



PARLIAMENT OF THE REPUBLIC OF UGANDA

**REPORT OF THE COMMITTEE ON GENDER, LABOUR AND SOCIAL
DEVELOPMENT ON THE EMPLOYMENT (AMENDMENT) BILL, 2019**

OFFICE OF THE CLERK TO PARLIAMENT

MARCH, 2021

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1.0 INTRODUCTION

The Employment (Amendment) Bill, 2019 (herein referred to as 'the Bill') was read for the first time on 3rd December 2019 and referred to the Committee on Gender, Labour and Social Development for consideration, in accordance with Rule 128 of the Rules of Procedure of Parliament. The Committee considered the Bill through consultation with different stakeholders, hence this report.

2.0 BACKGROUND

The Employment Act, 2006 and the legal regime in Uganda pertaining to labour, while progressive, did not cover several challenges in the fast-moving world including the regulation of employment of domestic workers and Ugandan migrant workers abroad, as well as the protection of the labour rights of breast-feeding mothers. The new Bill therefore seeks to improve on the current labour laws and take into consideration, among others, the above changes in the socio-economic system governing labour rights in the country.

3.0 POLICY AND PRINCIPLES OF THE BILL

The object to the Bill is to amend the Employment Act, 2006 to operationalize the provisions of Article 40 of the Constitution of the Republic of Uganda to all categories of workers in Uganda, specifically making provision for the regulation of employment of domestic workers in Uganda, to provide for an explicit formula for calculation of severance pay; to provide for the recruitment and employment of Ugandan migrant workers abroad; to provide for the protection of working breast feeding mothers; to require employers to put in place policies and facilities for breast feeding mothers; to prohibit employment of persons as casual employees for more than three months with the same employer and to provide for conversion of casual employment.

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4.0 METHODOLOGY

The Committee held consultative meetings and received written submissions from several stakeholders; the Committee reviewed relevant literature. The Committee also made a desk review of the employment laws of Tanzania, Kenya and Rwanda.

4.1 Meetings and written submissions

The Committee held meetings and received written submissions from the following stakeholders:

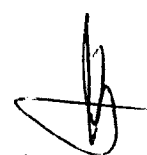
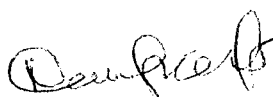
- i) Hon. Kunihira Agnes, the mover of the Bill
- ii) The Ministry of Gender, Labour and Social Development
- iii) Federation of Uganda Employers
- iv) Platform for Labour Action
- v) Uganda Law Society
- vi) IndustriAll Uganda
- vii) International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)
- viii) Uganda Association of External Recruitment Agencies
- ix) Uganda Women's Parliamentary Association
- x) Uganda Domestic Workers' Association

On the recommendation of the Committee that the Mover and the Ministry of Gender, Labour and Social Development hold a harmonisation meeting on their respective positions on the Bill, the two parties met on Monday 15th March, 2021 and harmonised on a number of clauses in the Bill which have been captured in the amendments to the Bill.

4.2 Document review

The Committee reviewed and made reference to the following documents;-

- i. The Constitution of the Republic of Uganda, 1995



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- ii. The Employment Act, 2006
- iii. The ILO Convention 102
- iv. The Labour Disputes Act, 2006
- v. The Workers Compensation Act, Cap 225
- vi. Employment (Recruitment of Ugandan Migrant Workers) Regulations, 2005
- vii. The Employment Regulations, 2011

5.0 GENERAL OBSERVATIONS

5.1 Compliance of the Employment Act, 2006 with the provisions of the Constitution of the Republic of Uganda, 1995

The Committee observed that principles of the Employment Act, 2006 do not cover the protections accorded to workers under Article 40 of the Constitution, in particular Domestic Workers, Ugandan migrant workers and breast-feeding mothers.

Article 40 of the Constitution of Uganda enjoins Parliament to make laws that provide for the rights of persons to work under satisfactory, safe and healthy conditions; and to the rights of pregnant mothers in employment.

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5.2 Compliance with UN 2030 Agenda for Sustainable Development

The Sustainable Development Goals are a universal call to action to end poverty, protect the planet and improve the lives and prospects of everyone, everywhere.

The Committee observed that if the country is to achieve the goals under the UN 2030 Agenda for Sustainable Development, a reform of the labour sector is inevitable. The Committee observed that the Employment (Amendment) Bill 2019 is compliant with the UN 2030 Agenda for Sustainable Development, especially in the

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areas of poverty alleviation and employment, but should be strengthened to support the provision or expansion of the other social security pillars.

5.3 Compliance with the principles of Gender and Equity

The Committee observed that the Bill takes into account principles of gender and equity where applicable, in accordance with Article 33 of the Constitution of Uganda 1995. Article 33 provides for opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. For example, the Bill protects the rights of mothers at work and domestic workers, a majority (at least 80%) of which are women.

6.0 SPECIFIC OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE

6.1 Domestic workers.

The Committee observed that Domestic work in general is one of the most common and traditional forms of work in Africa generally and Uganda in particular employing all categories of people most of whom are young persons. However, the rights of domestic workers are not fully protected under the current labour law regime.

The Committee observed that there is need to transform the legal regime to ensure it recognises the unique nature of domestic work and protect the rights of domestic workers.

The Committee recommends that;

- (a) the Employment Act, 2006 be amended to protect and promote the rights of domestic workers in Uganda. This can be done through the expansion of the definition of a contract of service to include the rights of domestic workers in the Bill;**
- (b) the Ministry should enact Regulations to operationalise the provisions on Domestic Workers as included in the Employment (Amendment) Bill 2019;**

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6.2 Protection of breastfeeding working mothers.

The Committee observed that there is need to amend the Employment Act, 2006 to clearly prohibit discrimination against breastfeeding mothers in employment and to ensure that breast feeding mothers are given breaks to breastfeed at least for the first three consecutive months after maternity leave.

The Committee noted that although Article 40 (4) of the Constitution provides for the protection of every female worker during pregnancy and after birth in accordance with the law, the Employment Act, 2006 does not contain comprehensive and explicit provisions promoting the rights of breastfeeding mothers. There is therefore need to expressly protect breastfeeding rights of working women, including the provision of breastfeeding breaks by employers or a reduction in hours of work to facilitate breastfeeding for the breastfeeding mothers.

The Committee recommends that;

- a) the rights of breast feeding mothers be incorporated in the Employment (Amendment) Bill, 2019, including the provision of breast-feeding breaks or a reduction in hours of work to facilitate breastfeeding for the breastfeeding mothers;**
- b) the Ministry should enact Regulations on the implementation of the provisions on breast-feeding mothers;**

6.3 Casual Workers

The Committee noted that whereas the Employment Act 2006, under section 2 defined a casual employee, this is the only provision on casual employees in the entire Act. The Act therefore does not legislate or make provisions on employment of casual employees.

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PROPOSED AMENDMENTS TO THE EMPLOYMENT (AMENDMENT) BILL, 2019

Clause 1: Commencement

Delete clause 1.

Justification:

Implementation of the proposals in the Bill does not necessitate establishment or readjustment of any implementation structures. The Bill can therefore commence upon publication in the Gazette in accordance with section 14(1) of the Acts of Parliament Act, Cap. 2.

Clause 2: Amendment of section 2 of Act 6 of 2006

Clause 2 (d)

Delete paragraph (d) of clause 2.

Justification:

To maintain the definition of “employer” as it is in the principal Act.


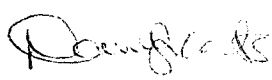
Clause 2 (e)

Delete paragraph (e) of clause 2.

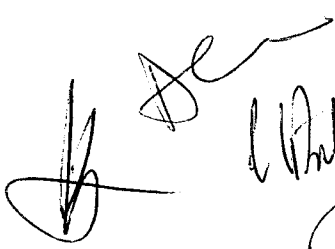
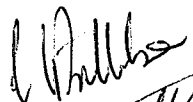
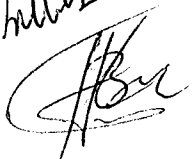
Justification:

The proposed definition of “employee” in clause 2(c) is sufficient to cover household employee.

Clause 2 (g)

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Delete paragraph (g) of clause 2.

Justification:

To maintain the definition of migrant worker as it is in the principal Act. The definition in the principal Act is inclusive of both migrant workers to and from Uganda to other countries.

Clause 2 (h)

Substitute for the proposed definition of 'recruitment agency', the following definition—

“recruitment agency” means any agency, bureau, contractor, sub-contractor or person registered to facilitate the placement of a worker with a prospective employer within and outside Uganda.”

Justification

To enhance clarity and avoid vagueness in the definition of the word of recruitment agency.

Clause 2 (i)

Delete paragraph (i) of clause 2.

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Justification:

Consequential amendment arising out of the amendment in clause 2(g).

Clause 2(j)

Delete paragraph (j) of clause 2.

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Justification

Section 3 of the principal Act restricts the application of the Act to an employee under a contract of service. A volunteer does not fall in that category and it is thus redundant to have the definition in the Act.

Clause 3: Amendment of section 3 of the Principal Act

Delete paragraph (a) of clause 3.

Justification

Consequential amendment arising out of the amendment to section 2 of the Principle Act on the definition of contract of service.

Clause 4: Amendment of section 7 of the principal Act

Clause 4(a)

Substitute for paragraph (a), the following—

“(a) by substituting for subsection (4), the following—

(4) An employer shall put in place measures to prevent sexual harassment at his or her work place.”

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Justification

The law should have no limit on the number of employees to be protected against protect sexual harassment at the workplace.

Clause 4(b)

Delete the entire paragraph (b) of clause 4.

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Justification

- i. The clause is redundant. The Minister is already empowered under section 97 of the principal Act to make regulations for the better carrying into effect the provisions of the Act.
- ii. There is already in place, the Employment (Sexual Harassment) Regulations, 2012 which provides a procedure for lodging a sexual harassment complaint and the handling of sexual harassment complaints by the labour officer.

Clause 5: Insertion of new section 7A to the principal Act

Clause 5 is amended in the proposed section 7A—

- a) By substituting the for the Headnote the following-

“7A. Prohibition of mistreatment against an employee

- (b) by deleting paragraphs (d), (e) and (f) of subsection (2);

- (c) by inserting immediately after subsection (2), the following—

“A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding forty two currency points or imprisonment not exceeding seven years or both.”

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Justification

- i. Reference to the words “abuse, harassment or violence” in the headnote which are not subsequently referred to in the section renders them redundant.
- ii. The deletion of paragraphs (d), (e) and (f) of subsection (2) is to avoid repetition since the provisions are already provided for in the existing penal legislations and a person against whom an offence has been committed can proceed under those legislations.

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In addition, section 95 of the principal Act allows for prosecution of a person for a criminal offence committed against a person under the Act.

- iii. The insertion of a new subsection is to provide for a penalty for the offences created under the proposed section 7A.

Clause 6; Amendment of section 11 of the principal Act

Delete Clause 6.

Justification

The proposed amendments to section 11 are redundant because:

- i. The principal Act empowers the labour officer to freely enter any workplace, without giving notice at any hour for inspection and conversely, the Employment Regulations, 2011 define workplace, to include all places of work where work is carried out.
- ii. The principal Act allows the labor officer to do the inquiry alone or in the presence of a witness on the application of the Act or other legal provisions made under the Act. This could be a police officer if the labor officer deems it necessary.
- iii. The principal Act empowers the Minister to make regulations for the better carrying into effect of the provisions of the Act.

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Clause 12: Substitution of section 34 of the Principal Act

Delete the words "household employee, volunteers" appearing in line five of the proposed section 34.

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Justification

Consequential amendment arising out of the amendment to clause 2 (e) and (j)

Clause 13: Amendment of section 37 of the principal Act

Substitute for clause 13 the following—

“13: Insertion of new section 37A in principal Act

The principal Act is amended by inserting immediately after section 37, the following—

37A. Obligations of employer of migrant worker.

(1) An employer employing a migrant worker in Uganda shall—

- (a) ensure that the employment is in accordance with this Act, the standard contract of service and other applicable laws, regulations and collective bargaining agreements;
- (b) provide the migrant worker orientation on the terms and conditions of employment and other relevant information, including the rights and duties under his or her contract of employment prior to or in the process of engagement;
- (c) ensure that the migrant worker has a valid work permit;
- (d) keep a register of all migrant workers employed at the work place;
- (e) file annual returns to the district labour officer of the area in which the work place is located with details of the migrant worker employed;
- (f) repatriate a migrant worker on the expiry or termination of the contract of service for which he or she was recruited notwithstanding the reason for termination.

(2) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred currency points or imprisonment not exceeding three years or both."

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Justification

- i. The current section 37 of the principal Act should be maintained as it is. The obligations imposed upon persons employing migrant workers in Uganda as proposed under clause 13 should be provided for under a separate section as proposed.
- ii. The reduction of currency points is to make the penalty commensurate to the offence.

Clause 14: Amendment of section 38 of the principal Act

Clause 14 is amended—

- (a) by deleting paragraph (a) of clause 14;
- (b) by deleting the word “Ugandan” wherever it appears in the clause.

(c) in paragraph (b)—

- (i) by substituting for the proposed subsection (2b), the following—

“(2b) A recruitment agency shall undertake due diligence on the suitability of an employer under whose employment it intends to place an employee.”;

- (ii) by inserting a new paragraph immediately after paragraph (d) of subsection (2c)—

“comply with any other condition as may be set by the Minister by Regulations;”

- (iii) by inserting a new paragraph immediately after paragraph (h) of subsection (2d)—

“any other category of persons as may be prescribed by the Minister through regulations.”

- (iv) by inserting a new subsection immediately after the proposed subsection (2d), the following—

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(2e) A recruitment agency shall repatriate an employee back to Uganda at the expense of the recruitment agency.

(c) by deleting paragraph (e) of clause 14.

(d) in paragraph (f), by substituting for the words “twenty thousand currency points”, the words “one hundred twenty currency points”.

Justification

- (i) Paragraph (a) of clause 14 is redundant given that section 38 of the Principal Act caters for the same proposals.
- (ii) The deletion of the word “Ugandan” is a consequential amendment arising out amendment by deletion of the proposed clause 2(g) and (i)
- (iii) The substitution of the proposed subsection (2b) is for clarity.
- (iv) The recruitment agency should have obligation to repatriate a Ugandan employee it recruits for external employment so that Ugandan workers do not continue being stuck in foreign countries after losing employment.
- (v) Paragraph (e) of clause 14 is redundant given that the principal Act empowers the Minister to make regulations for the carrying into effect the provisions of the Act.
- (vi) To ensure the penalty is commensurate to the offence.

Clause 15: Insertion of new section 38A to the principal Act

Clause 15 is amended—

(a) by deleting subsection (2) of the proposed section 38A;

(b) in subsection (4) of the proposed section 38A, by substituting for the words “ten thousand currency points” the words, “one hundred and twenty currency points”.

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Justification

- (i) The details proposed under subsection (2) should be provided in the Regulations made under the principal Act.
- (ii) To make the penalty commensurate to the offence.

Clause 17: Insertion of a new section 56A to the principal Act.

Clause 17 is amended in the proposed section 56A—

(a) by substituting for subsection (1), the following—

“(1) A female employee shall not be discriminated against on account of being a breastfeeding mother.”;

(b) by substituting for subsection (2), the following—

“(2) An employer shall accord a female employee, a daily thirty minute breast feeding break in every two hours of continuous work, or a daily reduction in the contractual daily hours of work to enable the female employee breast feed her child upon expiry of her maternity leave.”;

(c) by deleting subsection (3);

(d) subsection (5), by inserting the words “the first” immediately after the word “for”;

(e) by deleting subsection (6).

Justification

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- i. For clarity.
- ii. To clearly indicate the time and duration when a female employee should be granted a breast feeding break or reduction in the daily hours of work.
- iii. The substitution in subsection (2) renders subsection (3) redundant and thus is deleted.
- iv. To ensure that a female employee is only entitled to the breastfeeding breaks and reduction in hours of work only in the first three consecutive months after maternity leave to allow exclusive breast feeding up to six months of the child's life as recommended by the World Health Organization and the Uganda policy on breast feeding, 2009.

Not all employers have the capacity to put up breastfeeding facilities especially in or near the work place.

Clause 18: Amendment of section 59 of the principal Act.

Clause 18 is amended—

(a) in paragraph (a), by deleting the proposed subsections (1a) and (1b);

(b) in paragraph (b), by deleting the proposed subsection (6).

Alexis

Justification

- i. The deletion of subsections (1a) and (1b) is a consequential amendment arising from the amendment of section 2 of the Principal Act on the definition of contract of service.
- ii. Section 101 of the Evidence Act puts the burden of proof on a party that asserts the existence of those facts. There is no justifiable ground for shifting the burden of proof to the employer.

Clause 19: Insertion of new Part VIA to the principal Act.

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Substitute for clause 19 the following—

“19: Insertion of new section 59A in principal Act

The principal Act is amended by inserting immediately after section 37, the following—

59A. Conversion of Casual Employment to Term Employment.

- (1) A person shall not be employed as a casual employee for a period exceeding four months
- (2) A casual employee engaged continuously for four months shall be entitled to a written contract and shall cease to be a casual employee and all rights and benefits enjoyed by other employees shall apply to him or her.
- (3) Where a casual employee is laid off by an employer and rehired, the service shall be regarded as continuous.

Alexis

Justification

- i. The provision for conversion from casual employment to term employment is to reconcile the Employment Regulations, 2011 with the Employment Act, 2006.
- ii. The proposed section 61A and 61F provide for volunteers whereas the application of the Act under section 3 excludes volunteers and further, providing for volunteers in the Act shall expose term employees to exploitation by employers who may choose to predominately permanently employ them as volunteers.
- i. The proposed section 61B is redundant since domestic workers and casual employees have been recognized as special categories of employees under proposed amendment to section 34 of the Act (Clause 12) which therefore empowers the Minister to make regulations governing the employment of

Domestic workers

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persons with disabilities, apprentices thus domestic workers and casual employees.

- iii. The proposals in section 61C and 61D are redundant since domestic and casual workers have been expressly incorporated under section 2 of the Principal Act thus they are entitled to the same protections as other term employees.

Clause 20: Amendment of section 87 of the principal Act

Delete Clause 20

Justification

- i. Enlarging the period of payment of severance allowance to one year is to the detriment of the employee.
- ii. There is need for clarity on the entitlement to severance allowance and when this is due. The law should thus not be amended to the detriment of the employee.
- iii. Entitlement to severance allowance is for an employee who is unfairly dismissed by an employer.

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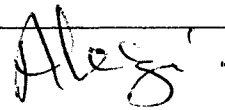



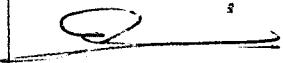
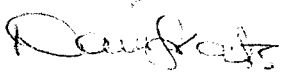

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MEMBERS OF THE COMMITTEE ON GENDER, LABOUR AND SOCIAL DEVELOPMENT – EMPLOYMENT (AMENDMENT) BILL, 2019

No	NAME	CONSTITUENCY	SIGNATURE
1.	Hon. Ndeezi Alex	PWDs	
2.	Hon. Kunihira Agnes	Workers' Rep	
3.	Hon. Arineitwe Rwakajara	Workers' Rep	
4.	Hon. Bakkabulindi Charles	Workers' Rep	
5.	Hon. Kamara John Nizeyimana	Bufumbira North	
6.	Hon. Kesande G. Bataringaya	DWR Rubirizi	
7.	Hon. Kibalya Henry Maurice	Bugabula County South	
8.	Hon. Lubogo Kenneth	Bulamogi County	
9.	Hon. Mariam Naigaga	DWR Namutumba	
10.	Hon. Okabe Patrick	Serere County	

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12.	Hon. Rwabogo Sylvia	DWR Kabarole	
13.	Hon. Major Avarlyne Asimwe	UPDF	<i>Avarlyne Asimwe</i>
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