 2006:68).

In this study, questions relating to FOA were raised to members of the labour unions to ascertain whether the removal of the 51 per cent of workers recruited as a requirement to obtain recognition by the employers was being implemented. Labour union leaders from both NOTU and COFTU agreed that the removal of the 51 percent requirement for recognition was being implemented and had increased number of labour unions. The study revealed that three (3) unions had greatly benefitted from the removal of the 51 percent requirement for recognition by employers. These include: Uganda Media Union (UMU), National Union of Educational Institutions (NUEI) and the Uganda Private Teachers Union (UPTU).

The General Secretary of UMU asserted that,

> "*It was difficult to organize in the media sector because most workers are freelance journalists, not stationed in one place and moved to and fro in search of news. But with the coming into force of the new law, the union had made positive strides in recruiting workers in The Monitor Newspaper and some radio and TV stations like Kiira FM and Record TV have now recognised the union*".

Furthermore, views from NUEI confirmed the point that the new provision paved way for recognition of the union which culminated in the conclusion of a recognition agreement with Ministry of Education and Sports to cover employees in private universities.

The General Secretary of UPTU also added that the removal of the 51 percent requirement for recognition had assisted the union in their campaign to gain recognition and organise teachers in many private primary and secondary schools.

However, some labour union leaders mentioned that some employers were not observing the law on recognition and were not permitting employees to freely join labour unions of their choice as the law required.

In conclusion to this part concerning trade union recognition, the removal of 51 percent requirement did not significantly boost the right to labour union recognition in the work places. There is no automatic

enjoyment of labour rights as stipulated in the law, namely, that workers are free to join labour unions of their choice and that the employer should not interfere with the right of association.[30] Some employers still demand a recognition agreement from the unions.

3.2.3 The right to register a labour union

Prior to the enactment of the new law, it was a requirement for a labour union to have at least one thousand (1,000) members in order to be permitted for registration. This was not only excessive in view of labour unions and human rights activists, but also constituted a breach of Article 2 of ILO Convention 87 which stipulates that;

> *"Workers and employers, without distinction whatsoever, shall have the right to establish and subject, only to the rules of the organization concerned, join organizations of their own choosing without previous authorization"* (Article 2).

The National Constitution 1995 Article 40(3) (a) states that every worker,

> *"…has a right to form or join a trade union of his or her choice…"*

The Labour Union Act 2006 S.3 states that,

> *"Employees shall have the right to organise themselves in any labour union…"*

What should be noted is that the law does not mention the minimum number of employees to be permitted to join a trade union.

Consequently, labour unions can now be registered with any number of members. This has led and will likely lead to a multiplicity of unions without necessarily increasing the numerical strength of labour unions.

The survey, therefore, tried to find out whether the removal of the requirement of 1,000 members to attain registration was being implemented and had subsequently resulted into growth[31] of trade unionism i.e., increase in the number of unions registered.

[30] See National Constitution (1995) Article 40 (3) (a-b) and Labour Unions Act, 2006 S.4

Table 2: Has the removal of the 1000 members' restriction permitted growth of trade unionism?

Response	NOTU n=14	COFTU n=10[32]
Yes	**21 %**	**100 %**
No.	**50 %**	**0 %**
Not Fully	**29 %**	**0 %**
Total	**100 %**	**100 %**

Source: Survey by ULRC, 2010

It should be noted that never in the history of the trade union decree of 1976 were as many unions registered as in the first eight months of the coming into force of this new law under review. Fifty percent of labour unions leaders interviewed in NOTU strongly held the opinion that the removal of one thousand (1,000) members requirement for a union to be registered was being implemented but had not resulted into growth of trade unionism in terms of individual members, but had only permitted registration of more unions. On the other hand, 100 percent of COFTU leaders submitted the view that the removal of this requirement was being implemented and had led to growth of more trade unions in Uganda. On their part, the number of unions that subscribe to COFTU has risen from five in 2004 to currently twenty unions. The labour union leaders in NOTU who contended that the clause on the removal of the 1,000 members' requirement for registration was being implemented made a submission that it had led to a weakened labour movement due to the following reasons:

(i) They said that though the new scenario had given room for registration of many labour unions they were however very small unions in terms of numbers which make them not economically viable.

(ii) Related to the above, it was also stated that among the so many unions now registered, the majority of them are "Pseudo Unions" without any members.[33]

(iii) Further it was claimed that the removal of the restriction had also contributed to "gerrymandering"[34] and duplication of labour unions. For instance, whereas COFTU had an affiliate (Uganda Hotel, Tourism and Allied Workers' Union) organizing workers in the Hotels

[31] Growth, in this particular study refers to number of registered trade unions and not necessarily the number of individual members in each union.

[32] One of the unions did not respond to this particular question.

[33] Direct interview with General secretary, UNATU

[34] Gerrymandering of unions in this particular study refers to more than one union being curved out of a similar sector.

Industry, NOTU went ahead to register Uganda Hospitality and Allied workers' Union as its affiliate also drawing membership from the same industry. Another example cited was the formation of Uganda Private Teachers Union an affiliate of COFTU when Uganda National Teachers' Union (NOTU affiliate) was already in existence.[35]

Some of the union leaders interviewed were of the view that at least there should be a minimum number of members in a union for it to be registered. They argued that this was the case with all Global Union Federations which demand for a certain minimum number of members in order for a union to be affiliated.

They stated that this should not be seen as a contradiction on FOA and based their opinion on ILO's views on the minimum requirement where applicable as indicated below,

> *"While a minimum membership requirement is not in itself incompatible with Convention 87, the number should be fixed in a reasonable manner so that the establishment of organization is not hindered. What constitutes a reasonable number may vary according to the particular conditions in which a restriction is imposed."*[36]

On the other hand, all of the union leaders interviewed in COFTU were of the view that the removal of the minimum membership restriction had led to the registration of more unions. They emphasized that they would not support any proposal to reintroduce a restriction on FOA. Putting any minimum number for a union to be registered would in their opinion tantamount to denying employees the right to FOA.

What can be derived from the above discussion is that the majority of union leaders agreed that the removal of the minimum 1000 member restriction was being implemented leading to registration of more unions. The current (2011) number of unions is forty from twenty-four in 2005. They however have different opinions on whether a lower minimum membership number should be instituted or not. Those in favour (of instituting a minimum number) argue that it would discourage formation of numerous small economically unviable unions which may not have the capacity to build a formidable force in the event of any industrial action. On the other hand those opposed to the idea argued that by instituting a minimum number, it might deny some workers in relatively small enterprises their labour rights. However, the

[35] The reader should note that this act of forming unions within the same sector where one union already existed is meant to create more space in terms of coverage and numbers. But for sure this is not a healthy environment as it weakens the cohesion and strength of the trade union movement.

[36] ILO (2006) 5th revised ed. Freedom of Association p. 60

critical issue to note here is that the recruitment capacity of the unions seems to have remained the same whether there is a minimum requirement or not.

3.2.4 The right to labour union affiliation

The Trade Union (Amendment) Decree of 1973 had established NOTU as the only principal organization of employees in Uganda, to which all registered trade unions were to affiliate (Section 2(1)). This was however in contravention of the National Constitution of 1995 and the ILO Convention 87.

The new law gives legal recognition to registered labour unions without interference, to affiliate to a federation of their choosing. This means, that compulsory affiliation to NOTU was ended in 2006 when the new law was passed.

Since then, labour unions have fully exercised their right to affiliate to a federation of their choice. Both NOTU and COFTU each have 20 affiliates.

3.2.5 The right to labour union expansion

The Trade Union Decree of 1974 did not cater for a wider section of employees especially the civil servants like teachers and health workers among others. The situation was however improved when the Trade Union (Miscellaneous Amendment) Statute of 1993 was passed to permit workers in Government departments, workers of Bank of Uganda, teachers and health workers to join trade unions of their choice. As a result unions like Teachers Union, Uganda Medical Workers Union and, Uganda Government and Allied Workers Union were formed. Despite the 1993 law other sections of workers were still prohibited from joining trade unions of their choice. These included the police force, prison services and those in the informal sector. In response to the above, the new labour law, the Labour Unions Act 2006, addressed this by allowing all workers except members of the Uganda People's Defence Forces (UPDF) to form and join unions of their choice.

The study therefore aimed at understanding whether unions had ventured into organizing workers from the formerly restricted areas. The question asked was whether the union had recruited workers from police, prison or the informal sector.

Transport Union, for instance, is one union that has made efforts to organize workers in the private security guard sector. The union also organizes workers in the informal sector, like boda-boda riders in Malaba and special hire drivers at Entebbe airport[37]. While the Transport Union has made entry into the informal sector many workers in the formal sector still remain unorganised. For instance, Bank of Uganda staff, prison officers and police among others have remained unorganised.

The study also revealed that five unions affiliated to COFTU were active in organizing workers in the informal sector. These included: Uganda Market Employees Union, Uganda Artisans and General Workers' Union, National Union of Drivers, Cyclists and Allied Workers Unions, Uganda Farm and Agro Based Workers Union and National Union of Infrastructural, Civil Works and Wood Workers.[38]

In conclusion of this part, the study revealed that this new provision of allowing workers in other sectors like police, prisons, Bank of Uganda and informal sector to join unions of their choice has not been fully utilized by the majority of unions. For instance, no union has ventured into organizing the police force and prison services. What the study found out was that the unions lacked both financial and human resource capacity to venture into these sectors. It was only in the area of private security and a cross section of workers in the informal sector where a few unions have organized workers into labour unions.

3.3 Labour Disputes (Arbitration and Settlement) Act 2006

The title of the Act was changed from Trades Disputes (Arbitration and Settlement) Act to Labour Disputes (Arbitration and Settlement) Act to be in conformity with the Labour Unions Act 2006 that did away with the term Trades. The aim of this new law was to simplify and reduce the statutory procedures for settling labour disputes, encourage the use of voluntary conciliation and arbitration and the observance of collective bargaining agreements. According to the new law some of the powers of the Minister in charge of labour were given to more technical people such as the labour commissioner and the labour officers in the Districts[39]. Formal reporting of disputes was to be made to the labour officer of the District of origin of the dispute or the labour commissioner. The labour officer assumed all the powers previously

[37] The union uses the SACCOs method to organize informal sector workers. A SACCO is a group of persons, with legal personality, not for profit, with open-ended capital, based on principles of unity, solidarity and mutual assistance whose primary purpose is to take savings from its members and grant them loans (Uganda Co-operative Alliance, 2010).

[38] Information given during an informal interview with Hon. Lyomoki.

[39] According to Employment Act 2006, "labour officer" means the Commissioner or a District labour officer. They ideally carry out similar functions. The major difference is that the Commissioner is stationed at the ministry head quarters whereas the labour officers are found at District head quarters. However, in terms of hierarchy the District labour officer reports to the Commissioner.

exercised by the Minister under the Trades Disputes Act, as far as resolution of labour disputes was concerned.

The survey, in assessing the workability of this Act, interviewed labour leaders, District labour officers and the Principal labour officer in charge of industrial relations.[40] The areas under consideration were those that were included in the new Labour Disputes (Arbitration and Settlement) Act 2006. Such areas included: Collective Bargaining, the role of labour officers and the Industrial Court.

Labour leaders were asked in the first instance if the new law was being implemented in regard to simplifying the handling of labour disputes, use of collective bargaining, the role of labour officers and the functioning of the industrial court.

3.3.1 Collective Bargaining Agreements (CBAs)

Of the 14 respondents (union leaders) from NOTU, different views on the applicability of this law in view of concluding CBAs were submitted as follows:

While 50 percent of the union leaders thought the law was good and simplified the process of collective bargaining, the rest submitted that the status quo still remained. They bemoaned the still drawn-out consultations which in most cases do not yield a positive outcome for the unions and were said to lead to frustrations and delays in concluding a CBA. Situations become further complicated where management contracts lawyers[41] as their representatives during the course of negotiations.

The labour officers interviewed on this issue complained of absentee owners[42] of factories/enterprises who contributed greatly to delay in concluding CBAs. Two unions, namely UFAWU and UHAWU, serve as classic examples for a case where negotiations dragged on from 2006 till 2010 when both parties finally signed collective bargaining agreements. This delay was greatly attributed to the reason stated above as well as the absence of an Industrial Court where unions could seek legal redress.

[40] The study had originally targeted the labour commissioner (LC) but he instead delegated the Principal labour officer in-charge of Industrial Relations to settle for the interview.

[41] Trade Unions claim that the use of lawyers is likely to erode the spirit of social dialogue. They consider lawyers uncompromising and the win-win situation which is the basis for negotiations unlikely to be realized.

[42] Absentee owners refer to those proprietors of enterprises who decide to stay in their country of origin other than in the countries where their businesses are located. They only fly in whenever they are called upon to make a final decision. This is a common phenomenon in the Fisheries and Flower sectors.

Union leaders on the positive side, however, noted that the new law requires employers to review the CBA within a period of not exceeding 24 months.[43] Failure to do so one *"...commits an offence and is liable…to imprisonment not exceeding one year…"* (Labour Disputes Act 2006 S.38 (7)).

From the above observation, the study did not find empirical evidence to suggest that the Labour Disputes (Arbitration and Settlement) Act 2006 had brought in better services in as far as concluding CBAs was concerned. Indeed the study revealed that few unions had concluded CBAs between 2006 and 2010.

3.3.2 The role of labour officers

The role of labour officer is by and large to ensure that the labour laws are fully complied with by the concerned parties who include workers, employers and labour union leaders. Labour officers are meant to provide guidance to all industrial relations issues in the country. Because of their central role, the labour officers interviewed in this study[44] were asked a number of questions ranging from use of the powers given to them by the new law and the challenges they faced in implementing the new law. Despite progressive provisions of the law like giving more powers to labour officers, the reality on the ground shows damning challenges for labour officers in Uganda.

Views from the Focus Group Discussions confirmed that labour officers were given more powers and responsibilities than what they used to have but were not well facilitated to effectively carry out their responsibilities. For instance the new law permits the labour officer to,

> *"…secure the settlement of trade disputes, actual or imminent, by the use of voluntary procedures, conciliation and mediation" (Labour Disputes Act 2006 S.24 (1)).*

In addition to the above, the labour officer can,

> *"…at the request of any party to the dispute, and subject to section 6, refer the dispute to the Industrial Court" (ibid. S. 5(1) (b)).*

[43] See The Labour Disputes (Arbitration and Settlement) Act, 2006 Section 38(5).

[44] Labour officers in this study refers to District labour officers in the four Districts of Jinja, Wakiso, Mbarara and Gulu plus the Principal labour officer at the Headquarter in Kampala.

Other provisions under the same law include: Sections 3-6 all of which stipulate roles and powers of labour officers in handling labour disputes.

Labour officers, however, stated that though they had more powers under the new law, they were in the first place few in numbers countrywide and even those employed in Districts could not appropriately cover all the areas under their jurisdiction. For instance, by December 2010 there were 112 Districts with only 36 labour officers who were not well facilitated (in terms of equipment and support staff) because of budgetary constraints of the Ministry in charge of labour. This point is further discussed under the challenges, i.e. inadequate facilitation to labour officers.

Additionally, upon the enactment of the 1995 Constitution, the supervision and budgets of the labour inspections service were devolved from the Central Government to the District Local Governments through the decentralization system of administration. However, decentralisation moved the situation of labour administration from bad to worse because district local councils do not consider labour a priority since it does not generate any income. As a result, the non-wage component of the department of labour which includes inspection is very minimal or lacking. All the five DLOs and the Principal labour officer interviewed confirmed the point that the budget constraints as highlighted by labour officers in the preceding paragraph had greatly weakened their inspection roles because they lacked resources to execute their duties.

In conclusion of the section, the study has postulated that the labour officers under the new law were given more responsibilities and powers as noted above but with less facilitation than before. This greatly curtailed their movement and ability to carry out their activities thus rendering them non-performers in the eyes of both employers and workers. The study could not obtain any empirical evidence where a labour officer had engaged any of the two social partners who had failed to comply with provisions of the law and was either fined or apprehended. However, despite these challenges, the interviewed labour officers said that the new Labour Disputes Act was good. Some have managed to resolve a few disputes with the use of persuasion. Resorting to the Industrial Court was, however, not an option since it is not currently operational (see chapter 3.3.3).

3.3.3 Industrial Court

The labour officers submitted that the non-functioning of the Industrial Court (IC) had substantially undermined their operations. It was mentioned that the Court ceased to operate in 2006 when the President of the Court died. Efforts by the employers and workers to lobby the appointing authority to replace the judge so the court could become operational have not yielded any positive outcome. The official explanation for this omission is that the new law changed the title of the judge from President to Chief Judge (CJ) whose initials (CJ), conflict with the already existing initials of Chief Justice (CJ). Therefore, the court would not be allowed to operate, unless section 10 and other related sections in the Labour Disputes Act 2006 are amended so as to remove the conflicting initials of Chief Judge. Information obtained from the acting labour commissioner indicates that his office had done its part (of pointing out the necessary clauses for amendment) and submitted the proposed amendments to the Permanent Secretary (PS) for appropriate action.

Labour officers further mentioned that the new law had raised the IC to the status of High Court implying that it was to draw its funds directly from the consolidated fund[45] other than the previous arrangement where its budget used to be apportioned from that of MGLSD.

Because of non-functioning of the IC, labour officers cannot apply the law as envisioned and invoke the IC. They instead "resort to persuasion and writing of letters which wastes a lot of time."[46] Labour officers added that some employers did not respect them by refusing to respond to their invitations in case of a dispute resolution and other related matters on industrial relations. They said that it is true that the new law empowers them to resolve any trade dispute, actual or imminent; by use of voluntary procedures, conciliation and mediation[47] but that given the current situation of "promoting investment" they cannot invoke a number of sections of the labour laws. They submitted that by trying to implement some of the provisions in the law (which are meant to meet minimum labour standards) they would appear as if frustrating Government's efforts to woo investors who are seen as a panacea to unemployment challenges faced by the country at the moment. The only remedy would be to go to the IC which is not functioning. This was a different scenario before 2006, when workers would take cases to the IC for legal redress.

[45] Consolidated Fund is the central collection account for all Government funds. This implies that the court will be directly getting its funds from this pool account and its budget will no longer be put together with the MGLSD.

[46] Direct Interview with Principal labour officer, Ministry of Gender, Labour and Social Development.

[47] See Labour Disputes (Arbitration and Settlement) Act 2006 S. 24 (1-2).

Whereas the new law elevated the IC to status of High Court, this cannot be operationalised. There are two procedural reasons for this, one relating to the legislature and the second one relating to the executive arm of government. Without Parliament amending section 10 and other related sections of the Labour Disputes Act 2006 to nullify the conflicting title chief judge and replace it with an appropriate title, the appointing authority – the President of Uganda – will not be in a position to effect the necessary appointment of a new judge. Until these steps are taken workers will not be in a position to receive justice. This situation has in the same way jeopardized the activities of the labour officers who cannot effectively carry out their daily activities.

3.4 Employment Act 2006

The Employment Decree of 1975 was one of the major labour laws that was considered outdated by both employers and workers of Uganda. The law did not sufficiently address new changes in the working environment brought about by globalization. Such new changes include: privatization, retrenchment, liberalization of the economy, and informalization of labour, among others. Further still, Uganda after embracing the World Bank's Structural Adjustment Programmes witnessed changes in the labour market, i.e., the shrinking of the public sector vis-à-vis expanding of the private sector. As such the labour market is faced with new challenges to include: unemployment, child labour and sexual harassment, all of which affect the normal operations of work.

The Employment Act 2006 has among other things been modified and made more effective to better address challenges brought about by social and economic changes in the country. This survey, therefore took to investigate three new areas that are covered by the Employment Act 2006 to include among others; (i) Sexual Harassment (Section 7), (ii) Prevalence of child labour (Section 32) and (iii) Discrimination on grounds of HIV status (Section 75)

3.4.1 Sexual Harassment (SH)

Sexual harassment is considered to be a violation of human rights, as well as a safety and health issue (ILO ABC of Women Workers' Rights and Gender Equality, 2000). As such the Government of Uganda found it prudent to put in place an enabling law which states that *"Every employer who employs more than 25 employees is required to have in place measures to prevent sexual harassment occurring at their workplace"* (Employment Act, 2006, Section 7(4). The study reveals that out of the 24 union leaders interviewed, 38 per cent confirmed that sexual harassment existed, while 62 percent of the union leaders said that sexual harassment did not exist at workplaces.

Table 3: Does Sexual Harassment Exist?

Response	**No of Union Leaders**		**Total**	**Percentage**
	Males	**Females**		
Yes	2 (29%)	7 (71%)	9	38%
No	13 (87%)	2 (13%)	15	62%
Total	**15**	**9**	**24**	**100%**

Of those who mentioned that sexual harassment existed, women constituted 71 per cent whereas their counter parts were 29 per cent. Those who said that it does not exist were 87 per cent, the majority being male. It was also important to note that some female respondents concurred with their male counterparts that sexual harassment does not exist. These constituted 13 per cent.

Union leaders that affirmed the existence of sexual harassment said it was mainly perpetuated by male supervisors. Unions that had experienced high occurrences of sexual harassment included: Theatrical Union (entertainment) and Horticultural Union (agriculture & plantation).

According to the General Secretary of Theatrical Union the occurrences of sexual harassment affecting members of his union were high because a large number is employed in the entertainment industry mainly in casinos, night clubs and restaurants. The reason for sexual harassment also being pronounced in the horticultural sector as noted by the General Secretary of Horticultural Union was the lack of knowledge of workers concerning their rights given the little formal education the majority of them attained. He said that most of them were primary drop-outs who were highly exploited by (male) supervisors. Furthermore, the General Secretary submitted that such workers do not bring up cases of sexual harassment; and only do so when they are faced with disciplinary actions and/or threatened with dismissal and instead use it in their

defence. Sexual harassment also existed in the health sector as revealed by the General Secretary of Uganda Nurses and Midwives Union. She said that this vice was on the other hand being perpetuated by both medical staff and patients.

The conclusion that can be drawn from the above is that sexual harassment though not openly pronounced, is a big problem because victims do not expose the culprits for fear of being victimized by the same violators. The new law has not effectively addressed this challenge.

3.4.2 Child labour

Child labour is a problem that has existed for a long time the world over. It constitutes one of the greatest sources of child abuse and exploitation in the whole world. The situation is worse in poor developing countries like Uganda where poverty, HIV/AIDS, social and political conflicts, wars and poor social services are prevalent. However, the exact number of children engaged in child labour in Uganda is not known. More recent estimates indicate that currently Uganda has about 3.3 million children working (UNICEF 2000).

In Uganda, this problem has mainly been attributed to deficiencies in the legislation. Labour unions working with ILO have taken action to fight child labour[48] through sensitizing workers on its dangers. The coming into force of the new law is therefore seen as a chance by the Ministry if Gender, Labour and Social Development (MGLSD), employers, workers and partners (both within and outside the country) to enhance efforts geared towards fighting and abolishing child labour in Uganda.

Section 32 of the Employment Act has clearly catered for the employment of children as thus:

1) *A child under the age of twelve years shall not be employed in any business undertaking or workplace.*
2) *A child under the age of fourteen years shall not be employed in any business, undertaking or workplace, except for light work carried out under supervision of an adult aged over eighteen years, which does not affect the child's education.*

[48] See ILO-IPEC Project on the elimination of child labour

According to the survey, respondents who included union leaders, workers and employers in the informal and formal sectors reported instances of child labour in sectors like co-operatives, mines, communication and transport as seen in Table 4.

Table 4: Sectors with child labour prevalence

Sector	**Activity**
Communication	Selling air time
Transport	Working in garages, riding motorcycles (boda-bodas)
Co-operatives	Helping parents
Hotels and Restaurants	Serving food
Mining	Stone quarrying

Source: Study by ULRC, 2010

During a direct interview with the General Secretary of the Co-operatives Union and Member of Parliament for Workers, Theopista Ssentongo, she identified child labour as the second biggest challenge faced by the union apart from informalization of labour. In co-operatives payment is largely on the basis of piecework and the work is agricultural in nature. Two main problems were shared by the General Secretary namely: (i) parents using their children to work to boost the parents' productivity with the employer ignoring the practice and (ii) by the direct engagement of under aged children by the employer.

Union leaders from COFTU reported that the use of child labour in the informal sector was rampant, with children being used as domestic servants, street vendors, in take-away food outlets and restaurants, in garages and most widely throughout the agricultural sector. ILO has noted that garage works was particularly dangerous due to high levels of exposure to benzene and lead which are especially harmful to children (Child Labour: Targeting The Intolerable, 1996).

Views generated from the informal sector indicate that Government needed to concentrate more on the worst forms of child labour which directly affected the well being of children and deprived the country of future intelligent leaders.

The study revealed that on the side of Government, several efforts have been made to fight child labour. The country in addition to putting in place the relevant legislation had put up a policy on child labour called National Child Labour Policy 2006. Government also ratified ILO conventions 138 (minimum age of entry into labour market) and 182 (elimination of worst forms of child labour).

Despite Government's effort, the extent of the child labour problem in Uganda demonstrates that the Government has not achieved the effective abolition of underage work as required by Employment Act 2006 S. 32 (1-6).

What can be derived from the above, is that the new law plus other interventions like ratification of ILO conventions 138 and 182, and putting in place the child labour policy plus labour legislation have not adequately contributed to the eradication of child labour for the reason that not many union leaders, employees and employers have fully internalized the contents in the new law concerning abolition of child labour.

3.4.3 HIV/AIDS

Throughout the history of mankind, epidemics and other calamities have forced individuals, families, communities and nations to mobilize and develop concomitant responses. HIV/AIDS is not just a health problem; it is also an occupational problem that affects workers, employers and Governments. It is prevalent among people in their prime years, i.e. between 15 and 49 years of age, a segment of society that is mainly responsible for production and reproduction. The Government of Uganda and a number of partners both within and outside the country have been engaged in the struggle to control and mitigate adverse effects related to the pandemic. Some of the initiatives include the national awareness campaign to sensitize the population about the prevention of the virus, palliative care and putting in place work place policies in a bid to minimize stigma before the affected employees.

In view of the above, therefore, the study investigated whether amidst the coming into force of the new law that prohibited victimization of workers on the basis of their HIV status plus all Government efforts in this regard, employers and employees still perpetuated the vice. The ILO Code of practice on HIV/AIDS and the World of work recognizes that HIV/AIDS is a workplace issue not only because it affects the workforce, but the workplace has a role to play in the wider struggle to mitigate the effects of the

epidemic. The three social partners (Government, employers and workers) therefore have an obligation to initiate and support programmes at workplaces to sensitize and educate workers about HIV/AIDS.

Study results revealed that 89 percent of union leaders had not come across any cases where workers were discriminated against on the basis of their HIV status. Their argument was based on the fact that in most areas of their jurisdiction they had addressed this issue with employers and had successfully embedded it in their CBAs. However they were quick to add that some employees were transferred under unclear circumstances. For the fishing sector, the study indicated that workers had to undergo a compulsory medical scrutiny because this is a sensitive area that involved contact with food.

Focus Group Discussions also brought to the fore various responses pertaining to the question of employers testing workers for HIV/AIDS:

- Many employees do test for HIV/AIDS under the cover of regular check-ups
- Some employees do test and those found positive are laid off under the guise of restructuring.
- Employees with long-term illnesses are often assumed to be HIV positive and are subsequently laid off
- Employers still find a way of getting rid of workers whose HIV status is positive by using poor performance analysis due to absenteeism as an excuse

From the responses given by interviewees, it can be concluded that the new labour law brought in a ray of hope in a sense that employers and employees can now freely discuss the subject to the point that it constitutes one of the major items for inclusion in the CBAs. Although the study could not get empirical evidence to suggest existence of discrimination in work places on the basis of someone's HIV status, the views from Focus Group Discussion seem to suggest that discrimination against workers does exist. Unfortunately, workers were still ignorant about the provisions of the law and in this case could not make good use of the same. In a nutshell, the new provision has not built confidence within the minds of workers to the point of using the law as they seek legal redress.

3.5 Occupational Safety and Health Act 2006

3.5.1 Introduction

The majority of workers spend at least eight hours a day in the workplace, be it on a plantation, in an office or enterprise. As such, working environments should be safe and healthy. Yet this is not the case for many workers. Every day workers all over the world are faced with a multitude of health hazards. ILO (2008) estimates that over 270 million work related accidents occur, 2 million of which are fatal. In economic terms the cost of losses resulting from work place diseases and accidents is estimated at about 4 percent of global Gross National Product (ibid). The prevention and protection of workers from adverse effects of health resulting from their working conditions is therefore crucial, particularly for those who get exposed to toxic chemicals when spraying pesticides.

These chemicals affect their health either through inhalation, absorption into the body through the skin, ingestion or through drinking water that has become contaminated with the chemicals. The workers' families and the surrounding communities can also be exposed by inhaling pesticides which may linger in the air, drinking contaminated water or by coming into contact with chemical residues on workers' clothes (ILO 2008). The management of Occupational Safety and Health challenges is therefore not only a work place issue but also a matter of concern to the whole country.

The coming into force of the Occupational Safety and Health Act 2006 was therefore timely in view of the above mentioned challenges. The new law prescribes a number of duties, obligations and responsibilities for both employers and employees for the purpose of promoting good Occupational Health and Safety standards. All employers are required to take practical measures for the protection of their workers and the community from the dangerous aspects of their economic activity (Section 13.1.a). These measures include the provision of protective gear (Section 19.) and provision of proper information and training about the proper handling of chemicals (Section 13.2.c).

The study however revealed that the majority of both workers and employers were not yet conversant with the provisions of the new law though union leaders interviewed contended that it was a good law but only lacked the implementation machinery. They mentioned that it was Government's responsibility to monitor implementation of the law. However, the interview done with the District labour officers and the senior principal labour officer at the Ministry head quarters all submitted that they lacked the necessary tools to execute their duties. They lacked office equipments and tools like computers, cars/motorcycles and other

communication devices because of the budgetary constraints and the decentralized policy where Districts were left to handle labour-related matters yet they did not get adequate facilitation.

Non-provision/irregular provision of Personal Protective Equipments (PPEs) was found to be the most violated aspect in the majority of work places. The study revealed that much as some employers did not provide adequate PPE, there were also cases where employees did not put on the equipment that had been provided. Complaints from workers were that some boots had developed holes underneath yet they were required to wear them and step in disinfectants before entering the Green Houses; overalls were not measured according to the sizes of workers which made them very uncomfortable; and the PPEs were not readily replaced hence the reason for not putting them on. Using the observation method, some bad skin conditions were noted to confirm that workers were exposed to chemicals. Other health conditions that workers associated with continuous chemical exposure were throat and respiratory problems (as submitted by Focus Group Discussion).

Table 5: Do you have Knowledge on Occupational Safety and Health (OSH)?

Response	No of Employees	Percentage
Yes	**10**	**30 %**
No	**20**	**70 %**
Total	**30**	**100 %**

Source ULRC Survey, 2010

From the table above, 70 per cent of workers interviewed showed no knowledge about OSH. Of the 30 per cent who had knowledge about OSH, 35 percent attributed this to employers, 36 percent to the union while 29 percent attributed having knowledge on OSH to both the employer and union. Government's contribution was not mentioned by any of the respondents in this interview yet it should play a pivotal role in ensuring that workers work in safe and healthy working environment.

In conclusion of this part, the indication is that not many workers have knowledge about OHS which calls for understanding of each partner's role and responsibility. The situation is no better for employers either and Government has not played its cardinal role of protecting the vulnerable workers.

3.5.2 Labour Inspection

It should be noted that effective labour inspection is part and parcel of a functional labour administration system and a basic condition for good governance in the World of work (ILO 2006a). The main functions of labour administration include; securing enforcement of the legal provisions, investigating complaints, providing technical information and advice to employers and workers as well as bringing to the notice of competent authorities defects and abuses not covered by the existing legal provisions (ILO Convention 81). In order for these functions to be effectively executed, labour inspectors should have the status of public officials with the right to enter freely any workplace liable to inspection and to carry out any examination, interrogations and to enforce any breaches of the law in the work place (ibid).

Labour inspectors in Uganda are granted the said rights by law and are therefore empowered to execute their work effectively. Employment Act 2006 section 10 and Occupational Safety and Health Act 2006 section 6 empower labour officers to carry out their inspection roles. However, like it has been mentioned in the foregoing sections, inadequate facilitation has not provided great opportunity for such officers to implement their tasks.

3.6 Challenges Faced in the Implementation of New Labour Laws

3.6.1 Introduction

This section covers challenges faced in the implementation of new labour laws in Uganda.

It was generally agreed that the current legal framework on labour laws was very conducive to proper industrial relations in this country. The majority of the respondents affirmed that Uganda's labour laws were the best in Eastern Africa, however, their implementation was faced with a number of challenges from organizational to operational by the three social partners. One vivid observation is that the legal environment is conducive to tripartism and social dialogue, though the reality was different.

The study noted that there are a number of challenges to the implementation of new labour laws as indicated below not in order of their priority.

1. Inadequate facilitation of labour officers

No mechanisms have been put in place to effect implementation of the new labour laws. According to the survey findings the District labour officers who are supposed to implement the labour laws are highly

constrained in terms of financial resources and other forms of support. Because of the latter, these officers are not adequately and frequently appraised on the actual situation on the ground, especially in areas that are rather remote from their work stations.

In addition, some Districts lacked labour officers, and above all, labour officers are employees of Districts and therefore find it difficult to enforce the law under such conditions.

The labour officers on their part mentioned the challenges they faced in implementing the law as follows:

(i) District leaders did not consider labour a priority issue. For instance the majority of Districts had only managed to employ one out of three labour officers required[49].

(ii) Inadequate staffing;

(iii) No or inadequate facilitation in terms of equipment like computers or organized transport like cars and/or motorcycles;

(iv) Political interference at some level and;

(v) Uncooperative union leaders who unfairly accused DLO of poor service delivery with total disregard of the unfavourable working conditions under which they operated.

2. Non-Recognition of labour unions

Non-Recognition of unions was among the biggest challenges faced by labour unions in this country. Most privatized enterprises had refused to recognize unions in spite of new provisions that removed the need to have 51 percent of workers in workplace consent to join the union. This was greatly attributed to ignorance by both workers and employers. The study further noted that most informal private employers did not wish their workers to join labour unions with the fear that unions might start demanding for improved working conditions leading to higher operational costs. One union leader quoted some of the words commonly used by employers to intimidate workers from joining labour unions as follows:

> *"You first become employees before you become a member of the union, if you think you give preference to the union, we (employers) shall withdraw and leave you to the union."*

[49] At every District (with a municipality status), there must be a labour officer at town council level, a senior District labour officer and a labour officer. Out of the six Districts under study it is only Mbarara and Kampala that do have labour officers at the Municipal level.

3. Non-functioning of the Industrial Court

The Industrial Court "shall arbitrate on labour disputes…and adjudicate upon questions of law … [and] shall dispose of the labour disputes … without undue delay."[50] It is also seen as the highest and final body in the process of settlement of labour disputes. Under the new arrangement of providing efficiency and expeditiously disposing of cases, the Industrial Court was raised to High Court[51] status and any appeal made "to the Court of Appeal [will] only [be] on a point of law, or to determine whether the Industrial Court had jurisdiction over the matter."[52] Despite the good provisions and the good intentions upon which this court was established, non-functioning of the Industrial Court seems to be greatly responsible for non-compliance to the new labour laws. It is true that the new Labour Disputes (Arbitration and Settlement) Act empowers labour officers to handle and conclude labour disputes, but in case of a deadlock where the matter would have to be referred to the Industrial Court[53], nothing could be done under the prevailing circumstances. The Industrial Court has not been in operation since 2006 when its President died. In an informal interview with the acting labour commissioner, he mentioned that "the Industrial Court could not function because of a confusing title given to its head."[54] Therefore, until Section 10 and others with the title "Chief Judge" are repealed, the Industrial Court might never function. According to information given in the course of this study, the MGLSD is in the process of repealing section 10 and other sections of the Labour Disputes (Arbitration and Settlement) Act 2006 to find a suitable title for the head of the Industrial Court. The continuing delay is being attributed to lack of both logistics and human resources.

4. Informalization of labour

At the enterprise level, the ability of unions to organize effectively within the informal sector has been seriously hampered by several measures that have been taken by employers in a bid to reduce overheads and make production factors adjustable. This is done by reducing the core of permanent workers and increasing the proportion of temporary and casual employees. Therefore most employers – be it in the formal or informal sector have contributed greatly to casualisation and informalization of labour by aiming at reducing expenses at the cost of permanent employment.

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[50] See Labour Dispute (Arbitration and Settlement) Act 2006 Sections 8 (1) (a-b) and (2).

[51] One of the implications under this arrangement is that it will be getting its funding directly from the consolidated fund and not under the Ministry of Gender, Labour and Social Development as was previously the case.

[52] Section 22 of Labour Disputes Act 2006.

[53] Section 5(1)(b) of the Labour Disputes (Arbitration and Settlement) Act 2006 states in parts that, "…the labour officer shall…refer the dispute to the Industrial Court",

[54] The labour commissioner mentioned that the title "Chief Judge" was being challenged by the Judicial Services Commission as it conflicts with initials of Chief Justice and hence there was a need to amend Section 10 of Labour Disputes Act 2006. This was seen as one of the reasons for the delay in appointment of members of the Industrial Court.

The new Employment Act 2006 defines casual labour or a casual employee as "a person who works on a daily or hourly basis where payment of wages is due at the completion of each day's work". Theoretically this is supposed to be labour that is employed irregularly, from time to time as and when work is available. Legally, the casual worker's contract is a daily contract. From the point of view of the employer this is cheap labour, labour without any rights apart from payment of wages at the end of the day. Casual labour can be hired and fired at will. Employers therefore by employing casual and temporary workers, avoid implementing labour laws most especially on workers' rights by not giving written contracts or appointment letters, increasing working hours and also deny workers to join labour unions.

5. Lack of capacity to enforce the law

Throughout the engagement with the majority of respondents, it was mentioned that Government as the watchdog of implementation of such laws had not shown serious commitment in this regard. This is confirmed by the fact that budgetary allocation to the Ministry for Gender, Labour and Social Development compared with other Ministries like Works and Transport, and Security is extremely low (see table 6 below) despite the large portfolio the MLGSD is supposed to be handling (all youth concerns especially employment placement and skills development, issues to do with women, people with disability, the aged and children).

The MGLSD cannot handle all the needs under its jurisdiction. It has the largest number of State Ministers (four in number) and a full Minister yet is the least funded. Looking at the National Budget Framework Paper FY 2009/10-2013/14, it received a very low budget allocation with 0.4 per cent compared with Works and Transport, and Security's 18.5 per cent and 8.1 per cent respectively in the 2008/09 budget allocation (see table 6 below).

Table 6: Medium Term Expenditure Framework (MTEF) Sector Shares 2007/8-2013/14 Excluding Non VAT Taxes and Arrears

Sector	2006/7 Budget	2007/8 Budget	2008/9 Budget	2009/10 Budget	2010/11 Budget	2011/12 Budget	2012/13 Budget	2013/14 Budget
Security	9.2 %	9.3 %	8.1 %	7.6 %	**7.9 %**	7.7	7.8 %	8.3 %
Works and Transport	11.3 %	13.2 %	18.5 %	17.4 %	**16.5%**	10.4%	9.6%	10.0%
Agriculture	3.8%	4.3%	3.8%	4.4%	**4.6%**	4.8%	4.9%	5.2%
Education	17.6%	16.1%	15.4%	16.2%	**14.9%**	15.2%	15.1%	15.8%
Health	9.3%	9.0%	10.7%	10.2%	**10.8%**	10.9%	10.8%	11.2%
Water & Environment	3.0%	3.3%	2.6%	2.2%	**1.9%**	2.0%	2.1%	2.3%
Justice/Law and Order	5.0%	4.9%	4.8%	4.8%	**4.6%**	4.9%	4.9%	5.3%
Accountability	6.8%	7.1%	7.1%	5.4%	**4.7%**	4.9%	5.1%	5.5%
Energy and Mineral Development	8.3%	9.5%	7.9%	8.8%	**9.4%**	8.3%	7.1%	7.0%
Tourism, Trade &Industry	1.1%	0.9%	0.5%	0.8%	**1.3%**	1.4%	1.2%	1.3%
Lands, Housing &Urban Development	0.4%	0.2%	0.2%	0.2%	**0.7%**	0.8%	0.8%	0.9%
Social Development[55]	**0.4%**	**0.5%**	**0.4%**	**0.5%**	**0.6%**	**0.6%**	**0.6%**	**0.7%**
ICT	0.0%	0.1%	0.1%	0.0%	**0.1%**	0.1%	0.1%	0.1%
Public Sector Management	7.9%	10.2%	9.1%	9.2%	**9.1%**	9.3%	9.3%	9.7%
Public Administration	4.3%	3.7%	2.3%	2.7%	**3.9%**	4.1%	3.5%	3.8%
Legislature	1.3%	1.7%	1.9%	1.8%	**1.6%**	1.7%	1.8%	1.9%
Interest Payment Due	6.3%	6.1%	6.5%	6.0%	**5.3%**	4.6%	4.2%	3.8%
Unallocated	0.0%	0.0%	0.0%	1.6%	**2.2%**	8.3%	11.1%	7.3%
Grand Total	100%	100%	100%	100%	**100%**	100%	100%	100%

Source: MFPED, 2009.

[55] This sector is in charge of Gender, Labour and Social Development

6. Dual Recognition

Employers mentioned that the greatest challenge they faced while dealing with unions was 'dual recognition' of labour unions. This results from provisions regarding FOA, where more than one union can recruit and organize workers from one enterprise. This has brought in confusion in the sense that an employer will have to deal with more than one union which is time consuming and may breed disharmony among workers of the same enterprise subsequently affecting their production line. Employers said that the matter was increasing and that Trade Union Federations were not guiding their affiliates on where to organize to avoid collusion.

Labour unions leaders, on the above matter said that they had addressed this issue in the submission of their views on labour regulations to the MGLSD. One of their views was that the union that was found in the workplace at the time of enactment of the new labour laws should be the only recognized union. However by December 2010 such proposals had not been finalized by the MGLSD.

7. Unemployment

Uganda's labour force is currently estimated to be 12 million persons and is projected to reach 19 million by 2015 basing on the growth rate of 3.4 per cent per annum (UBOS UNHS 2003). Young men and women constitute the largest single block of our country's labour force. The youth, in the 15-29 age bracket, constitute over 95 per cent of the 400,000 labour market entrants annually (UBOS UNHS 2003). Only 15 per cent (1.6 million) of the total workforce (10.8 million) is employed for wages of which 4.6 per cent are permanent employees and 11.6 per cent are temporary. As much as 70 per cent of the labour force is self-employed or employed as unpaid family workers in the agricultural sector. Informal employment constitutes 72 per cent of the total employment (National Employment Policy for Uganda 2010:7). The youth's share of suffering unemployment is increasing (42 per cent in 1997; 58 per cent in 2003; 65 per cent in 2006; and 50 per cent in 2010.[56])

Because of the high levels of unemployment, "people were willing to work under any terms and conditions provided by employers."[57] This has made enforcement of minimum labour standards difficult since people are willing to offer their labour at any cost.

[56] See National Development Plan (2010/11-2014/15).

[57] Direct interview with District labour officer for Jinja.

CHAPTER FOUR: CONCLUSIONS AND RECOMMENDATIONS

This study has examined the new labour laws with a particular focus on their implementation. A number of conclusions have been made from the above study. Firstly, apart from a few areas, the new labour laws largely improved the right to labour union recognition, the right to register a labour union, the right to labour union affiliation and the right to labour union expansion in terms of organizing workers in the country. However, challenges still exist in terms of enforcing the rights and freedoms enshrined in the new labour laws that call for workers, employers and the MGLSD to devise strategies towards implementation of the labour laws. The challenges include the inadequate facilitation to labour officers, non-recognition of labour unions, non-functioning of the industrial court, dual recognition of labour unions on the side of employers, informalization of labour and ignorance of the law by both workers and employers.

In view of the above, recommendations are drawn below to the Government (to a large extent the Ministry of Gender, Labour and Social Development), employers and workers on what should be done to ensure that new labour laws are effectively implemented.

1. GOVERNMENT (MGLSD)

(i) Appointment of District labour officers

Labour administration has been decentralized to local levels but there are currently only 36 labour officers in the country. This therefore calls for the appointment of more labour officers to cover all the 112 or more Districts in this country. It should also be noted that according to the new labour laws, new roles have been given to labour officers, for instance handling labour disputes at the local level and powers to prosecute. Labour officers also need to be trained to adequately carry out their new roles. To fulfil all the above, more funding to this Ministry may serve the purpose. Besides funding, Government should recentralise labour administration in order to conform to ILO convention 150 on labour administration. Once labour has been recentralised, it will serve a better arrangement in terms of deployment (in case there are fewer labour officers as is the case currently), accountability and better management.

(ii) Functioning of the Industrial Court

The Industrial Court is not functioning because of confusion brought about by the new title i.e., chief judge whose initials CJ clash with those of the Chief Justice (CJ). It is thus recommended that the MGLSD should request parliament to urgently expedite the amendment of this title, Chief Judge, to an appropriate title. Additionally, the labour unions should put pressure on their representatives in parliament

to move a private members bill if government, through the MGSLD does not immediately come up with an amendment bill. In the meantime, workers through their unions or national federations, employers through their umbrella bodies and partners both within and outside the country should raise their voices concerning the non-functioning of the IC and should demand its functioning as soon as possible.

(iii) Concluding of labour regulations

According to employers, the greatest challenge they faced in the implementation of the new labour laws was 'dual recognition'. This was as a result of more than one union recruiting and organizing employees from same enterprise/sector. The MGLSD should therefore urgently come up with labour regulations to guide labour unions in their organization campaigns. During the interviews, it was learnt that labour union leaders had already submitted their comments in response to proposals developed by MGLSD towards labour regulations and it is upon this basis that the study recommends quick adoption of these labour regulations.

(iv) Increase funding to the Ministry

The various departments responsible for either inspection with the view of enforcing minimum labour conditions or training with the aim of skills development should be well facilitated to meet the desired goals. Trade unions together with Ministry officials should use the ILO concepts on decent work and the social floor in regard to social dialogue and social protection to lobby for more funding of this Ministry. They should make their case that provision of safe and better terms and conditions of service in work places as well as protection against basic life risks can lead to economic growth and not necessarily the other way round as some decision makers seem to believe. They should further submit that people have fallen and stayed in poverty because of absence of minimum labour standards, the lack of a decent working environment as well as the lack of social protection. For all of the above to be realised, labour officials and trade unions need to position themselves in a more visible way at all levels of resource allocation i.e. before and during the budget allocation.

The Ministry officials, employers, trade unions and CSOs ought to do a lot of lobbying to convince Parliament (through the budget allocation committee) of the importance of such a Ministry as compared with other Ministries in view of the enormous role it plays. For instance, it handles all youth concerns especially employment placement and skills development among others. It also handles issues to do with women, people with disability, the aged and children. This cohort of youth and women mentioned above constitutes a large percentage of employees especially in the informal sector.

(v) Strengthening of OSH Department

Given the importance of this matter, training and sensitization need to be intensified to safeguard the lives of ignorant workers. Government through its OSH department should take the lead and employers and trade unions should play a supplementary role. Considering what the law was established for vis-à-vis the numerous occurrences of occupational accidents and unhealthy working environment in the construction and commercial agricultural sectors respectively Government ought to take up this matter with urgency. Only by doing so will the law become relevant before the workers.

(vi) Elimination of Child Labour

The study noted that there is still a high prevalence of child labour in both the formal and informal sectors though higher in the latter. The following recommendations are therefore being proposed for implementation in order to fight the vice:

- ✓ Awareness creation on the issue of child labour among the public through education.
- ✓ A national and massive awareness campaign on child labour where parents are reminded of their obligations to take children to school, teachers to offer quality education and Government to ensure that universal primary and secondary education absorbs all the children.
- ✓ Programmes should be put in place to ensure that children acquire basic education while at the same time their parents/guardians have a source of income.
- ✓ The Universal Primary and Secondary Education should have a specific strategy for incorporating children withdrawn from the worst forms of child labour.

2. EMPLOYERS

(i) Recognition of labour unions

The survey reveals that a large number of private employers both in the formal and informal sectors did not recognize labour unions. In view of this, the Federation of Uganda Employers in collaboration with labour unions should sensitize its members on the need to respect the new labour laws specifically the right of workers to form and join labour unions of their choice as stipulated in the 1995 Constitution of the country.

(ii) HIV/AIDS

The study noted that there are still cases of discrimination on the basis of someone's HIV status. The three social partners, therefore, should intensify their campaign in sensitizing employees and management about HIV/AIDS with regard to the contents and implication of the new provision in the law[58].

3. WORKERS

(i) Applying international solidarity

It is important to note that the international community played a big role in the amendment of the labour laws. For instance, bodies like ILO, ITUC, CTUC and FES put in much time and financial resources towards the amendment of the old labour laws. It is on this basis that the study highly recommends that workers' representatives should call upon such bodies to assist in the implementation of the new labour laws. This seems important because workers' struggles have rarely been won with national solidarity alone. International solidarity has in the past played a very recognizable role in workers' struggles.

(ii) Media campaign to popularize and widen debate on the new labour laws

The challenges of labour implementation are many and labour unions may find it difficult to find a solution alone. It is therefore recommended that labour union leaders through their federations should start/increase using the media to popularize not only their federations and unions but also to make known their position and alternative solutions to the socio-economic challenges that affect Ugandans. This therefore calls for labour unions to develop a communication strategy to guide them in effective communication to the public.

(iii) Working closely with the Federation of Employers (FUE)

The labour movement needs to strengthen its co-operation with the Federation of Uganda Employers (FUE). For instance, workers and employers should negotiate directly without third party intervention. The current trend is that employers are increasingly engaging lawyers to settle labour disputes instead of using labour specialized personnel like human resource managers and union leaders. This practice of using lawyers may not be a good industrial relations practice. According to industrial relations theory, direct engagement between workers and employers often best addresses the problem both parties face.

[58] See Employment Act 2006 S. 6 (3)

(iv) Strengthening organizational capacity

NOTU and COFTU need to build their capacities to serve their affiliates. For instance, by assisting them in the training of shop-stewards or on recruitment and organizing (especially of young workers and women). It is also strongly suggested that the two national federations need and must work together in the protection and promotion of workers' rights. No single federation can manage this enormous task independently. For instance, NOTU can share with COFTU copies of the "Popular Version" they made on the new labour laws to avoid duplication of the same work and wastage of workers' resources. Likewise, COFTU can allow NOTU to utilize its training centre for all its educational and training activities and also make good use of its legal aid project which is meant to assist workers seeking justice. COFTU is managing a National Labour Institute (NALI) for labour education and skills training of various categories of workers and the community. The two federations can also share other educational materials that have been developed over the years.

(v) Organising in the formal sector and possibility of merging

Since the law is very clear and applies to all workers, organizing in both formal and the informal sector should now be a top priority. Caution however has to be taken in view of minimising conflicts when carrying out this cause. It is hereby recommended that unions should adopt a sectoral approach while recruiting other than the current industrial approach which might lead to clashes among union members. In fact they should start considering merging most of the affiliates so as to come up with a few but formidable and economically viable unions.

(vi) Organising the Informal Sector

The need to organize the informal sector is not only necessary but is a must for the trade unions. – "[Labour] unions should not only be seen to protect rights of a small section of workers and leave out the informal sector where working conditions are very unfavourable"[59].

While venturing into this sector, however, unions should take caution in view of the dissenting views espoused by those already organizing the same but through associations. In an interview Menhya Alex[60], the Executive Director of Foundation for Advancement of Small Entrepreneurs and Rural Technology (FASERT) had this to say about trade unions' venture into organizing the informal sector,

[59] See a research paper by Rose Nassanga (1998) on 'Trade unions and informal sector: the case of Uganda

[60] Alex Menhya was also the former Executive Director of The Uganda National Federation of Informal Sector Associations (FISA).

"In the informal sector, we do not need trade unions, because there is no employer-employee relationship. Workers here do not need collective bargaining; they need skills which can readily be got by forming associations. For instance, motorcyclists commonly known as Boda-boda cyclists should form associations and not trade unions because there are no skills got by joining trade unions. Trade unions should only go in to sensitize workers on their rights."

That notwithstanding, labour unions should overlook such obstacles and proceed to organize workers in the informal sector, and should not miss an enormous opportunity to increase their membership[61]. They should first analyze the obstacles they face like giving their institutions a new outlook that would be appealing especially to youth and women.

(vii) Education of negotiators

Before management will have any trust in union negotiators, the union negotiators will have to exhibit high knowledge on the subject they are handling. This can only be done by union leaders demonstrating an understanding of their business, its strengths and perhaps its difficulties. Many union negotiators lack professional conduct and the ability to explain labour union issues. This seems more pronounced on the side of newly formed unions that were interviewed. As such the process of negotiations has been seen to take more time than necessary. Labour unions are therefore encouraged to set education and training of negotiators as a top priority on topics like Company Performance Analysis (CPAs), to enable them have some knowledge on the situation under which employers operate before they go for collective bargaining.

4. THE TRIPARTITE BODY

(i) Sexual harassment

Sexual harassment is still a major threat among many workers notably among those with very low skills i.e. in commercial agriculture and the entertainment industry. Male supervisors were the major culprits in perpetuating the vice. Sexual harassment was also noted in the health sector. The perpetuators this time are staff and patients. Therefore, Government (through the MGLSD), employers, workers and civil society organizations/international partners ought to come up with awareness campaigns on sexual harassment to

[61] Strength of any labour union largely depends on number of members recruited.

the communities through the media, national rallies, campaigns and education in all schools, academic institutions of higher learning.

(ii) Awareness creation

One of the challenges faced by workers is ignorance of the law. It is recommended that the three social partners should take up the issue of sensitizing workers with urgency.

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