



**INTERNATIONAL
LAWYERS ASSISTING
WORKERS NETWORK**

THE INFORMAL ECONOMY AND THE LAW IN UGANDA



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AUGUST 2022

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ABBREVIATIONS

ATGWU	Amalgamated Transport and General Workers Union
FES	Friedrich-Ebert-Stiftung
ILAW	International Lawyers Assisting Workers Network
ILO	International Labour Organization
KCCA	Kampala Capital City Authority
NOTU	National Organization of Trade Unions
UBOS	Uganda Bureau of Statistics
UMAEU	Uganda Markets and Allied Employees Union
UNFLS	Uganda National Labour Force Survey

ABSTRACT

This research paper examines the extent to which the laws in Uganda protect the rights of workers in the informal economy. It discusses the international jurisprudence on the rights of workers in the informal economy and identifies the gaps in Ugandan laws regarding the protection of workers in the informal economy.

The research finds that whereas the 1995 Constitution of the Republic of Uganda contains substantive protections of the rights of workers in the informal economy, for instance, the right to form and join a trade union of their own choice, the right to work, equality and protection from discrimination; many of the existing legislations do not extend these protections to workers in the informal economy. They are informal economy blind and some contain provisions that are discriminatory and inconsistent with the Constitution. Some like the Employment Act of 2006 contain many regulatory differentials that indirectly encourage informal employment and exploitation of workers in the informal economy for instance casual employees, temporary agency workers among others.

This Paper proposes strategic litigation to ensure that informal workers have access to their fundamental rights, particularly those enshrined in the Ugandan Constitution and to challenge discriminatory provisions of existing laws. Other recommendations are advocacy and policy dialogue, research and documentation, legal aid and representation, making use of the ILO Supervisory mechanism, leveraging collective power, involvement of media and sensitization, awareness raising and capacity building.

1.0. Introduction

The informal economy constitutes 85 percent of Uganda's labour force¹, meaning that the majority of the population depends on it for their livelihoods and survival. The informal economy contributes over 50 percent² of Uganda's GDP. This reveals how significant informal workers are in Uganda's economic growth.³

Historically, the concept of the informal economy has come a long way. In earlier decades, it was labelled the "shadow economy" or "black market", with most of its activities associated with illegality and criminality. Some scholars thought that the informal economy was a temporary phenomenon that would disappear with increasing economic growth or industrialization since many formal sector jobs would be created to absorb the entire workforce.⁴ However, this has not occurred. In Uganda, since the 1970s, the informal economy has gradually grown now to 85 percent of the labour force as per the 2016/2017 National Labour force survey published in 2018.⁵ This growth is attributed to poor governance, political and economic instability, conflict, trade liberalization, high unemployment levels, presence of an unskilled and semi-skilled workforce, high flexibilisation of the labour market, high costs of business registration, high taxes and inappropriate regulations, among other factors.⁶

Despite their contribution to Uganda's development and economy, workers in the informal economy are neither recognized nor sufficiently protected by existing legal and policy frameworks. They face several vulnerabilities, including poor conditions of work, lack of access to social protection, inadequate wages, lack of access to credit, denial of trade union rights, violence and harassment, and occupational hazards and illnesses, among others.

1.1. PURPOSE OF THE RESEARCH

This report analyses the extent to which Ugandan laws protect or discriminate against workers in the informal economy. The research may form a basis of strategic litigation and advocacy to challenge the discriminatory laws against workers in Uganda's informal economy.

1.2. RESEARCH OBJECTIVES

The research objectives are:

1. To examine the extent to which the laws of Uganda protect workers in the informal economy.
2. To analyze the gaps that exist in the laws of Uganda regarding workers in the informal economy.
3. To examine how workers in the informal economy are organized in Uganda.
4. To analyze international jurisprudence on the rights of workers in the informal economy in comparison to Ugandan national law.

1.3. METHODOLOGY AND LIMITATIONS

This research relies on existing National and International legal instruments and laws, including case law and government policies, as its main source for analysis. This is backed up with secondary literature, government publications, and newspaper records. In addition, a few interviews were undertaken on the aspect of organizing and recruitment of workers in the informal economy with the National Organisation of Trade Unions (NOTU), Amalgamated Transport and General Workers Union, Uganda Markets and Allied Employees Union, National Union

¹ UGANDA BUREAU OF STATISTICS, UGANDA NATIONAL LABOUR FORCE SURVEY 2016/17 (2018) (hereinafter UNLFS 2016/17).

² See FROM THE MARGINS TO THE CENTRE: DISCOURSES ON THE IMPACT OF THE COVID-19 PANDEMIC ON WOMEN IN UGANDA (Maria Alesi & Leah Eryenyu eds., 2020).

³ *Id.*

⁴ MARTY CHEN, THE INFORMAL ECONOMY: DEFINITIONS, THEORIES AND POLICIES (WIEGO Working Paper 1 2012).

⁵ UNLFS 2016/17, *supra* note 1.

⁶ Graeme Young, *The State and the Origins of Informal Economic Activity in Kampala: Insights from Kampala*, 30 URBAN FORUM 407 (2019).

of Creative, Performing Artists and Allied Workers' Union and National Union of Informal, Dependent and Industrial Outworkers (still undergoing the registration process).

There is limited statistical and secondary literature on issues pertaining to the rights of workers in the informal economy in Uganda, especially in the existing legal and policy framework. For purpose of this research, the laws and policies themselves are the most significant source of information studied.

2.0. CONCEPTUAL DEFINITIONS

2.1. INFORMAL ECONOMY

Before the term “informal economy” took shape, “informal sector” was the commonly used terminology. The term “informal sector” gained prominence in the seventies in research papers carried out by the ILO on the situation of poor workers in Kenya.⁷ At that time, the informal sector meant a group of production units (unincorporated enterprises owned by households) including “informal own-account enterprises” and “enterprises of informal employers.” Informal sector enterprise refers to unregistered and/or small-scale private unincorporated enterprises engaged in non-agricultural activities with at least some of the goods or services produced for sale or barter.

However, in 2002, a conceptual framework of employment in the informal sector was presented in the context of the discussion on decent work and the informal economy to the International Labour Conference. The Conference then proposed that the term “informal economy” replace “informal sector” and accommodate “all economic activities that are – in law or practice – not covered or insufficiently covered by formal arrangements.” The expanded definition of the informal economy extended its focus from unregistered and unrecognised enterprises to include employment relationships not legally regulated or socially protected.⁸

The 2002 resolutions on the informal economy led to developing Recommendation 204 (R204) concerning the ‘Transition from the informal to the Formal Economy’ that was adopted in 2015. Indeed, recommendation 2 of R204 defines the term informal economy as “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements” and further describes economic units to include units that employ hired labour; units owned by individuals working on their own account, either alone or with the help of contributing family workers; and cooperatives and social and solidarity economy unit.⁹

R204 applies to all workers and economic units in the informal economy and categorically classifies them into (a) those in the informal economy who own and operate economic units, including own-account workers, employers and members of cooperatives and of social and solidarity economy units, (b) contributing family workers, irrespective of whether they work in economic units in the formal or informal economy, (c) employees holding informal jobs in or for formal enterprises, or in or for economic units in the informal economy, including but not limited to those in subcontracting and in supply chains, or as paid domestic workers employed by households (d) workers in unrecognized or unregulated employment relationships.¹⁰

This research is based on the broadened definition of the informal economy in R204.

⁷ CHEN, *supra* note 4.

⁸ *Id.*

⁹ International Labour Organization[ILO], R204 - Transition from the Informal to the Formal Economy Recommendation (No. R204), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204 (June 15, 2015) [hereinafter ILO R204].

¹⁰ *Id.*

2.2. EMPLOYMENT RELATIONSHIP

Traditionally, an employment relationship plays a very important role in labour law. It creates “a legal link between a person who performs work and the person for whose benefit the work is performed in return for remuneration, under certain conditions established by national law and practice”¹¹. It is also a gateway for workers to access rights and employment protection under the law. ILO Recommendation 198 on employment relationships cautions member states to take particular account in national policy to ensure effective protection of workers especially affected by uncertainty on the existence of an employment relationship, including women workers, vulnerable workers, young workers, older workers, workers in the informal economy, migrant workers and workers with disabilities.¹²

Historically, labour law emerged as an intervention to protect the party with less power, the employee, in an employment relationship by placing certain obligations on the employer and creating liability for failing to meet these obligations. Proof of the existence of an employee-employer relationship was usually determined by a multi-factor test which weighed various criteria, such as degree of control over the employee by the employer, the mutuality of obligation, economic dependence and integration of the employee into the business of an employer.¹³ These common law tests drew a binary divide between dependent employees and independent contractors who were assumed to fall outside of an employment relationship and were therefore not entitled to claim any benefit arising from an employment relationship. Notably, labour statutes in many jurisdictions maintained this position and over time have built their labour law jurisprudence on the aforementioned position.

However, with the rise of new forms of work and the growing size of the informal economy in many countries, this position is gradually changing. For example, temporary agency workers do not know who their true employer is because a triangular employment relationship exists between the worker, the temporary work agency, and the client or user utilizing the worker’s labor. Both the Agency and the Client/user play employer roles for the temporary worker. The question that arises then is what duties does each entity owe the worker, and who is liable for the rights of the agency worker in the event of any violations.

Such a question may appear simple, but it is complex - especially when weighed against the traditional tests of an employment relationship. Indeed, **the Supreme Court of Canada in *Pointe-Claire (City) v. Quebec***¹⁴ has summarized this puzzle:

situations involving tripartite relationships can cause problems when it comes to identifying the real employer if the labour legislation is incomplete in this regard. The tripartite relationship does not fit very easily into the classic pattern of bilateral relationships. The Labour Court (of Quebec) was essentially designed for bipartite relationships involving an employer and an employee. It is not very helpful when a tripartite relationship must be analysed. The traditional characteristics of an employer are shared by two separate entities – the personnel agency and its client – that both have a certain relationship with the temporary employee. When faced with such a legislative gap, tribunals have used their expertise to interpret the often-terse provisions of the statute. In the final analysis, however, it is up to the legislature to remedy those gaps.¹⁵

With the informal economy constituting 60 percent of the world’s labour force,¹⁶ labour protection can no longer depend on the existence of a narrowly defined scope of the employment relationship.

¹¹ INTERNATIONAL LABOUR ORGANIZATION, NON STANDARD EMPLOYMENT AROUND THE WORLD: UNDERSTANDING CHALLENGES, SHAPING PROSPECTS (2016) [hereinafter ILO, NON-STANDARD EMPLOYMENT AROUND THE WORLD].

¹² International Labour Organization [ILO], R198 - Employment Relationship Recommendation, 2006 (No. R198) ¶15 (June 15, 2006), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535.

¹³ See Guy Davidov & Brian Langille, *Goals and Means in the Regulation of Work*, in BOUNDARIES AND FRONTIERS OF LABOUR LAW (2006).

¹⁴ [1997] 1 SCR 1015 (Can.).

¹⁵ Whereas the researcher found no Ugandan case that has interpreted the aspect of triangular employment relationships, the Canadian jurisprudence becomes very useful in the circumstances in a way that it exactly describes the current state of the Ugandan labour legislations in that they currently extend protection to only employees in bilateral employment relationships and not the triangular ones.

¹⁶ INTERNATIONAL LABOUR ORGANIZATION, WOMEN AND MEN IN THE INFORMAL ECONOMY: A STATISTICAL PICTURE (2018), https://www.ilo.org/wcm-sp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_626831.pdf.

2.3 CURRENT STATISTICAL OUTLOOK OF THE INFORMAL ECONOMY IN UGANDA

The Uganda National Labour Force Survey 2016/17 (the Survey)¹⁷ estimates the working population of Uganda at 15.3 million people. The Survey estimates the proportion in informal employment outside agriculture at 85 percent. The highest proportion of the working persons in Uganda in 2016/17 were own-account workers (73%) with women workers accounting for a higher proportion (79%) relative to men (67%). These were followed by wage and salaried workers at 20 percent. The survey further reveals that own-account workers and contributing family workers are in what is termed ‘vulnerable employment’. The survey describes vulnerable employment to be often characterized by inadequate earnings, low productivity and difficult conditions of work that undermine workers’ fundamental rights. Based on the same survey, the main reasons for entering own-account work are the lack of wage or salaried jobs and conflicting family obligations. The survey also revealed that the informal economy contributed to over 50 percent of the Gross Domestic Product (GDP) in the year 2016/2017.

3.0. ORGANIZING AND RECRUITMENT OF WORKERS IN THE INFORMAL ECONOMY IN UGANDA

Historically, trade unions organized and recruited members who enjoyed a defined employment relationship in a workplace. Organizing used to be easier since most workplaces were formal and consisted of mainly formal employees in employment relationships. However, in the 1980s, when the government of Uganda embraced structural adjustment programs and privatized most of the industries and corporations, many workers lost employment due to retrenchment, pushing them into informal work as a tool of survival. This caused a great decline in trade union membership.¹⁸ This prompted some unions to rethink strategies of rebuilding their membership and embracing bringing workers on board from the informal economy.

Registered informal economy unions face hardships in dealing with public authorities when pursuing their rights. The public authorities always question who the employers of their members are and seem to question the legitimacy of the union’s existence. Fortunately, the National Organization of Trade Unions (NOTU), the biggest Federation of Labour Unions in Uganda amended its constitution in 2017 to incorporate representation of workers in the informal economy on both its Executive Board and General Council. Currently, four seats are reserved on the Board for members representing workers in the informal economy and two on the General Council.¹⁹ This is a positive direction towards recognition of the rights of workers in the informal economy and the urgent need to organize them.

3.1 AMALGAMATED TRANSPORT AND GENERAL WORKERS UNION (ATGWU).

The Amalgamated Transport and General Workers Union was the first labour union in Uganda, formed in 1938.²⁰ Traditionally, the union’s membership was drawn from big public transport companies. However, due to structural adjustment programs and mass privatization in the 1980s, many of their members were retrenched, leading to a big reduction in the union’s membership. By 2006, ATGWU had only 2000 members. A big chunk of its membership was pushed into the informal economy where they started informal mini-buses and motorcycle taxis (boda-boda).²¹ The union, therefore, had to rethink organizing strategies to grow its membership. The union embarked on organizing campaigns with informal workers associations from the transport sector, private security, service and other sectors. As a result, the union’s membership has increased to 105,000 members.²²

¹⁷ UNLFS 2016/17, *supra* note 1.

¹⁸ DAVE SPOONER & JOHN MARK MWANIKI, TRADE UNIONS IN TRANSFORMATION: TRANSFORMING TRANSPORT UNIONS THROUGH MASS ORGANISATION OF INFORMAL WORKERS IN UGANDA (2017), <https://library.fes.de/pdf-files/iez/13643.pdf>.

¹⁹ JORGEN ASSENS, KENT JENSEN & MOHAMMED MWAMADZINGO, ORGANIZING INFORMAL ECONOMY WORKERS INTO TRADE UNIONS: A TRADE UNION GUIDE (2019), https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_711040.pdf.

²⁰ *About Us*, AMALGAMATED TRANSP. & GEN. WORKERS UNION, <https://www.africaefuture.org/atgwu/pagweb/81.html> (last visited July 30, 2021).

²¹ Interview with Mr. Abima Stephen, General Sec’y, Amalgamated Transp. & Gen. Workers Union (Aug. 5, 2021).

²² *Id.*

Davies and Mwanika note that

the ATGWU strategy for organizing workers in the informal economy was based on an understanding that these workers are in many cases already organised, not within the trade union movement, but through credit and savings cooperatives, informal self-help groups, community-based organisations, and, most importantly, associations. Some of these associations were already large, well-organized and had substantial resources.²³

The ATGWU has assisted these workers in the informal economy in securing their rights to protection from violence and harassment by public authorities and giving them a strong collective voice to advance their socio-economic interests.²⁴

Previously, associations paid only affiliation fees and did not enjoy full membership rights but this position has changed. They now pay direct membership fees and enjoy full membership rights.²⁵

Despite ATGWU reaching great milestones in bringing on board members from the informal transport associations, they still face many legal challenges ranging from non-recognition of informal workers as workers by the government.²⁶ For example, when the ATGWU supported a strike of taxi drivers, the police questioned them on the legality of their actions and their union offices were invaded for some days.²⁷

This was further confirmed by the General Secretary of ATGWU through a zoom meeting, where he added that to counter the resistance and interference with the associational rights of informal transport workers by public authorities, the union has leveraged the assistance of union lawyers to continue interpreting constitutional provisions and international instruments to support workers in the informal economy because of the legal questions raised.²⁸

3.2. UGANDA MARKETS AND ALLIED EMPLOYEES UNION (UMAEU).

Registered in 2006, UMAEU organizes individual market vendors and employees working in the markets directly. It is purely an informal economy labour union affiliated with the National Organization of Trade Unions (NOTU). Despite their successful registration as a union under a legal framework that does not recognize workers in the informal economy; the union has faced several challenges as far as enforcing their right to freedom of association. Government and local authorities have generally not been willing to negotiate with the UMAEU on various issues affecting market vendors. A respondent from UMAEU said that public authorities on several occasions have questioned the union about who the employers of their members are and under which law they get the mandate to speak for them. She further reported that UMAEU offices were closed as of the time of research by Kampala Capital City Authority (KCCA) after His Excellency the President of Uganda issued a directive in 2020 directing KCCA to repossess all public markets, disband all the existing leadership and elect new leaders who will now speak on the affairs of the market.²⁹ She said this directive has greatly affected the union leadership as they are not allowed to access their offices or speak on behalf of the vendors since the government put in place new leaders.³⁰ One of the market vendor's associations, whose chairperson is the current General Secretary of the Union, went to court to challenge the presidential directive and the court ruled in their favour; however, even with the court order in their hands, the KCCA has refused to give them access to the market, prompting them to file a case of contempt of court.³¹

²³ SPOONER & MWANIKA, *supra* note 18.

²⁴ Zoom Meeting with Abima Stephen, Gen. Sec. Amalgamated Transport & General Workers Union and Bwanika John Mark (Aug. 5 & Aug. 13, 2021) [hereinafter Zoom Meeting with Stephen & Mark].

²⁵ SPOONER & MWANIKA, *supra* note 18.

²⁶ This statement was given by one of the respondents from ATGWU during the interviews carried during the research.

²⁷ Interview with Owere Usher Wilson, Chairman Gen., National Organisation of Trade Unions (NOTU) (July 8, 2021).

²⁸ Zoom Meeting with Stephen & Mark, *supra* note 25.

²⁹ Kenneth Kazibwe, *Museveni Orders Disbandment of Leadership for all Kampala Markets, Abattoirs*, NILE POST (Oct. 12, 2020), <https://nile-post.co.ug/2020/10/12/museveni-orders-disbandment-of-leadership-for-all-kampala-markets-abattoirs/>.

³⁰ Interview with Mwijuka Jesca, Uganda Markets & Allied Employees Union (June 27, 2021).

³¹ *St. Balikuddembe Market Stalls, Space & Lockup Shops Owners Assoc. Ltd. (Ssloa) v. Kampala Cap. City Auth.*, [2021] UGHCCD 37 (Uganda).

One challenge UMAEU faces is the dual existence of the market vendors association and the union, with the same leadership performing similar roles. For instance, and as already noted, the Union's current General Secretary is the chairperson of one of the market vendors associations in St. Bbalikuddembe market in Kampala.³² This same leadership of the Association sits on the management committee of the markets and is bestowed with the collection of dues, while at the same time taking care of the vendor's interests and welfare.³³ This has created a fundamental conflict of interest in the Association's dealings with the Authorities and vendors.

3.3. NATIONAL UNION OF CREATIVE, PERFORMING ARTISTS AND ALLIED WORKERS.

The National Union of Creative, Performing Artists and Allied Workers was formed and registered in 2006. The union currently has a membership of over 10,000 individuals from the creative and performing arts industry. The mode of organizing includes both direct membership as well as the affiliation of groups and associations of musicians and performing artists.³⁴

Whereas the Union was successfully registered in 2006 under a legal framework that does not explicitly recognize the right of workers in the informal economy to form and join a trade union, the union faces many challenges in recognition of the right to collectively bargain for its members.³⁵

The General Secretary explained the effect of the Public Entertainment Act cap 49 on the rights of workers in stage plays. She explained that this Act contains very prohibitive provisions, such as the requirement that an artist obtain a permit before any performance and the wide discretion given to the Council³⁶ to refuse to grant permits without reason, permission before one displays any poster and the minister being the final decision maker in the appeal process provided for in the Act. All these provisions limit the enjoyment of the right to work, freedom of expression and right to be treated justly and fairly in administrative decisions.

Moreover, in 2019, the government passed rather more repressive and unfair regulations entitled the Stage Plays & Public Entertainment Rules S.I. No. 80 of 2019, which requires that artists seek clearance from a minister before performing abroad, register with the Ministry of Culture before performing at any public event, submit their work and content for approval before any performance and adhere to a dress code for artists that particularly restricts women artists.

The other unions organizing both formal and informal workers are: National Union of Theatrical, Domestic and General Workers, Uganda Fisheries and Allied Workers Union, National Union of Drivers, Cyclists and Allied Workers and National Union of Plantation and Agricultural Workers. Another informal economy union, the National Union of Informal, Dependent and Industrial- Outworkers, is in the process of registration.

Although there have been efforts to organize the informal economy as seen above, these represent just a small portion. The informal economy is big and comprises many categories of workers.

³² Almost three quarters of the Union leadership is also part of the market vendors associations in various markets.

³³ It has been the practice of KCCA to assign the role of management committee to the leaders of the market vendors Associations.

³⁴ Interview with Anita Sseruwagi, Gen. Sec'y, Nat. Union of Creative, Performing Artists and Allied Workers, on Zoom (Aug. 13, 2021).

³⁵ Public authorities have not appreciated this right as far creative and performing artists are concerned. Moreover, outdated and draconian colonial laws still exist that limit the enjoyment of this right including the right to freedom of speech and expression for artists.

³⁶ The council is an administrative body that is in charge of granting permits to Artists.

4.0. RIGHTS OF WORKERS IN THE INFORMAL ECONOMY IN THE CONTEXT OF INTERNATIONAL JURISPRUDENCE

4.1. FREEDOM OF ASSOCIATION AND THE RIGHT TO ORGANIZE, REPRESENTATION AND COLLECTIVE BARGAINING.

Freedom of association and the right to organize is a universal right that is explicitly provided for under Article 23(4) of the Universal Declaration of Human Rights and Article 10 of the African Charter on Human and People's Rights.³⁷ This right has also been recognized in many International Instruments that Uganda has duly ratified. For instance, Article 8 of the International Covenant on Economic, Social and Cultural Rights provides for the right of everyone to form and join the trade union of their choosing, subject only to the rule of the organization concerned, for the promotion and protection of their economic and social interests. This same provision is reiterated in Article 22 of the International Covenant on Civil and Political Rights.³⁸

Article 2 of the ILO Convention 87 Freedom of Association and Protection of the Right to Organize gives a right to *all Workers and employers, without distinction whatsoever*, to establish and, subject only to the rules of the organisation concerned, to join organisations of their choosing without previous authorisation.³⁹ Further, ILO Convention 98 on the Right to Organise and Collective Bargaining protects all workers against all acts of anti-union discrimination in respect of their employment and any acts of interference regarding their establishment, functioning or administration.⁴⁰ It is worth noting that C87 and C98 are two of the ILO'S eight fundamental conventions, giving them an elevated level of importance. The principles enshrined in these conventions are binding on member states of the ILO even if they have not ratified the specific conventions.⁴¹

The right to organize and bargain collectively has been interpreted by the ILO Committee on Freedom of Association to extend to workers in the informal economy. The Committee ruled that "[b]y virtue of the principles of freedom of association, all workers – with the sole exception of members of the armed forces and the police – should have the right to establish and join organizations of their own choosing." The Committee further expounded that the criterion for determining the persons covered by that right is not based on the existence of an employment relationship, which is often non-existent, for example in the case of agricultural workers, self-employed workers in general or those who practice liberal professions, who should nevertheless enjoy the right to organize.

The Committee requested governments take the necessary measures to ensure that self-employed workers fully enjoyed the freedom of association rights, in particular the right to join the organizations of their choosing.⁴²

Further, it is interesting to take note of the decision of the panel of experts on the dispute arising from a Free Trade Agreement between the EU and Korea. Under the Free Trade Agreement, there was a requirement to abide by ILO principles and Conventions. The EU engaged a dispute mechanism because, in part, Korea's laws did not provide a right for self-employed workers to unionise. The panel of experts sided with the EU, holding Korea in breach.⁴³

ILO Recommendation 204 on Transition from the Informal Economy to the Formal Economy also outlines that member states should ensure that those in the informal economy enjoy freedom of Association and the right to

³⁷ See Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948) [hereinafter UDHR] & African Charter on Human and Peoples' Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982) (**entered into force Oct. 21, 1986**) [hereinafter **African Charter**].

³⁸ International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976, adopted by the United States Sept. 8, 1992) [hereinafter ICCPR].

³⁹ International Labour Organization, Convention Concerning Freedom of Association and Protection of the Right to Organise, 68 U.N.T.S. 17 (1948) [hereinafter ILO Convention No. 87] (Uganda ratified this convention on the June 2, 2005).

⁴⁰ International Labour Organization, Right to Organise and Collective Bargaining Convention, 1949 (July 1, 1949), http://www.ilo.org/dyn/normlex/en/f?p_1000:12100:0::NO::P12100_ILO_CODE:C098 [hereinafter ILO 098] (Uganda has ratified this convention).

⁴¹ *Conventions and Recommendations*, INT'L LABOUR ORG., <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm> (last visited Mar. 27, 2022).

⁴² INTERNATIONAL LABOUR ORGANIZATION, FREEDOM OF ASSOCIATION - COMPILATION OF DECISIONS OF THE COMMITTEE ON FREEDOM OF ASSOCIATION 21 (2018), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_632659.pdf (citing 376th Report, Case NO. 2786, para. 349).

⁴³ *Panel Report Confirms Republic of Korea is in Breach of Labour Commitments under Our Trade Agreement*, EUROPEAN COMM. (Jan. 25, 2021), <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2238>.

collective bargaining, including the right to establish and subject to the rules of the organization concerned, to join organizations, federations and confederations of their choosing.⁴⁴ The Recommendation further provides that member states should create an enabling environment for workers and employers in the informal economy to exercise their right to organize and bargain collectively and to participate in social dialogue in the transition to the formal economy and further encourages employers and workers' organizations to extend their membership services to workers and economic units in the informal economy.⁴⁵ Also vital to add is the inclusion of representatives of membership-based representative organizations of workers and economic units in the informal economy in the tripartite consultations on policies and programmes of relevance to the informal economy.⁴⁶

Additionally, the ILO declaration on fundamental rights and principles at work commits member states to respect and promote rights in four categories whether or not they have ratified the said conventions that is: freedom of association and effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour and the elimination of discrimination in respect of employment and occupation⁴⁷.

4.2. THE RIGHT TO WORK

Article 23 of the Universal Declaration of Human Rights gives everyone a right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. This right is also reiterated in the International Covenant on Economic, Social and Cultural Rights, which Uganda ratified in 1987. This right has been interpreted as *a fundamental right inherent in the 'right to life'*. For example, the Indian Supreme Court has interpreted this right as inclusive of the right to work. In the case of *Olga Tellis v. Bombay Municipal Corporation and others*⁴⁸ the Court stated:

The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live ... If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life."⁴⁹

The Indian Supreme Court observed that persons in the position of the petitioners lived in slums and on pavements because they had small jobs in the city. They chose to live near their place of work to avoid commuting costs, which cost them way too much when compared to their meagre earnings. Losing the sheds meant losing a job. The Court also noted that though the petitioners were using public property for private use, they had no intention of committing an offence, intimidating, insulting or annoying any person, which constitutes the gist of the offence of 'Criminal Trespass' as defined under S.441 of the Indian Penal Code. They lived there due to economic compulsion.

From the aforementioned Court ruling, it can be safely argued that the right to work, livelihood and the right to life are interdependent. They are inseparable. Violation of one leads to violating the other.⁵⁰ Notably, all international instruments recognize the right to life as a fundamental right.⁵¹

Additionally, among the four pillars of the ILO decent work agenda is the promotion of jobs and enterprise. The

⁴⁴ ILO R204, *supra* note 9 at ¶ 16 & 31.

⁴⁵ *Id.* at ¶ 32 & 33.

⁴⁶ *Id.* at ¶ 34.

⁴⁷ ILO Declaration on fundamental principles and rights at work adopted in 1998

⁴⁸ [1985] 2 Supp SCR Supl. (2) 51 (India).

⁴⁹ *Olga Tellis & Ors v. Bombay Municipal Council*, [1985] 2 Supp SCR 51 (India).

⁵⁰ As Uganda is a common law country, its jurisprudence may offer good guidance on this right bearing in mind that their decisions are only persuasive. Indeed, Ugandan courts have overtime made good decisions based on precedents in other jurisdictions. It should be noted that the researcher failed to get a purely Ugandan case interpreting the right to work

⁵¹ See International Covenant on Civil and Political Rights, Art. 6, Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 [hereinafter ICCPR] (in force Mar. 23, 1976), African Charter, *supra* note 38, at Art. 4; UDHR, *supra* note 38, at Art. 3.

agenda recognizes is cognizant of the fact that micro, small and medium sized enterprises are the world's job creators, accounting for at least two thirds of all jobs worldwide and that these enterprises are often found in the informal economy. One of the goals is therefore to promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity, innovation and encourage the formalization and growth of the micro, small and medium sized enterprises. Besides imposing a positive obligation on states to make this possible, the decent work agenda principles underscore a negative obligation to "do no harm" to the existing livelihoods of workers wherever possible.

4.3. THE RIGHT TO SOCIAL PROTECTION

The right to social protection is also a universal right enshrined under Article 22 and 25 of the Universal Declaration of Human Rights. This right is reiterated in Article 9 of the International Covenant on Economic, Social and Cultural Rights, Articles 15, 16 and 17 of the African Charter on Human and Peoples' Rights and ILO Convention 102 on Social Security. Uganda is a signatory to all these conventions.

The International Labour Organization (ILO) defines "social protection as "the protection which Society provides for its members, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury and occupational diseases, unemployment, invalidity, old age and death"⁵² provides a guide for designing social security schemes in its member states. Convention 102 prescribes nine contingencies or benefits relating to (1) Medical Care, (2) Sickness, (3) Unemployment, (4) Old age, (5) employment injury, (6) Family support, (7) Maternity, (8) Invalidity, and (9) Survivors/death benefits.⁵³

In 2012, the ILO adopted Recommendation 202 on Social Protection Floors. This Recommendation reaffirmed that *the right to social security is a human right*; that social security is an economic and social necessity for development and progress; that social security is an important tool to prevent poverty, inequality, social exclusion, and social insecurity. Recommendation 202 further affirms that social security is needed to promote equal opportunity and gender and racial equality and to support *transition from informal employment*. Among the principles promoted by Recommendation 202 is social inclusion, including persons in the informal economy. The ILO reiterates the importance of social protection for workers in the informal economy as a medium through which poverty, inequality and social exclusion can be effectively reduced.

ILO Recommendation 204 on Transition from the informal to formal economy outlines the importance of extending social protection to the workers in the informal economy. The Recommendation urges member states to progressively extend, in law and practice, to all workers in the informal economy, social security, maternity protection, decent working conditions and a minimum wage that takes into account the needs of workers and considers relevant factors, including but not limited to the cost of living and the general level of wages in their country.⁵⁴ It further outlines that in building and maintaining national social protection floors within their social security system and facilitating the transition to the formal economy, Members should pay particular attention to the needs and circumstances of those in the informal economy and their families.⁵⁵ It further emphasizes the need to extend to social insurance and quality childcare facilities and other care services to informal economy workers as part of the social protection measures.⁵⁶

⁵² Adapted from INTERNATIONAL LABOUR OFFICE, SOCIAL SECURITY: A NEW CONSENSUS (2001), https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---soc_sec/documents/publication/wcms_209311.pdf; International Labour Organization, C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C102 [hereinafter ILO C102].

⁵³ *Id.*

⁵⁴ Recommendation 18 of R204 Transition from the Informal to Formal Economy

⁵⁵ Recommendation 19 of R204 Transition from the Informal to Formal Economy

⁵⁶ Recommendation 20 and 21 of R204 Transition from the informal to formal economy

4.4. THE RIGHT TO SAFETY AND HEALTH AT WORK

Workers, irrespective of their status, are entitled to a safe and healthy workplace. The ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) obligates member states to incorporate in their national system for occupational safety and health mechanisms a progressive improvement of occupational safety and health conditions in micro-enterprises, in small and medium-sized enterprises and the informal economy. The Occupational Safety and Health Convention, 1981 (No. 155) also places an obligation on member states to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The convention applies to all workers in the branches of economic activity. These two conventions have been added among the core fundamental ILO conventions in the recent ILO conference held in June 2022.⁵⁷ This comes from a resolution passed by the ILC to include a safe and healthy working environment in the ILO'S framework of fundamental principles and rights at work.⁵⁸ Therefore, although Uganda has not yet ratified them, they are applicable and binding on it by virtue of being among the core fundamental conventions.

Uganda is also a signatory to the International Covenant on Economic, Social and Cultural Rights which places on it an obligation under article 7(b) to recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular Safe and healthy working conditions.

R204 Transition from informal to the Formal Economy also outlines the need to extend this right to workers in the informal economy. It urges Member States to take immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy; and further to promote and extend occupational safety and health protection to employers and workers in the informal economy.⁵⁹

The ILO decent work agenda also seeks to protect labour rights and promote safe and secure working environment for all workers.⁶⁰

4.5. EQUALITY BEFORE THE LAW AND FREEDOM FROM DISCRIMINATION

Article 1 of the Universal Declaration of Human Rights provides that human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. It further expounds on this right in Article 7 that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination and any incitement of such discrimination. This same right is provided for under Article 26 of the International Covenant on Economic, Social and Cultural Rights, Article 3 of the African Charter on Human and Peoples' Rights and Articles 2 and 14 of the International Covenant on Civil and Political Rights.

ILO Convention 111 on Discrimination in Employment and Occupation ("C111") defines discrimination as any distinction, exclusion or preference made based on race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.⁶¹ C111 gives the member states an option of expanding the definition to such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation⁶². Uganda ratified this Convention on 2nd June 2005. Informal economy workers often have one or more marginalized social identities, as structural discrimination often limits access to standard forms of employment, and drives marginalized people into less secure, more exploitative forms of employment. Workers in the informal economy often face discrimination in terms of access to services, for instance, public space in the

⁵⁷ https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_848132/lang-en/index.htm : Accessed on 12th /06/2022,

⁵⁸ See Resolution 3 of the ILC Resolution on the inclusion of a safe and healthy working environment in the ILO's framework of fundamental principles and the rights at work: https://www.ilo.org/ilc/ILCSessions/110/committees/general-affairs/WCMS_847432/lang-en/index.htm : Accessed on 12th /06/2022

⁵⁹ Recommendation 17 of R204 Transition from the informal to formal economy

⁶⁰ ILO Decent work and the 2030 agenda for sustainable development.

⁶¹ International Labour Organization, C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111), Art. 1(a), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111 [hereinafter ILO C111].

⁶² ILO C111, at Art. 1(b).

case of street vendors. In Kampala, street vendors are seen as criminals and people merely congesting the city, as opposed to people working to earn a livelihood.

4.6. PROTECTION FROM VIOLENCE AND HARASSMENT AT WORK

ILO Convention 190 on Eliminating Violence and Harassment in the World of Work (“C190”), supplemented by Recommendation 206 (“R206”) is, as of this writing, the newest convention passed by the ILO Conference. C190 defines the term violence and harassment in the world of work as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.”⁶³ Gender-based violence and harassment means “violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.”⁶⁴

One of the most important Articles to workers in the informal economy is Article 2. It extends protection to “workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.” Article 2(2) categorically states that “this Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.”⁶⁵

ILO C190 explicitly applies to all violence and harassment occurring in the course of, arising out of, or linked with work. This includes “public and private spaces where they are a place of work, places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities, during work-related trips, travel, training, events or social activities, through work-related communications, including those enabled by information and communication technologies; in employer-provided accommodation; and when commuting to and from work.”⁶⁶ C190 Article 8 calls on governments to take appropriate measures to prevent violence and harassment in the world of work, including recognizing the important role of public authorities in the case of informal economy workers.” This measure was included by advocates both to ensure that governments adopt specific preventive measures that will be effective in the informal economy and to acknowledge the role police and other public officials play as perpetrators of violence and harassment against informal workers. R206 Paragraph 11 calls on governments to provide “resources and assistance for informal economy workers and employers ... to prevent and address violence and harassment.”

This is one of the most progressive and inclusive conventions the conference has so far passed. However, Uganda has not yet ratified this convention.

4.7. ACCESS / PROPERTY RIGHTS

Article 17(1) & (2) of the Universal Declaration of Human Rights gives everyone the right to own property, alone and in association with others, and prohibits arbitrary deprivation of property. This right is provided for in many international instruments to which Uganda is a signatory, such as the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, among others.⁶⁷

This right is vital to workers in the informal economy due to their nature of work and vulnerability. Most often, workers in the informal economy live and work in places that have insecure land tenures, and as such, they are subjected to frequent and arbitrary evictions and arrests. Some need access to public spaces to carry on their work,

⁶³ ILO C111, at Art. 1(a).

⁶⁴ International Labour Organization, C190 – Violence and Harassment Convention, 2019 (No.190), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190 [hereinafter ILO C190].

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ UDHR, *supra* note 38.

for instance, street vendors. But unfortunately, they are seen as criminals frustrating public order.⁶⁸ Broembsen & Chen explain that “lack of secure tenure means that informal workers are vulnerable to evictions, relocations and forced removals (both from homes and from public land), all of which have significant livelihood implications.”⁶⁹

5.0. ANALYSIS OF THE POLICY FRAMEWORK GOVERNING THE RIGHTS OF WORKERS IN THE INFORMAL ECONOMY IN UGANDA⁷⁰

5.1. NATIONAL EMPLOYMENT POLICY 2011

The vision of Uganda’s National Employment Policy is “*Productive and decent employment for better lives and livelihoods for all*” and its mission is “*to promote and create more decent jobs for women and men*”⁷¹ with an overall goal of productive and decent employment for all women and men in conditions of freedom, equity, security, and human dignity. One of the objectives of the policy is to promote and protect the rights and interests of workers following existing labour laws and fundamental labour standards.⁷²

The policy emphasises the promotion and expansion of private sector investment, in line with the government strategy of a private sector-led economy. It stipulates that private sector investment shall be promoted not only in the formal sector but also in the informal sector to ensure that wages and working conditions in the informal sector gradually converge with those in the formal sector.⁷³

One of the priority areas of the policy is improving micro and small-scale enterprises in the informal sector through, among other things, providing advisory information on tax compliance, improving working conditions, safety and health issues and union recognition, supporting entrepreneurship development programmes including training, strengthening the capacity of small enterprise associations in coordination, networking and policy influence and promoting forward and backward linkages between large scale registered and small scale unregistered enterprises.⁷⁴ The Policy further embraces the promotion of affirmative action, adequate safety nets and social protection for poor and vulnerable groups to hedge against risks associated with operating the market system. It emphasizes the need for new labour force surveys to centre on low-paid and vulnerable workers, especially domestic workers and casual and seasonal workers in the agricultural sector, and other sectors dominated by elementary occupations.

However, according to the policy, reference to vulnerable workers is associated mostly with casual and domestic workers, leaving out own account workers, homeworkers, contract, agency workers and others who also form part of the informal economy. Not surprisingly, the implementing partners of the policy have since focused on only extending legal protection to domestic and casual workers. This is evident in the proposed amendments⁷⁵ to the Employment Act, No.6 of 2006 which seeks to protect the rights of domestic and casual workers. This suggests that policymakers are inclined to protect workers who seemingly have an employer-employee relationship, but not market vendors and own-account workers.

Further, the Policy uses the term “informal sector” instead of “informal economy”. As already seen in this report, the two terms have different definitions. The definition of informal economy is more expansive and inclusive, as opposed to the informal sector. Moreover, the Policy defines informal sector narrowly and ambiguously when it states that informal sector means enterprises that are not incorporated according to the Companies Act, do not have complete books of accounts, do not separate the legal entity independent from the owners, and operate within a

⁶⁸ MARLESE VON BROEMBSSEN & MARTHA CHEN, ELIMINATING LEGAL BARRIERS FROM THE PERSPECTIVE OF THE INFORMAL ECONOMY: A POLICY BRIEF FOR THE UN SECRETARY-GENERAL’S HIGH-LEVEL PANEL ON WOMEN’S ECONOMIC EMPOWERMENT 7 (2016), <https://www.wiego.org/sites/default/files/migrated/resources/files/WIEGO-eliminating-legal-barriers-informal-economy.pdf>.

⁶⁹ *Id.* at 51.

⁷⁰ It should be noted that government policies, plans and visions carry no legal value and enforceability. They are just expressions of government intentions towards achieving particular goals for the good of its citizens. However, they are good tools of advocacy and accountability.

⁷¹ The Republic of Uganda, The National Employment Policy for Uganda ¶ 5 (Apr. 2011), https://www.ilo.org/dyn/youthpol/en/equest.fileutils.dochandle?p_uploaded_file_id=155 (delineating The Employment Policy) [hereinafter National Employment Policy].

⁷² National Employment Policy.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See The Employment Amendment Bill (EAB) 2019 (Uganda).

fixed or without fixed location.⁷⁶ It does not take into consideration the wider concept of informal employment that comprises self-employment and informal wage employment not protected under the law. Further, the definition creates a presumption that all formal enterprises must be incorporated as companies. Yet there exist formal businesses that are not incorporated as companies but are registered as partnerships under the Partnership Act or sole proprietorships under the Business Registration Act.

5.2. UGANDA'S VISION 2040

In 2013, the President of the Republic of Uganda, His Excellency Yoweri Kaguta Museveni launched Uganda's vision 2040. The vision is "a transformed Ugandan society from a peasant to a modern and prosperous country within 30 years". This involves changing Uganda from a predominantly low income to a competitive upper-middle-income country at that time.

The vision's attributes, which are consistent with the principles of the Constitution of the Republic of Uganda are: independence and sovereignty, democracy and the rule of law, stability and peace, knowledgeable and skilled, and the ability to exploit and use its resources gainfully and sustainably.

The vision is conceptualised around strengthening the fundamentals of the economy to harness the abundant opportunities around the country which include oil and gas, tourism, minerals, ICT business, abundant labour force, geographical location and trade, water resources, industrialisation and agriculture among others. The fundamentals include: infrastructure (energy, transport, water, oil and gas and ICT), science, technology, engineering and innovation, land use and management, urbanisation, human resource and peace, security and defence.

One of the assurances in the vision 2040 is the government's commitment to ensure a human rights-based approach to development is integrated into policies, legislation, plans and programs.⁷⁷ Indeed, the government commits through this vision that respects for human rights shall be at the core of development planning. The vision further commits to prioritising interventions that will respond to the needs of vulnerable and marginalised groups in society.

The vision implicitly extends consideration to the informal economy when it commits the government to ensure that a human rights-based approach to development is integrated into policies, legislation, plans and programs and that interventions that respond to the needs of the vulnerable and marginalised groups in society should be prioritised.

5.3. NATIONAL DEVELOPMENT PLAN 111 2020/2021 – 2024/2025

The vision of the NDP 111 is still the national vision of "a Transformed Ugandan Society from a Peasant to a Modern and Prosperous Country within 30 years." The goal is "Increased Household Incomes and Improved Quality of Life of Ugandans" and its theme is "Sustainable Industrialization for inclusive growth, employment and wealth creation."

The key objectives of the Plan are: enhance value addition in key growth opportunities; strengthen the private sector to create jobs; consolidate and increase the stock and quality of productive infrastructure; enhance the productivity and social wellbeing of the population; and strengthen the role of the state in guiding and facilitating development.

The plan has several key development strategies. Some include: leveraging urbanization as a driver for socio-economic transformation; improving access and quality of social services and increasing access to social protection among others.

⁷⁶ National Employment Policy.

⁷⁷ See THE REPUBLIC OF UGANDA NATIONAL PLANNING AUTHORITY, UGANDA VISION 2040 108 (Apr. 18, 2013), <http://www.npa.go.ug/wp-content/uploads/2021/02/VISION-2040.pdf> (discussing Uganda's Vision 2040 on protection of human rights).

5.4. UGANDA NATIONAL SOCIAL PROTECTION POLICY 2015

The vision of the Uganda National Social Protection Policy 2015 is a society where “all individuals are secure and resilient to socio-economic risks and shocks”⁷⁸ and its mission is “provision of comprehensive social protection services to address risks and vulnerabilities.”⁷⁹ The Policy’s goal is to “reduce poverty and socio-economic inequalities for inclusive development by 2024.”⁸⁰

The Policy defines social protection as public and private interventions to address risks and vulnerabilities that expose individuals to income insecurity and social deprivation, leading to undignified lives. According to the Policy, social protection consists of two pillars: i) social security; and ii) social care and support services. Social security refers to protective and preventive interventions to mitigate factors that lead to income shocks and affect consumption. Social Care and Support Services are a range of services that provide care, support, protection and empowerment to vulnerable individuals unable to fully care for themselves.⁸¹ In terms of definition, pillars and conceptual framework, this policy is in line with ILO Convention 102 on Social Security Minimum Standards.

The pillar on social security comprises contributory schemes targeting the working population in both formal and informal sectors (social insurance); and the non-contributory transfers targeting vulnerable children, youth, women, persons with disabilities and older persons (direct income transfers). The social care and support services pillar focuses on care, support, protection and empowerment of vulnerable individuals.⁸² Informal sector workers are among the target group that the policy seeks to cover. The policy describes these workers as ones working in economic units or family businesses with less than 5 persons, unregistered workplaces, and rural agricultural areas.⁸³

One objective of the Policy is increasing access to social security and the government intends to do this by expanding the coverage and scope of contributory social security in both the formal and informal sectors, establishing and expanding direct income support schemes for vulnerable groups, and enhancing access to compensation by workers in both the private and public sectors, among other strategies.

Among the priority areas of focus for the Policy is *developing appropriate social security products for the informal sector*. The Policy acknowledges that 85 percent of workers employed in the informal sector have no social security and the existing social protection schemes and services only cover the working population in the formal sector.⁸⁴

The Policy further acknowledges social protection as *a basic service and human right* that ensures the dignity of people. Thus among its guiding principles for its implementation is a human rights approach to service delivery; in which communities shall be empowered to know and claim their rights and demand accountability from duty bearers and institutions implementing social protection interventions.⁸⁵ Other guiding principles include universalism and inclusiveness, including measures to protect every Ugandan from risks and shocks, and ensure equity, gender responsiveness, transparency, accountability, and dignity among others.

In conclusion, the policy acknowledges the existence of the informal economy and the need to extend social protection to informal workers. However, the policy’s strategy of making informal workers contribute money to the pension schemes may not yield many results unless their right to work and livelihood is first secured and protected. Indeed, since the launch of this policy in 2015, there is no evidence of the implementation of this strategy. Therefore, in practice, workers in the informal economy still lack social protection. FES notes that the “National Social Protection Policy (NSPP) 2015 identifies expansion of contributory social security schemes to the informal economy as one of its priorities but with no stated avenues on how to implement these.”⁸⁶

⁷⁸ The Republic of Uganda Ministry of Gender, Labour and Social Development, The National Social Protection Policy ¶ 4.4.1 (Nov. 2015), <https://socialprotection.go.ug/wp-content/uploads/2016/07/National-Social-Protection-Policy-uganda.pdf> [hereinafter Uganda Social Protection Policy 2015].

⁷⁹ Uganda Social Protection Policy 2015.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ This definition is quite narrow and differs abit from the definition provided under Employment Policy. Although both policies narrowly define informal sector.

⁸⁴ Uganda Social Protection Policy 2015.

⁸⁵ *Id.*

⁸⁶ Madina Mwangale Guloba, How Inclusive is Uganda’s Social Protection, Legal and Policy Framework in Relation to the Informal Economy? (Friedrich Ebert Stiftung Policy Brief 2020).

6.0. ANALYSIS OF THE UGANDAN LAWS EXTENDING PROTECTION TO WORKERS IN THE INFORMAL ECONOMY

6.1. THE 1995 CONSTITUTION OF UGANDA

The constitution of the Republic of Uganda is the supreme law of the country, with binding force on all authorities and persons throughout Uganda. Any law, custom or practice inconsistent with its provisions becomes null and void to the extent of the inconsistency.⁸⁷ The Constitution guarantees that fundamental rights and freedoms of the individual are inherent and not granted by the State.⁸⁸ It further confers a duty on all organs and agencies of Government and all persons to respect, uphold, and promote all rights and freedoms enshrined under Chapter Four of the Constitution.⁸⁹

The constitution lays down fundamental rights and protections regarding all workers whether they are formal or informal. These rights are discussed below:

A) EQUALITY BEFORE THE LAW AND PROTECTION FROM DISCRIMINATION

Article 21 of the Constitution entitles all persons to equal protection of the law in all spheres of political, economic, social and cultural life and protects them from discrimination based on sex, race, colour, ethnic origin, tribe, birth, creed or religion, *social or economic standing*, political opinion or disability. This provision protects workers in the informal economy from discrimination based on social or economic standing. Discrimination according to this Article is understood as giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, race, colour, ethnic origin, tribe, birth, creed or religion, or *social or economic standing*, political opinion or disability.⁹⁰

B) FREEDOM OF ASSOCIATION INCLUDING THE RIGHT TO REPRESENTATION AND COLLECTIVE BARGAINING

Article 29(1)(e) gives every person a right to freedom of association which includes the right to form and join a trade union of his or her own choice. This right is emphasized and broadened under Article 40(3) which stipulates that every worker has a right to form or join a trade union of his or her own choice for the promotion and protection of his or her economic and social interests, to collective bargaining and representation and to withdraw his or her labour according to law.

The reference in these articles to “every person” and “every worker” are particularly important in defining the scope of the application of the rights in question. These two constitutional provisions exclude no particular group of persons or category of workers from the enjoyment of these rights; rather they give them to every person or worker. Therefore, workers in the informal economy are entitled to enjoy these rights just like their counterparts in the formal economy.

Further, the construction of the above constitutional provisions is in line with ILO Convention 87 on Freedom of Association and Protection of the Right to Organise, which gives a right to workers to establish and, subject only to the rules of the organization concerned, to join organizations of their choosing without previous authorization. As already discussed in this report, this right has been interpreted by the ILO Committee on Freedom of Association to cover not only workers in an employment relationship but also the self-employed, agricultural workers, casual workers, contract workers, and sub-contracted workers, among others.⁹¹

⁸⁷ The Constitution of the Republic of Uganda 1995, art. 2.

⁸⁸ *Id.* at art. 20.

⁸⁹ *Id.* at art. 20.

⁹⁰ *Id.* at art. 21(3).

⁹¹ INTERNATIONAL LABOUR ORGANIZATION, *supra* note 43.

C) RIGHT TO WORK AND LIVELIHOOD

Article 40(1)(a) requires Parliament to enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions. In addition, Article 40(2) of the Constitution gives every person in Uganda a right to practice his or her profession and to carry on any lawful occupation, trade or business. These provisions protect every person and do not limit the enjoyment of this right to a particular category of workers or persons. Often, in defense of de-congesting and organizing Kampala Capital City, street vendors have been on the run from the Kampala Law enforcement officers, fearing being arrested and having their merchandise confiscated on account of working from streets not gazetted as vending areas.⁹² However, in reality, KCCA has never gazetted any single street as a vending zone; save for the recent intervention where the Authority resolved to give the street vendors only one day a week to work (Sunday), and for this purpose allocated about four streets with a requirement of payment of a daily charge of UGX 12,000 before using the space.⁹³ Notably, this falls short of adequate protection in as far as the street vendors are only given one day to work in a week, an arrangement that renders it practically impossible to sustain their meagre incomes. Moreover, said charge is quite high for some vendors, who vend goods worth less than the charge. These actions by KCCA towards the street vendors contravene the right to work and livelihood and by extension their right to life, as discussed above.

D) PROTECTION FROM DEPRIVATION OF PROPERTY

Article 26 gives every person a right to own property, either individually or in association with others. It further prohibits compulsory acquisition of Land from any person except where the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and said possession or acquisition must be made under a law that makes provision for prompt payment of fair compensation before the taking position or acquisition. Further, the person who has an interest or right over the said property has the right to access a court of law. Indeed, Courts have emphasized this constitutional position in a number of cases where they have held that before one is deprived of his or her property through compulsory acquisition, he or she must first be compensated before the acquisition or expropriation takes place.⁹⁴

This Constitutional provision is important, given the question of ownership of markets and the market vendors' right to work. Historically in Uganda, there have been several incidences where market vendors have been arbitrarily evicted out of the markets without adequate compensation, threatening their right to work and livelihood.⁹⁵ Previously, some of the main public markets in Kampala had been leased and some sold to the market vendors through their associations and as such the market vendors had legal interests in the property. However, in 2020, a presidential directive was issued directing KCCA to repossess all the public markets. This was done without any adequate notice and prior compensation as required by the Ugandan constitution. Some market vendor's associations went to court and won against KCCA and some like the Nakawa market vendor's Association are still in court.

E) AFFIRMATIVE ACTION IN FAVOUR OF MARGINALISED GROUPS

Article 32 (1) places an obligation on the state to take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition or custom, for the purpose of redressing imbalances that exist against them. It further prohibits laws, cultures, customs and traditions which are against the dignity, welfare or interest of women or any other marginalised group to which clause (1) relates, or

⁹² Ghida Ismail, *Uganda's Street Vendors Need a Working Regulatory Framework*, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE: AFRICA at LSE (June 8, 2020), <https://blogs.lse.ac.uk/africaatlse/2020/06/08/uganda-street-vendors-working-regulatory-framework-lock-down-covid19/>.

⁹³ *Vendors Decry High Sunday Market Fees*, THE INDEPENDENT (June 20, 2019), <https://www.independent.co.ug/vendors-decry-high-sunday-market-fees/> (reporting that: "The vendors operate on Luwum, Burton, Dastur and Namirembe streets every Sunday. The streets are closed to motorists to allow the vendors to display their merchandise as part of the plan to keep them off the streets on other days of the week. Each vendor parts with Shillings 11,000 as operational fees every Sunday, which they say is too costly").

⁹⁴ See *Advocates for Natural Resources Governance and Development & Others v Attorney General and Uganda National Roads Authority*, [2013] UGSC 10 (Uganda).

⁹⁵ Amos Ngwomoya, *Wrangles stall govt plan to take over city markets*, THE MONITOR – UGANDA EDITION: PRIME (Apr. 21, 2021), <https://www.monitor.co.ug/uganda/business/markets/wrangles-stall-govt-plan-to-take-over-city-markets-3371000>.

that undermines their status.⁹⁶ To make this provision operational, Article 32(3) provides for the establishment of an Equal Opportunities Commission whose composition and functions are to be stipulated in an Act of Parliament.

F) INCLUSIVE DEVELOPMENT AND SOCIAL COHESION

Among the guiding objectives, directives and principles of the Constitution are: the right to development where the State will facilitate rapid and equitable development through encouraging private initiative and self-reliance.⁹⁷ The state is further directed to take all the necessary steps to involve the people in the formulation and implementation of development plans and programmes that affect them.⁹⁸

Additionally, the state shall endeavour to fulfil the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and that all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.⁹⁹

G) HUMAN RIGHTS AND FREEDOMS ADDITIONAL TO OTHER RIGHTS

Article 45 recognises other rights not specifically provided for under chapter four of the Constitution. It provides that the rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.

H) ENFORCEMENT OF RIGHTS AND FREEDOMS BY COURTS

Article 50(1) provides that any person, who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation. Article 50(2) allows any person or organization to bring an action against the violation of another person's or group's human rights. In *Adrian Jjuuko v. Attorney General*,¹⁰⁰ the constitutional Court of Uganda ruled that a petition can be validly filed by an individual who is not necessarily aggrieved.

I) RIGHT TO A FAIR HEARING

The right to a fair hearing under Article 28 entails a fair, speedy and public hearing before an independent and impartial Court or tribunal established by law, a presumption of innocence until proven guilty, a right to be immediately informed in a language that the person understands of the nature of the offence, adequate facilities and time for the preparation of a defence, right to an interpreter, facilities to examine witnesses and a right to obtain the attendance of other witnesses before court among others. In addition, the Constitution gives everyone a right to just and fair treatment in administrative decisions under Article 42.

⁹⁶ The Constitution of the Republic of Uganda 1995, Art. 32(2).

⁹⁷ The Constitution of the Republic of Uganda 1995, Objective IX.

⁹⁸ *Id.* at Objective X.

⁹⁹ *Id.* at Objective XIV.

¹⁰⁰ Constitutional Petition No.001 of 2009 (2016) (Uganda).

EMPLOYMENT LAWS

6.2. THE EMPLOYMENT ACT NO. 6 OF 2006

The Act regulates individual employment relationships. It provides for substantive protections and benefits to employees under a contract of service, for instance entitlement to wages¹⁰¹, protection from unfair termination and dismissal¹⁰², protection from discrimination¹⁰³, sexual harassment¹⁰⁴, forced labour¹⁰⁵, entitlement to severance pay¹⁰⁶, sick pay¹⁰⁷, overtime pay¹⁰⁸, repatriation allowance¹⁰⁹, maternity and paternity leave¹¹⁰ and annual leave¹¹¹, among others.

The Act establishes the Labour Advisory Board which is tasked with several roles, including advising the Minister on any matter falling under the Act and on any other matter affecting employment and industrial relations.

On the enforcement, Labour officers are courts of the first instance on any matter/complaint arising from the Employment Act.¹¹² They are given the power to investigate and adjudicate labour complaints arising from the Act.¹¹³ Appeals from their decision go to the Industrial Court.¹¹⁴ Labour officers are also given the power to inspect places of employment and to order, with the approval of the Commissioner for Labour, remedial action where there is a threat to the health or safety of workers and can close down a workplace where there is imminent danger to the health or safety of workers

However, said protections and rights only apply to *employees employed by an employer under a contract of service*.¹¹⁵ A contract of service means any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship.¹¹⁶ An employee is defined to mean any person who has signed a contract of service or an apprenticeship contract.¹¹⁷ In *Adiga v. Sabino & Anor*,¹¹⁸ Justice Stephen Mubiru held that a contract of service entails an obligation to serve and it comprises some degree of control by the master and specifically, three conditions are required to prove it, that is; (i) the servant agrees, in consideration for a wage or other remuneration to provide his work and skill in the performance of some service for his master, “mutuality of obligation”; (ii) he agrees expressly or impliedly that in the performance of that service he will be subject to the other’s control in a sufficient degree to make that other master; and (iii) the other provisions of the contract are consistent with its being a contract of service.

This outrightly excludes workers in the informal economy who do not enjoy a contract of service from protection. Workers in the informal economy like own account workers or self-employed workers are therefore not protected under the Employment Act.

Other categories of informal workers like temporary agency workers, contract workers, subcontracted workers, and casual workers are also not sufficiently protected under the Act. The statutory definition of a contract of service envisions a bipartite employment relationship between an employee and a single employing entity (employer). This definition does not consider temporary agency/contract workers who interface with two employing entities with

¹⁰¹ The Employment Act, 2006 (Act No. 6) § 41 (Uganda) [hereinafter The Employment Act].

¹⁰² *Id.* at § 71.

¹⁰³ *Id.* at § 6.

¹⁰⁴ *Id.* at § 7.

¹⁰⁵ *Id.* at § 5.

¹⁰⁶ *Id.* § 87.

¹⁰⁷ *Id.* at § 55.

¹⁰⁸ *Id.* at § 53.

¹⁰⁹ *Id.* at § 39.

¹¹⁰ *Id.* at § 56 & 57.

¹¹¹ *Id.* § 54.

¹¹² *Id.* at § 11.

¹¹³ *Id.* at § 12.

¹¹⁴ *Id.* at § 92.

¹¹⁵ *Id.* at § 3(1).

¹¹⁶ The Employment Act § 2.

¹¹⁷ *Id.* at § 2.

¹¹⁸ [2018] UGHCCD 4, 9-10 (Uganda).

one masquerading as the employer and the other as a client to the supposed employer of the agency worker, yet in reality, both entities share employer roles and functions over the agency worker. The challenge that comes with this type of arrangement in light of the said definition is it incentivizes employers to arrange contractual structures to obscure the true nature of the relationship.

And the Act contains qualification periods and regulatory differentials that make certain categories of informal workers (casual workers, contract, and agency workers) who may have an employment relationship more vulnerable. For instance, for an employee to qualify for annual paid leave, he or she must have worked for a continuous period of six months and more.¹¹⁹ Further, the Act provides for notice periods before the termination of one's employment or payment in lieu of this notice that is tied to length of service. The starting notice period is a two weeks notice *if the employee has worked for more than a period of six months but less than 1 year*, 1 month if one has worked for more than 12 months but less than five years, 2 months for a period of more than 5 years but less than 10 years and 3 months for the service which is more than 10 years.¹²⁰ The other regulatory differential pertains to the claim for unfair termination under Section 71. For an employee to lodge a claim of unfair termination, he or she must have worked for a period of 13 weeks or more. All these provisions push casual employees, contract and agency workers out of the legal protection provided under the Act because usually their engagements are temporary and short-term, or are set up to appear that way. Many employers likely take advantage of these provisions and employ workers on contracts of less than six months to avoid regulatory obligations. The use of short-term contracts is more prevalent in the construction and manufacturing sectors.

The Employment Act does not regulate fixed-term contracts. It does not provide for their maximum duration or renewals. In fact, under Section 2 of the Employment Act, the end of a fixed-term contract is a justifiable reason for termination of employment. This has encouraged the growth of temporary work in Uganda as repeated fixed-term contracts are used for jobs of a permanent nature. The ILO in its report on non-standard forms of work around the world found that Uganda had the highest percentage of temporary work among the selected countries.¹²¹ Temporary work arrangements form part of informal employment because they push workers out of labour protection.

6.3. THE EMPLOYMENT REGULATIONS NO.61 OF 2011

The Employment Regulations under Regulation 39 provide for contracts of casual employees.¹²² Regulation 39(1) provides that “a person shall not be employed as a casual employee for a period exceeding four months.” 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.¹²³ The regulation further provides that an employment card shall be issued to, and retained by, the casual employee except at the request of the employee¹²⁴ and shall not be taken from him or her, except for the purpose of having it marked by the employer which shall be done on each day worked or, in the case of a day to be counted as worked, on the next working day.¹²⁵ Where a casual employee is laid off by an employer and rehired the service shall be regarded as continuous.¹²⁶

While this regulation was meant to protect workers in casual employment, it does not sufficiently address their needs. In practice, casual workers are employed on oral terms and laid off or fired verbally. Regulation 39(3) places no mandatory obligation on the employer to provide an identity card to the casual employee. From the wording of

¹¹⁹ The Employment Act § 54(4).

¹²⁰ *Id.* at § 58.

¹²¹ ILO, NON-STANDARD EMPLOYMENT AROUND THE WORLD, *supra* note 11.

¹²² *Kitaka Erismas v. AIM Distributors*, [2018] UGIC 34 (Uganda)., a casual Labourer/ employee as one who gets paid per day after doing what he has been engaged to do. There is no guarantee that his employer will give him a job the next day and the obligations and responsibilities towards either the employee or the employer end with the work and payment of a particular day

¹²³ Statutory Instruments Supplement to the Uganda Gazette, The Employment Regulations, Regulation 39(2) (2011) (Uganda) [hereinafter The Employment Regulations].

¹²⁴ This provision of the law is quite vague as it seems to suggest that an employment card shall only be issued to a casual employee at his or her request, a position that leaves a casual employee more vulnerable as he or she may first all be ignorant of the fact that he or she is supposed to request the employer for an employment card and the procedure of doing so and secondly scrupulous employers will abuse this provision and deny them employment cards after all the law does not place a mandatory obligation on them to provide them to casual employees.

¹²⁵ The Employment Regulations, Regulation 39(3).

¹²⁶ *Id.* at Regulation 39(4).

the provision, it is upon the casual employee to request the same. It should be noted that most casual employees do not even know that it is their duty to request identity cards.

6.4. THE EMPLOYMENT (AMENDMENT) BILL, 2019¹²⁷

This bill was passed by Parliament in 2021, but is awaiting the assent of the President to become law. This is a private members bill brought forward by one of the Members of Parliament representing workers (Hon. Agnes Kunihira). The Ministry of Gender, Labour and Social development had also earlier drafted a comprehensive bill amending the Employment Act and presented the same to the cabinet. Notably, in an interview, an official at the Ministry of Gender, Labour and Social Development clarified that the Ministry had written a letter to the president requesting him not to assent to the bill until it is harmonized with the one that had been presented to the cabinet.

The Employment (Amendment) Bill, 2019 would amend the Employment Act of 2006. It seeks to regulate the employment of domestic workers and casual employees in Uganda. The Employment Act of 2006 excluded from its application employers and their dependent relatives where the dependent relatives were the only employees in a family undertaking and did not exceed five. The Bill seeks to remove this exception. The bill would apply to all domestic workers and casual employees regardless of their number and relationship to the employer.

The Bill, if passed, will also reduce the period within which a person can be a casual employee from four months to one month, and will provide for the protection of the health and safety of the casual worker, among other rights. The Bill seeks to ensure that domestic workers are fully entitled to all usual employee rights including overtime pay, leave days, and rest, among others.

The Bill further seeks to amend the section on sexual harassment in the Employment Act of 2006, which limited the requirement on employers to put in place a sexual harassment policy to those employing 25 employees or more. The amendment will ensure that all employers have in place a policy to prevent sexual harassment, regardless of the number of employees. It further expands places where sexual harassment may be considered to have taken place, including work trips, training or social activities. Besides sexual harassment, the bill also prohibits any form of abuse, harassment and violence against an employee. This provision seems to incorporate certain aspects of ILO C190, however, it leaves out some other important aspects of the Convention including explicit protection of all workers from harassment and violence including those in the informal economy.

The bill extends protection to working breastfeeding mothers where it entitles them to one or more daily breaks or a reduction in hours of work to allow them to breastfeed their babies.¹²⁸ This entitlement is meant to last for at least three months from the end of maternity leave. An employer is also required to provide a breastfeeding room under adequate hygienic conditions, within or near the workplace, for purposes of breastfeeding, bottle feeding, or expressing milk. This creates some of the necessary conditions for a breastfeeding mother to return to work. This protection in the bill only applies to employees under a contract of service. It does not extend to workers in the informal economy who do not enjoy an employer-employee relationship.

Whereas some of these amendments are fascinating in as far as they extend protection to casual and domestic employees, they are blind to many other categories of workers in the informal economy like own account workers who also face harassment and violence at their places of work, agency workers who may not know on which of the employing entities to place liability in event of a violation of their rights, and home workers.

¹²⁷ *Parliament to Fast Track Employment Amendment Bill*, PARLIAMENT OF THE REPUBLIC OF UGANDA: NEWS (Mar. 23, 2021), <https://www.parliament.go.ug/news/5040/parliament-fast-track-employment-amendment-bill>.

¹²⁸ The bill does not provide an objective basis for getting more than one break, and in reality, one break might not also be enough to sustain lactation.

6.5. THE LABOUR UNIONS ACT NO.7 OF 2006

This Act regulates the establishment, registration and management of labour unions in Uganda. It provides for general principles governing the right to freedom of association for *employees*. It is intended to operationalize the constitutional provisions that give every worker a right to join or form a trade union, collective bargaining and representation and to withdraw his or her labour and take industrial action.

Section 3, therefore, provides for a right of employees to organize themselves in any Labour Union of their choice and assist in its running including undertaking any lawful activities for purposes of collective bargaining. Employers are prohibited from interfering with the exercise of this right.¹²⁹ Any employer who interferes with this right commits a crime and is liable on conviction to a fine not exceeding ninety-six currency points¹³⁰ (UGX 1,920,000/=),¹³¹ or imprisonment for a term not exceeding four years, or both. In case of a continuous offence, the employer is liable on conviction to a fine of two currency points for every day or part of a day during which the offence continues.¹³²

However, as stipulated in Section 3 of the Act, the right to form or join a labour union is only given to employees. Additionally, the Act defines a labour union as any organization of employees created by employees for the purpose of representing the rights and interests of employees.¹³³ The same Act defines an Employee as any person who has entered into a contract of service or a contract of apprenticeship.¹³⁴ As discussed, many workers in the informal economy are self-employed or own-account workers who do not enjoy a clear employment relationship with an employer, and as such these provisions push them out of the legal protection and enjoyment of rights under the Act, violating their rights to freedom of association under both national and international law.

Limiting the right to form or join a trade union under the Act to only employees contravenes Articles 29(1) (e) and 40(3) of the Constitution, which gives the enjoyment of this right to every worker. It further contravenes Article 21 on equality before the law and protection from discrimination, as well as ILO C087¹³⁵ and C098¹³⁶ which Uganda has duly ratified. In addition, Section 18 (4) of the Labour Unions Act provides that “the process of registration shall be within 90 days from the date of submission of the application”. This is quite a long period within which to register an organization voluntarily formed by workers. The ILO Committee on Freedom of Association has noted this specific provision is overly lengthy and may constitute a serious obstacle to the establishment of organizations and has requested the Government of Uganda take necessary measures to amend Section 18 of the Labour Unions Act to shorten the time frame for registration of a trade union.¹³⁷ In addition, among the forms to attach for registration is the form containing officers of the proposed union and the members. However, the officers and members applying for union registration must indicate their employer. This requirement does not take into consideration the self-employed or own-account workers who do not have employers and thus implicitly places an encumbrance on their formation as a labour union because the language in the Act excludes such workers.

6.6. THE OCCUPATIONAL SAFETY AND HEALTH ACT NO.9 OF 2006

The Act provides for the promotion and protection of the safety and health of workers at the workplace. It places a duty on employers to protect workers from dangerous aspects of the employer’s undertaking and to ensure that the work environment is free from any hazards.¹³⁸ As such, the employer has an obligation to take safety and health measures for the benefit of employees,¹³⁹ to monitor and control the release of dangerous substances into the

¹²⁹ The Labour Unions Act No.7 of 2006 § 4 (Uganda).

¹³⁰ Each currency point is equivalent to Uganda shillings Twenty thousand (20,000/=).

¹³¹ USD 533.

¹³² The Labour Unions Act No.7 of 2006 § 5(a)&(b).

¹³³ *Id.* at § 2.

¹³⁴ *Id.*

¹³⁵ Convention Concerning the Freedom of Association and Protection of the Right to Organise, July 9, 1948, 31 ILO Official Bull., Ser. B, No. 1 (1948) [hereinafter ILO Convention No. 87].

¹³⁶ International Labour Organization, C098 - Right to Organise and Collective Bargaining Convention, 1949 (No. 98), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098 [hereinafter ILO C098].

¹³⁷ International Labor Organization, Observation (CEACR) - adopted 2019, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4023493.

¹³⁸ The Occupational Safety and Health Act No.9 of 2006 § 13 (Uganda).

¹³⁹ *Id.* at § 14.

environment,¹⁴⁰ to provide protective gear to employees,¹⁴¹ to supervise the health of workers and to provide safe premises for work.¹⁴²

Section 24 of the Act provides that “a self-employed person shall conduct his or her undertaking in a way that ensures as far as is reasonably practicable that he or she and any other person who may be affected by the undertaking is not exposed to risks to his or her health and safety”.

Requiring self-employed persons to protect themselves and those affected by their undertakings is a good gesture by the Act. However, it ignores the power imbalances that the self-employed face in their line of work. The question is: who is responsible for keeping the workplace of the market and street vendors safe? What about the home workers who manufacture for big companies and the artisanal miners in quarries who supply materials to big companies? All these categories of workers deal with entities in their line of duty that are more powerful and indirectly control their work; moreover, these controlling entities derive benefits from these workers.

Ideally, in the case of the market and street vendors, the Public authorities who usually own the markets and control public space would be liable to provide a safe and healthy workplace since they collect dues from them. Whereas, for artisanal miners and home workers, the companies buying from them ought to be held liable for their safety and health. Recently, there have been many reports of Artisanal miners dying because of accidents in quarries.¹⁴³

6.7. THE WORKERS COMPENSATION ACT, 2000

The Act provides for compensation to workers for injuries and illnesses or diseases suffered in the course of their employment. Under Section 3(1), an employer shall be liable to pay compensation to any injured worker if the personal injury by accident arises out of and in the course of the worker’s employment. Such compensation shall be payable irrespective of whether the incapacity or death was due to recklessness or negligence of the worker or otherwise.¹⁴⁴

The calculation under the Act is based on monthly earnings and the amount of compensation shall be a sum equal to sixty months’ earnings.¹⁴⁵ However, the Act provides that compensation may not be payable unless notice of the accident has been given to the employer by or on behalf of the worker as soon as is reasonably practicable and in any case within one month after the date when the accident occurred or within three months after the date the symptoms of the occupational disease became apparent.¹⁴⁶ Notably, no notice is required where it is shown that the employer knew of the accident or disease at the time it occurred or the time when the symptoms became apparent or any other reasonable cause.¹⁴⁷ The employer is also placed with an obligation of reporting such an accident to the Labour officer.¹⁴⁸ It is also a requirement under the Act that all employers be insured in respect of liability under the Act.¹⁴⁹

The Act further provides for liability in case of contract work. Section 22(1) of the Act provides that where a person awards a contract or subcontract to an employer for the execution of any piece of work, that person shall be liable to pay to any worker employed in the execution of the contract or subcontract by the employer any compensation under this Act as if that worker had been directly employed by that person. This provision implicitly extends protection to outsourced and agency workers who may get injuries or occupational illnesses because of their work for the third party who is not the direct employer. They are liable to be paid by the person who has entered into a contract with their agency to perform a certain task.

¹⁴⁰ *Id.* at § 18

¹⁴¹ *Id.* at § 19

¹⁴² *Id.* at § 21

¹⁴³ Andrew Bagala, *Muyenga Stone Quarry Kills Four, Injures Three*, MONITOR – UGANDA EDITION (June 16, 2021), <https://www.monitor.co.ug/uganda/news/national/muyenga-stone-quarry-kills-four-injures-three--3438360>.

¹⁴⁴ The Workers Compensation Act, 2000, § 3(6) (Uganda).

¹⁴⁵ *Id.* at § 5 & 6.

¹⁴⁶ *Id.* at §9(1).

¹⁴⁷ *Id.* at §9(1).

¹⁴⁸ *Id.* at §10.

¹⁴⁹ The Workers Compensation Act 2000, §18 (Uganda).

The law allows such a person to be indemnified by the employer of the injured workers.¹⁵⁰ In addition, the Act does not stop a worker in such an arrangement who may want to seek compensation directly from his employer.¹⁵¹

However, in as much as the Act extends protection to some categories of workers in the informal economy like contract, agency and outsourced workers, it leaves out some categories, like the own-account workers who do not enjoy the benefit of having an employer *per se*. Some self-employed workers are in reality dependent employees because of the imbalance of power relations that exists between them and the people or companies connected to them through a purported business relationship. For instance, artisanal miners supplying raw materials to a big company or an Uber driver or cyclist using a digital app to access customers.¹⁵² They bear all the risks of employment to the advantage of those connected to them through the purported business relationship.

6.8. THE LABOUR DISPUTES (ARBITRATION AND SETTLEMENT) ACT NO. 8 OF 2006

The Act regulates industrial relations and provides for the establishment of the industrial court.¹⁵³ The Industrial Court is tasked with arbitrating claims referred to it under the Act and adjudicating questions of law and fact arising from references and appeals.¹⁵⁴ It, therefore, has both referral and appellate jurisdiction.¹⁵⁵ It also has concurrent jurisdiction with the high court, and this has been confirmed in the constitutional case of *Justice Asaph Ruhinda Ntengye & Justice Linda Tumusiime Mugisha v. Attorney General*.¹⁵⁶ Therefore, appeals from the decisions of the Industrial Court lie to the Court of Appeal on a question of law or jurisdiction.

Parties may be represented by an advocate, a labour union, or an employers' association before the Industrial Court. However, the Industrial Relations Court is not bound by the ordinary rules of evidence. Its rules of procedure and evidence are comprehensively set out in the Labour Disputes (Arbitration and Settlement) (Industrial Court Procedure) Rules, 2012.

Under the Act, Labour disputes may also be resolved through a board of inquiry appointed by the responsible Minister. The board may inquire into employer-employee relations and the working conditions or terms of employment of an employee. The board, which may be a single person, has the same powers relating to evidence as to the Industrial Court.

The Act further recognizes the right of employees to lawful industrial action subject to certain restrictions. The Act, however, only seeks to resolve disputes or conflicts between employees and employers, between employees, or between Labour Unions and often does not apply to workers in the informal economy.

¹⁵⁰ *Id.* at § 22(4)(2).

¹⁵¹ *Id.* at § 22(5).

¹⁵² See INTERNATIONAL LAWYERS ASSISTING WORKERS (ILAW) NETWORK, TAKEN FOR A RIDE: LITIGATING THE DIGITAL PLATFORM MODEL 9 (ILAW Issue Brief 2021), <https://www.ilawnetwork.com/wp-content/uploads/2021/03/Issue-Brief-TAKEN-FOR-A-RIDE-English.pdf> (discussing the fact that companies like Uber involved in platform work use employment practices that are similar to traditional forms of employment but disguise the same as contracts for services/independent contractors. And finding that "[t]hese companies provide a service and need to hire labour in order to provide that service; they do not simply connect consumers and providers"). However, they treat the labour they hire not as employees but independent contractors pushing them out of the ambit of employment relations and protection.

¹⁵³ The Workers Compensation Act 2000, § 10.

¹⁵⁴ *Id.* at § 8.

¹⁵⁵ The Employment Act, §§ 8 & 93-94.

¹⁵⁶ Constitutional Petition No.33 (2016) (Uganda).

SOCIAL SECURITY LAWS

6.9. THE NATIONAL SOCIAL SECURITY FUND CAP 86.

The National Social Security Fund Act establishes the National Social Security Fund (NSSF), governed by a Board of Directors appointed by the responsible Minister, whose main function is to operate and manage the fund into which contributions shall be made to benefit workers. The Act further provides for both compulsory and voluntary registration of employers and employees. The employees contribute 5 percent of their monthly total earnings to the fund, while the employers contribute 10 percent on behalf of each of their employees to the fund. In essence, the employee saves 15 percent monthly with the fund.

As is clear from the foregoing, this fund is for employees in the formal sector. There is no general provision for social security in Uganda outside the context of formal employment despite 85% of the Ugandan labour force belonging to the informal economy.¹⁵⁷

6.10. THE NATIONAL SOCIAL SECURITY FUND (AMENDMENT) ACT 2021.

This Act amends the National Social Security Fund Act, cap 222 and expands social security coverage by making contributing to the Fund mandatory for all workers in the formal sector and also allowing workers both in the formal and informal sector to voluntarily contribute to the fund. It also seeks to expand the social security benefits to its members. It further seeks to allow members aged 45 years and above to have mid-term access to their savings.

One of the key positives in this amendment is the recognition of the workers in the informal sector and their need to be brought under the coverage of the fund and enhancing social protection for workers in the informal economy. Although the law calls for voluntary contributions from the workers in the informal economy, it is blind to their socio-economic state which is precarious in nature and may not adequately facilitate them to make the said voluntary contributions. It would be more effective and meaningful to the realization of social protection for workers in the informal economy if the law required individual contributions of informal economy workers and further placed an obligation on the government and companies that benefit from some categories of workers in the informal economy to also co-contribute a certain percentage just like it is with the workers in the formal economy.

MARKET AND TRADE LAWS

6.11. THE LOCAL GOVERNMENT ACT CAP 243 AS AMENDED

The Local Governments Act operationalizes the principle of decentralization enshrined in the Constitution of the Republic of Uganda. The Act accordingly establishes local governments and administrative units in Uganda and empowers them to manage the development of their respective areas of jurisdiction. The Act further provides for the Council to be the highest political authority in the local government. The council is given legislative and executive powers under the Constitution of the Republic of Uganda. However, these legislative powers are limited to the enactment of bylaws and ordinances as long as they are not inconsistent with the Constitution of Uganda.

An urban, sub-county, division or village council may, in relation to its powers and functions, also make by-laws not inconsistent with the Constitution or any other law enacted by parliament or an ordinance of the district council or a bylaw passed by a higher council. Local governments are mandated under the Act to provide some services, for example, establishment, administration, management and collection of revenue from markets.

In 2015, the Local Government Act was amended to include worker representation in the Local Councils as a way of contributing to policies and decisions that affect workers. Representatives are to be elected in accordance with the Labour Unions Act, to help represent the interests of workers.

This law is of keen interest to workers in the informal economy, especially market and street vendors. Their activities and work are largely regulated by Local governments through ordinances and bylaws that are in most cases prohibitive towards their operations. This amendment allows them to stand as worker's councilors at the local levels

¹⁵⁷ UNLFS 2016/17, *supra* note 1.

and participate in decision-making. For instance, the National Chairperson of Uganda Markets and Allied Employees was elected as a workers representative at Kampala Capital City Authority and is now part of decision-making at KCCA.¹⁵⁸

6.12. THE MARKETS ACT CAP 94

The Markets Act was enacted in 1942 before Ugandan independence. It provides for the establishment and management of markets. The Markets Act vests authority of establishment and control of markets with local authorities. The Act further empowers a Minister to make rules for the administration and management of markets.

The Act has many shortcomings; for instance, it does not define what a market is. This has created a policy vacuum where a market has been interpreted differently between the local authorities, municipal councils and the relevant stakeholders. In its research, the Uganda Law Reform Commission found that many types of markets have sprung up, for instance, roadside, open space, street markets, mobile markets and supermarkets.¹⁵⁹

Further, while the Markets Act vests authority over markets with local authorities, in practice, private investors and market vendor associations also own and control markets and are not adequately regulated by the local authorities. This has created a lot of confusion, leading to legal battles due to the lack of a law that takes care of such dynamics. The Act empowers a minister to make regulations regarding the management of markets and other incidental issues, but it does not define the responsible ministry. A dispute resolution mechanism is also not provided for under the Act, nor does the law empower vendors to negotiate their interests or participate in the decision-making process with the local authorities.

However, Parliament recently passed the Markets bill 2021 awaiting assent by the President of Uganda.¹⁶⁰ Once the bill is assented to by the President, it will repeal the Markets Act cap 94. The Bill seeks to provide for a comprehensive legal framework to strengthen the regulation, management and administration of markets and address the gaps and limitations that have been identified in the current law.

The Markets bill 2021 is a bit more comprehensive. It defines a market, provides for types of markets, governance and administration structures. It further addresses questions of ownership, a little bit of representational rights of vendors, provision of separate toilets for women and day care centers. However, this bill on the face of record also contains some shortfalls and gaps. For instance, the definition of a market is limited in scope. The bill also contains provisions which suffocate the associational rights of market vendors when it gives power to the local councils to terminate the democratically elected leaders of vendors. Further it does not address issues of gender-based violence and harassment which is a common vice in the markets neither does it put in place a clear dispute resolution mechanism on conflicts arising from the markets.

6.13. THE LOCAL GOVERNMENT (KAMPALA CITY COUNCIL) (MARKETS) ORDINANCE, 2006

This ordinance is intended to license and regulate the establishment, maintenance and control of markets in the city and for other connected matters. It applies to markets established within the jurisdiction of the council. According to the Ordinance, a Market has the same meaning as in the Markets Act, which is undefined. The ordinance prohibits

¹⁵⁸ See The Republic of Uganda Electoral Commission, Guidelines for Election of Workers' Councillors to Local Government Councils, 2018 (Apr. 17, 2018), https://www.ec.or.ug/sites/default/files/press/Guidelines%20for%20Elections%20of%20Councillors%20Representing%20Workers%20to%20the%20District%20Local%20Government%202018_0.pdf (The representation of workers' councilors to the council is through an election. The election is done through a workers' Electoral College composed of 20 delegates from each registered Labour Union in Uganda and 40 delegates representing non-unionized workers).

¹⁵⁹ UGANDA LAW REFORM COMMISSION AND MINISTRY OF LOCAL GOVERNMENT, A REPORT OF THE REVIEW OF THE MARKETS ACT, CAP 94 IN UGANDA (July 2013), <https://www.ulrc.go.ug/sites/default/files/Draft%20Study%20Report%20on%20Markets%20Acts%20Review%20July22%20%202013.pdf>.

¹⁶⁰ <https://www.newvision.co.ug/category/news/ugandan-parliament-passes-bill-on-administrat-127169>, <https://parliamentwatch.ug/bills/markets-bill-2021/>

a person from establishing or maintaining a market within the jurisdiction of the council without a market license issued by the council. The ordinance further gives the Council power to enter a contractual arrangement with a person, firm, company, or organization which intends to invest money in the establishment and maintenance of a market. The ordinance prohibits a market vendor from coming with a baby to the market, except if there is a day-care centre in the market. Notably, the ordinance conflicts with the Markets Act in as far as it allows private individuals to establish, maintain and control markets.

6.14. THE KAMPALA CAPITAL CITY AUTHORITY ACT 2010

The Kampala Capital City Act (KCCA) empowers Kampala Capital City Authority to manage the development of Kampala capital city. It lays down the functions of KCCA to: initiate and formulate policy, determine taxation levels, promote economic development in the Capital City, mobilize the residents of the Capital City to undertake income-generating and self-help community projects, enact legislation for the proper management of the Capital City and carry out physical planning and development control.

The Authority is composed of the Lord Mayor, Deputy Lord Mayor, councillors representing each electoral area in the Capital city, two councillors with disabilities representing persons with disabilities and two councillors, one woman and one man, representing workers. The Authority is given legislative power under the Act to make ordinances not inconsistent with the Constitution or any other law made by Parliament.

The Act places an obligation on the Executive Director of the Authority to ensure proper physical planning and development control in the urban councils, ensure trade order, and be responsible for enforcing ordinances and bylaws made by the Authority and its lower council units.

The Act gives power to the Minister to vary or rescind any decision of the Authority which is in contravention of any law or Government Policy, with the approval of the cabinet, the minister can give directives on policy and general development of the Capital City and the Authority shall comply with the directives. The Minister is further given the power to veto decisions taken by the Authority which appear to the Minister to be illegal. Where the authority fails to perform any of its duties, the minister may by writing, direct the Authority to carry out those duties.

The third schedule to the Act lays out the functions and services for which KCCA is responsible, including: establish, acquire, erect, maintain, promote, assist or control, with *the participation of citizens* among others markets and piers, jetties and landing places, education, trade and technical schools, *prohibit, restrict, regulate or license the sale or hawking of wares or the erection of stalls on any street, or the use of any part of the street or public place for the purpose of carrying on any trade, business or profession.*

Notably, the Act has some gaps, for instance, a conflict of power or roles may arise especially between the Authority and the Minister. The ministerial directives may overshadow any lawful decision passed by the Authority. There have been occasions when the Authority makes certain decisions on the informal traders especially street vendors and motorcycle riders and the same get rejected by the Minister.

Further, the Act prohibits hawking or street vending unless licensed, but does not provide the mechanisms or procedure for one to acquire a licence. Though the Authority is delegated to make ordinances or bylaws under the Act, to date no ordinance detailing the procedure for application of such a licence has been passed. The draft bill (The Kampala Capital City (Regulation of Street Trade) Ordinance, 2019 provides for the form of application for a license, however, this bill has not been passed yet.¹⁶¹

¹⁶¹ The main purpose of this ordinance is to provide a legislative framework that will allow regulation and management of vending and hawking on the streets of Kampala City in an organised and orderly manner. Among the provisions under this ordinance is the requirement of all street vendors and hawkers to have uniforms, special street trade license, and identification numbers among other provisions. However, the ordinance still has many shortfalls in as far as realising the right of work for street vendors and hawkers for instance it provides for excessive annual licencing fees which are a big impediment to obtaining the same and does not provide for reasons as to why a street vendor may be denied a licence. It indeed maintains the draconian provisions of the parent Act that is the Trade Licencing Act.

6.15. THE TRADE (LICENSING) ACT CAP 101

The Trade (Licensing) Act, Cap. 101 gives the minister responsible for Local administrations and Urban authorities power by statutory order to declare any specified area in Uganda, other than an area declared a trading centre by administration of a district, to be a trading centre, assign a name to it, define the boundaries, alter boundaries and declare that any trading centre shall cease to be a trading centre.

The Act prohibits trading without a license. However, no trading licence is required in the event of the trade of a planter, farmer, gardener, dairy person or agriculturist regarding the sale of his or her own dairy or agricultural produce; the trade of a person regarding goods bonafide made by him or her by his or her handicraft in or on any premises where he or she normally resides or by a handicraft of persons normally residing with him or her or who are his or her employees or members of his or her family; trade carried out in any market established under the Markets Act; and any other trade which the minister may, by statutory instrument, declare to be a trade for which no trading licence is required under this Act.

Under the Act, the Town Clerk of any City, Municipality or Town other than an administration town is given the responsibility of granting a trading license or hawker's license. The Act however gives the Licensing Authority excessive discretion to refuse to grant a hawkers license upon giving reasons but the said reasons for refusal to grant the same are not specified in the law which facilitates abuse of the whole process of accessing a licence and in the long run it impedes the right of hawkers to work and earn a livelihood.

6.16. THE LOCAL GOVERNMENT (KAMPALA CITY) (STREET TRADERS) ORDINANCE S.I 243-23

The bylaw defines a street trader to mean a propeller of a wheelbarrow, shoe repairer, shoe polisher, watch repairer, newspaper or bookseller or charcoal seller carrying on a business. No street trader is allowed to carry on business without a permit from the town clerk. Additionally, a holder of a permit shall be required to provide proper structures, kiosks or premises where necessary, which shall be approved by the council for the purpose.

As seen, the definition of a street trader is exceedingly narrow and does not cover many types of street traders that have evolved. In addition, the requirement of providing proper structures, kiosks or premises for a permit holder excludes street vendors who sell their goods on foot.

The lack of clear rules for vending, and protections for street vendors have resulted in the criminalization and abuse of street vendors, in violation of their constitutional rights. In December 2021, the Resident City Commissioner of Kampala announced that all street vendors must vacate city streets by January 10, 2022, ordering street vendors who wished to continue operating to get a license. There was no consultation with street vendors before making this arbitrary announcement, and as noted above, currently no process for obtaining a license exists.

Starting January 17, over one hundred street vendors in Kampala were arrested, including children, and charged with a variety of offenses, including hawking without a license, public nuisance, and obstruction. Street vendors report cruel, degrading or harmful treatment while in police custody. Some vendors report having their valuables confiscated. The announcement coincided with schools reopening in Uganda for the first time in two years, with this arbitrary crackdown leaving many vendors unable to afford school fees or supplies. The speaker and deputy speaker from the Kampala Capital City Authority (KCCA) were arrested alongside 12 city councilors for attempting to march in downtown Kampala to inspect roads and show support for the street vendors, although they were not formally charged.¹⁶² These actions are unlawful and unconstitutional. The Constitution guarantees every person a right to work under satisfactory, safe and healthy conditions and in addition, every person in Uganda the right to practice his or her profession and to carry on any lawful occupation, trade or business.¹⁶³ The act of evicting street vendors from the streets deprives them of their right to life, which includes the right to livelihood as has been constitutionally interpreted in the case of *Salvatori Abuki & Another v. Attorney General*,¹⁶⁴ as well as the right to medical care and education of their children.

¹⁶² URN, *KCCA Speaker Luyirika, 13 Councillors Arrested over Street Vendors Protest*, THE OBSERVER (Feb. 4, 2022), <https://observer.ug/news/headlines/72650-kcca-speaker-luyirika-13-councillors-arrested-over-street-vendors>.

¹⁶³ The Constitution of the Republic of Uganda, Art. 40(1)&(2).

¹⁶⁴ [1997] UGCC 10 (Uganda).

LAWS IN THE CREATIVE, ARTS AND PERFORMING INDUSTRY

6.17. THE STAGE PLAYS AND ENTERTAINMENTS ACT

This Act provides for regulation and control of stage plays and public entertainment. It provides for the licencing of theatres and the safety of persons attending them. The Act requires a permit before the performance of stage play and submission of stage play description in the English language to the council for approval before the performance. Under the Act, the council has the discretion to refuse to grant the permit without giving reasons.¹⁶⁵ Under Section 13, an appeal shall lie to the Minister regarding any act or decision of the licensing authority or the council and the decision of the Minister shall be final.¹⁶⁶ Firstly, the requirement to obtain a permit from the council before performance amounts to censorship of the content, which violates Article 29(1) of the Constitution on freedom of expression. Secondly, the refusal to grant permits as and when the council deems fit contravenes Article 28 on the right to a fair hearing and the right to be treated fairly and justly in administrative decisions.

6.18. THE STAGE PLAYS & PUBLIC ENTERTAINMENT RULES S.I NO. 80 OF 2019

Under these new regulations, one must have a permit to stage a play, concert or any form of public performance or entertainment and contravention of this is punishable by a fine, imprisonment of six months, or both.¹⁶⁷ Regulation 6 stipulates that “a person shall not, without a permit issued by the Uganda Communications Commission, stage or exhibit a play or public entertainment to the public.”

In the application for the permit, one shall have to: a) state the name, address and legal status of the applicant; b) state the premises where the play is to be staged or where the public entertainment is to be exhibited; c) include a copy of the script of the play; d) where applicable, be accompanied by a certificate of censorship issued by the Media Council; e) where the audio-visual content is in a language other than English, include a certified translation of the content; and f) attach a copy of the payment of the application fee. On top of the application fees for the permit, the applicant has to pay extra money to facilitate the attendance of an inspector.¹⁶⁸ In addition, the Uganda Communications Commission is given the power to withdraw the permit during the concert or play. The regulation further requires all performing artists to register with the government and maintain annual practicing licenses, which can be revoked whenever they are in breach or contempt of the law. This regulation suffocates the freedom of expression of performing artists and further violates their right to work and practice their profession in freedom.

6.19. COVID-19 REGULATIONS AND THEIR IMPACT ON WORKERS IN THE INFORMAL ECONOMY

In March 2020, Uganda identified its first case of COVID-19. To curb the spread of the virus, the government imposed a country-wide total lockdown through June 2020, when it partially opened the country. During the partial lockdown, schools, bars, nightclubs, gyms, and places of worship remained closed, public transport was directed to carry a smaller number of passengers, and the country was subjected to a curfew. To enforce these new directives, the government passed the Public Health (Control of Covid-19) Rules, 2020 in which all the directives were captured. These rules were revoked recently by the Public Health (Control of Covid- 19) rules 2021, following a recent country lockdown that began on 18th June 2021 and lasted 42 days. The new rules not only maintained many of the provisions of the earlier rules but provided for more restrictions. Among the Covid-19 management measures taken by the government was the closing of many workspaces including shopping malls, small shops, hair salons and other smaller businesses, with the exception of food selling stores and markets.¹⁶⁹

These measures have negatively affected workers in the informal economy and increased their vulnerability in terms of income security and social protection. The restrictions of movement affected many and some categories of workers in the informal sector have not been allowed to work at all, for example performing artists and street

¹⁶⁵ The Stage Plays & Entertainments Act, § 6 & 7 (Uganda).

¹⁶⁶ *Id.* at § 13(1)(2).

¹⁶⁷ The Stage Plays and Public Entertainment Rules (Statutory Instruments Supplement, no. 30 to the Uganda Gazette), rules 2 & 6 (Uganda).

¹⁶⁸ *Id.* at rule 5.

¹⁶⁹ Public Health (Control of COVID-19) Rules, 2020 (Statutory Instrument 83 of 2020), <https://ulii.org/akn/ug/act/si/2020/83/eng@2020-07-22> (Uganda).

vendors and hawkers, even when the country has partially opened up.

During the lockdown, street vendors and hawkers, the majority of whom are women, faced a lot of violence and harassment from the police on account of working when the rules required them not to work. In one widely reported incident on 26th March 2020, a group of women street vendors vending fruits on the streets of Kampala were severely beaten and harassed by the law enforcement officers, Police and Local Defence units.¹⁷⁰ This same violence and harassment also manifested during the second lockdown.

Whereas the markets remained open during both the lockdowns, all market vendors were required to sleep in the markets and not return to their homes until the lockdown was lifted. This came with challenges regarding safety and hygiene, as well as the burden on those with family or care obligations, particularly breastfeeding women and parents of young children, who had to carry the children along with them, contrary to international labour standards.

Article 3 of (ILO Convention No. 183 on Maternity and Work mandates that states adopt appropriate measures to ensure that pregnant or breastfeeding women are not obliged to perform work prejudicial to the health of the mother or the child. However, this treaty has not been ratified by Uganda.

As of December 2021, schools are still closed and this has intensified labour violations in households; without overtime payment, domestic workers continue to bear the burden of increased workload which grossly exposes them to a very stressful working environment.¹⁷¹

7.0. JUDICIAL RESPONSE/ CASE LAW ON THE RIGHTS OF WORKERS IN THE INFORMAL ECONOMY IN UGANDA

There is very little jurisprudence that explicitly protects the rights of workers in the informal economy. However, some cases that were discovered during this research addressed property and business rights of the market vendors, casual employees, fixed-term employees and agency workers. Most cases were heard before the High courts of Uganda, as the Industrial Court cannot hear disputes that do not involve workers deemed to be employees. One concerning casual workers was heard by the Industrial Court.¹⁷² These cases are discussed below.

7.1. ST. BALIKUDEMBE MARKET STALLS, SPACE AND LOCKUP SHOPS OWNERS ASSOCIATION LIMITED (SSLOA) V. KAMPALA CAPITAL CITY AUTHORITY MISC. CAUSE NO. 328 OF 2020¹⁷³

On 3rd November 2020, the Executive Director of the Respondent, KCCA, wrote to the Applicant (the Association) notifying it that the Respondent had assumed the management of Kampala markets and directed that the affairs and operations of the Applicant be handed over to the officials of the Respondent Authority. The action of the Executive Director was based on the Presidential directive of 2020 on markets which directed the Authority to repossess all markets within Kampala Capital City. The Applicant contended that the Respondent's decision to take over the affairs of the Applicant and the management of the Applicant's property was a violation of the Applicant's right to own and utilize its property, enshrined in Article 26 of the Constitution of the Republic of Uganda.

The Court ruled in favour of the Applicant. It found that St. Balikudembe (Owino) Market, which sits on land registered in the names of the Applicant, belongs to the Applicant and thus held that if the Respondent wished to possess said market from the Applicant under S.1 (2) of the Market Act, 1942, then it should make prompt, fair, and adequate compensation to the Applicant before taking over possession and/or management of the property.

The Court emphasized that fair and adequate compensation should first be paid to the Applicant before any take over and or management of the property.

¹⁷⁰ Strategic Initiative for Women in the Horn of Africa, *Statement of Solidarity: We Demand Accountability for the Brutality by Ugandan Law Enforcement Agents*, SIHA NETWORK (Mar. 29, 2020), <https://sihanet.org/statement-of-solidarity-we-demand-accountability-for-the-brutality-by-ugandan-law-enforcement-agents/>.

¹⁷¹ The Informal Economy in the Grip of the Pandemic: Sharing Experiences and Strategies for a Resilient Recovery, AKINA MAMA WA AFRIKA (Oct. 26, 2020), <https://www.akinamamawaafrika.org/the-informal-economy-in-the-grip-of-the-pandemic-sharing-experiences-and-strategies-for-a-resilient-recovery/>.

¹⁷² The Industrial Court of Uganda only handles cases of workers with an employer-employee relationship.

¹⁷³ A Ugandan High court case involving a self-employed market vendors association.

7.2. KITAKA ERISMAS V. AIM DISTRIBUTORS LABOUR DISPUTE REFERENCE. NO. 75/2017 (ARISING FROM LABOUR DISPUTE NO. 246/2016), [2018] UGIC 7¹⁷⁴

The claimant sought recovery of damages for unlawful termination of a contract of employment. It was not in dispute that the claimant was an employee of the Respondent. However, there was a contest as to the nature of employment and whether it was on a casual basis or terms other than casual. According to the claimant, he was employed on an oral contract as a storekeeper, but the respondent stated that he was a casual worker who would come to the Depot seeking work and was paid on a daily basis as and when he got work to do.

The court made some pronouncements on casual work. It defined a ‘casual labourer’ as one who gets paid per day after doing what he has been engaged to do. There is no guarantee that his employer will give him a job the next day and the obligations and responsibilities towards either the employee or the employer end with the work and payment of a particular day.

The court further interpreted Regulation 39 of the Employment regulations and held that for one to cease being a casual labourer, he or she must have been continuously engaged for a period of four months. Thereafter, he or she would be entitled to the same benefits as other employees. The court defined continuous engagement to connote engagement every day to do particular works over a certain period and added that in terms of regulation 39, the period is four months.

In this case, the claimant failed to show that he was a storekeeper. The court only relied on his payment voucher showing payment for 16 days during December 2013 and concluded that failed to show that the claimant was continuously engaged for four months so as to take benefit of Regulation 39.

Therefore, the court concluded that having failed to adduce further evidence to prove continuous engagement, the claimant was still regarded as a casual laborer and the benefits under regulation 39(2) did not, therefore, apply to him. The Court further held that as a consequence of the claimant being a casual laborer, he ‘was not entitled like other employees to a hearing as provided for under section 66 of the Employment Act, notice as provided for under section 58 of the said Act, Severance as provided under section 87 of the said Act, leave as provided for under section 54 of the said Act.’¹⁷⁵

7.3. EMILY MBABAZI V RURAL ELECTRIFICATION AGENCY & 2 OTHERS, HCMC NO 165/2019¹⁷⁶

The main issue in this case was whether the decision of the respondents not to renew the applicant’s fixed-term contract was marred by procedural irregularities. The applicant contended that the act of the respondent’s Executive Director, appraising her 4 days before the expiry of her contract and making a decision not to renew her contract without allowing her to be heard, was not procedurally proper. On the other hand, the Respondents contended that the decision not to renew the Applicant’s contract was based on appraisals which showed that her performance was less than satisfactory and that the Second Respondent had delegated its power to recruit and renew contracts to the Third Respondent.

Justice Musa Ssekaana held that the applicant was to be reappraised every 6 months based on her contract and existing policies to determine whether, at the end of her contract, the appointing authority would be able to exercise the discretion to renew the contract of employment and therefore, the absence of any appraisal exposed the applicant to unfairness and arbitrariness in determining whether to renew her contract. He further held that the purported appraisal carried out 4 days to the end of her contract was irregular and contrary to the Human Resource Manual. It was a sham appraisal made to achieve an intended purpose of not renewing the Applicant’s contract and as such was a clear abuse of power that the Court would not allow to stand.

¹⁷⁴ A Ugandan court case on casual employees.

¹⁷⁵ Employment Act No.6 of 2006 (Uganda).

¹⁷⁶ A Ugandan case on fixed term contracts.

Most important, the Judge held that “the employees legitimately expected to be treated fairly before any decision is taken not to renew their contracts of employment. Legitimate expectation envisages that, if the administration—by a representation—has created an expectation in some person, then it will be unfair on the part of the administration to whittle down or take away such legitimate expectation.”¹⁷⁷

7.4. NSSF V. MTN UGANDA LTD & UNISIS INVESTMENTS UGANDA LTD¹⁷⁸

The facts constituting the cause of action, in this case, arose from the failure by the second defendant (a temporary work agency) to remit the social security contributions to the plaintiff (a statutory body responsible for social security) on behalf of the workers it placed with the first defendant (a user enterprise). The contract read in part “provide skilled and competent temporary staff hereinafter referred to as “UNISIS contract staff” for assignments required by MTN Uganda, under MTN Uganda’s control and direction”. Another clause read as follows; “UNISIS Contract staff shall mean an applicant and employee of UNISIS who shall be vetted and where successful, deployed to work at MTN Uganda in terms of an employment agreement signed between the said UNISIS Contract staff and UNISIS, a template of which is attached hereto as Appendix B”. Another clause among others required UNISIS (the second defendant) to ensure that it takes care of all government taxes including social security remittances to the relevant bodies.

The second defendant failed to remit the social security contributions on behalf of the contract staff to the plaintiff, prompting the contract staff to lodge a complaint with the plaintiff. An audit was subsequently done at the offices of the second defendant by the plaintiff and found the second defendant non-compliant. Following these findings in the audit report, the second defendant closed its offices and its managing director switched off his phone and fled the country. The actions of the second defendant prompted the plaintiff to turn to the first defendant (user enterprise) for the payment of the arrears and the penalty. The first defendant denied liability on account that it was not the employer of the contract staff, thus pushing the plaintiff to seek a remedy before the court.

Two issues were raised at the hearing of the suit: i) whether or not the defendants are jointly or severally liable to pay NSSF contributions, and ii) remedies available in the circumstances. The Court held that matter beforehand was only a matter of interpretation of the contract entered into by the defendants and this did not require the application of the common law tests of a contract of service.¹⁷⁹

Relying on the long-standing legal principle that ‘when interpreting written documents including contracts, courts must give effect to the intention of the parties, the Court held that the parties to the contract intended that the 2nd defendant was the employer of the contract staff and that further, the question of joint liability could not arise since according to the commercial contract, each party had specific obligations to undertake and that the 1st defendant had duly performed all its contractual obligation. Therefore, in the court’s own language, it did not make ‘commercial sense’ to make the 1st defendant jointly liable for the default of the 2nd defendant.¹⁸⁰

The court further explained that the common law tests of a contract of service would only apply in cases where the employer is not known, but in the instant case, the commercial contract had clearly stipulated who the employer was, and which party is liable for what.¹⁸¹

First and foremost, this case shows the complexity and the unwillingness of courts to apportion joint and several liability for worker’s benefits on two entities, since they consider the relationship to be always personal and bilateral. The court took a formalistic approach based purely on freedom of contract to arrive at its decision, ignoring the practical outcome, which is that the party with the least amount of power to shape contract terms is left without a remedy. If it had taken a functional approach aimed at achieving justice, it would have held both the defendants

¹⁷⁷ Justice Musa Ssekaana in *Emily Mbabazi v. Rural Electrification Agency & 2 Others*, [2020] UGHCCD 15 (Uganda).

¹⁷⁸ *National Social Security Fund v. MTN Uganda Ltd & Anor*, [2011] UGCommC 80 (Uganda).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 149.

¹⁸¹ *Id.* at 149.

jointly and severally liable for the payment of social security benefits on behalf of the contract staff.

8.0. RESEARCH FINDINGS

8.1. SUBSTANTIVE PROTECTIONS

- i. The Ugandan Constitution has robust and progressive provisions that protect every worker, despite their status, through provisions on: equality before the law and protection from discrimination, the right of every worker to join and form a trade union to promote his or her social and economic interests, collective bargaining and representation, the right of every person to work under satisfactory, safe and healthy conditions, the right of every person to practice his or her profession and to carry on any lawful occupation, trade or business, protection from deprivation of property, protection from discrimination and rights to affirmative action in favour of marginalized groups, inclusive development, and social cohesion
- ii. Some of the existing policies acknowledge the importance of inclusion and social cohesion of the marginalised groups in development. The Employment Policy and the Social Protection Policy specifically acknowledges the need to extend protection to the workers in the informal economy. Uganda's vision 2040 also directs the government of Uganda to ensure a human rights-based approach to development is integrated into policies, legislation, plans and programs. These provisions implicitly extend protection to workers in the informal economy, though to a smaller extent in practice.
- iii. The Workers Compensation Act of 2000 extends protection to agency, contract and sub-contracted workers. Section 22(1) of the Act provides that: *where a person awards a contract or subcontract to an employer for the execution of any piece of work, that person shall be liable to pay to any worker employed in the execution of the contract or subcontract by the employer any compensation under this Act as if that worker had been directly employed by that person.* This provision extends protection to workers under outsourced and agency arrangements that may get injuries or occupational illnesses as a result of their work for the third party who is not the employer. They are entitled to be paid by the person who has entered into a contract with their employer for the performance of a certain task.
- iv. The Occupational Safety and Health Act of 2006 places a duty on an employer to ensure the safety and health of persons other than his or her employees who may be affected by his or her undertaking.¹⁸² This implicitly protects agency, outsourced and contract workers who may perform work in the same workplace but are not directly employed by such an employer.
- v. Local governments and Municipal Councils are empowered to make ordinances and bylaws, provided they are not inconsistent with the Constitution. This provision offers opportunities to workers in the informal economy to challenge provisions of ordinance or bylaw that may contravene the constitution through strategic litigation.

8.2. GAPS

- i. The Labour Unions Act No.7 of 2006 explicitly denies self-employed and own-account workers in the informal economy the right to form or join a trade union of their own choosing. This is evident in the definition of a Labour union under Section 2 as *"any organization of employees created by employees for the purpose of representing the rights and interests of employees"*. Section 3 of the Labour Unions Act states that; *"employees shall have a right to organize themselves in any Labour Union and may assist in the running of the Labour Union, bargain collectively through a representative of their own choosing, engage in any other lawful activities for the purposes of collective bargaining or any other mutual practice, and*

¹⁸² See Occupational Safety and Health Act of 2006 §24 (Uganda).

*withdraw their Labour and take industrial action.”*¹⁸³

The above provisions in the Labour Unions Act are discriminatory and inconsistent with Articles 21 of the Constitution of Uganda on equality and protection from discrimination and 29(1)(e) and 40(3), which give the right to form or join a trade union to *every worker* irrespective of his or her employment status. The constitution does not limit the enjoyment of these rights to only employees under a contract of service but extends the same to all workers.

- ii. The Labour Unions Act No.7 of 2006 and Labour Unions (Registration) Regulations of 2012 contain cumbersome, lengthy and confusing procedures for registering a Labour Union. Section 18 (4) of the Labour Unions Act provides that: *“the process of registration shall be within 90 days from the date of submission of the application.”* The ILO Committee on Freedom of Association has called on the Government of Uganda to amend this Section to shorten the time frame for registration of a trade union.¹⁸⁴ In addition, the requirement that forms list officers, members and the employee does not take into consideration the self-employed or own-account workers who do not have employers and thus implicitly places an encumbrance on their formation as a labour union.
- iii. The substantive protections stipulated in the Employment Act No.6 of 2006 only apply to employees employed by an employer under a contract of service. The Act does not cover other categories of workers who do not enjoy an employment relationship with an Employer.
- iv. The Employment Act No.6 of 2006 applies to only personal and bilateral employment relationships. It does not regulate multilateral or triangular employment relationships that have emerged in the labour market; for instance, agency and outsourced workers have such relationships and as such, they have been pushed out of legal protection. Further, the Act, leaves out categories of workers who find themselves in a bilateral employment relationship which is not a contract of service,¹⁸⁵ that is workers who work for a company on a regular basis but under non-standard or non-existent contracts and as such may not meet the formal requirements of a contract of service.
- v. The Employment Act further contains many regulatory differentials and qualification periods that make casual, temporary, part-time and fixed-term employees more vulnerable and more likely to fall out of the substantive protections provided under the Act. This includes access to paid leave, and notice before termination. Under Section 71, for an employee to lodge a claim of unfair termination, he or she must have worked for a period of 13 weeks or more. All these differentials encourage employers to circumvent liability under the law by making sure employees do not qualify for the said entitlements as a measure of cutting down the non-wage costs and ending employment relationships before the time periods laid down by statute or court decisions to create liability.
- vi. Whereas the Occupational Safety and Health Act No. 9 of 2006 places an obligation on self-employed workers to take care of themselves and any person who may be at risk in their undertakings, it ignores the power imbalances that the self-employed face. The question is: who is responsible for keeping the workplace of the market and street vendors safe? What about the home workers who manufacture for big companies or the artisanal miners in quarries who supply materials to big companies. All these categories of workers deal with entities that are more powerful and indirectly have control over their work; moreover, they derive benefits from these workers without sharing any of the risks involved in their work.
- vii. Although the Workers’ Compensation Act of 2000 extends protection to some categories of workers in the informal economy like contract, agency, and outsourced workers, it leaves out other categories like the own-account workers who do not enjoy the benefit of having an employer per se. Some self-employed workers

¹⁸³ Labour Unions Act, No.7 of 2006 § 3 (Uganda).

¹⁸⁴ International Labour Organization, Observation (CEACR) - adopted 2019, published 109th ILC session (2021), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4023493.

¹⁸⁵ Employment Act, No.6 of 2006 § 3 (Uganda) (providing that the Act shall apply to all employees under a contract of service).

are in reality dependent employees because of the imbalance of power relations that exists between them and the people or companies that profit off their labour, which are deemed a business relationship rather than an employment relationship. This includes artisanal miners supplying raw materials to extractive companies and Uber drivers or delivery cyclists using a digital platform. The workers bear all the risks of employment to the benefit of the companies.

- viii. The Labour Disputes (Arbitration and Settlement) Act No. 8 of 2006 provides no recourse to workers in the informal economy, in particular self-employed workers, as it only seeks to resolve disputes or conflicts between employees and employers or a dispute between employees or a dispute between Labour Unions.
- ix. The National Social Security Fund Act extends social protection only to employees in the formal sector. There is no general provision for social security in Uganda outside the context of formal employment.
- x. The current Markets Act cap 94 is an obsolete outdated colonial law that is tainted with many shortfalls in as far as promoting the rights of market vendors in the informal economy is concerned. Firstly, it does not define what a market is, thus facilitating a breed of many speculative definitions and interpretations by the stakeholders involved. Moreover, many types of markets exist today but are not defined and recognized under the law; including roadside markets, street markets, and supermarkets. Many street vendors are chased off the streets and advised to sell their merchandise from markets that are not currently defined under the law. Secondly, the Markets Act vests authority of establishment and control of markets with local authorities, however in practice, private investors and market vendor associations also own and control markets. This has created a lot of confusion, leading to legal battles due to the lack of a law that takes care of such dynamics.¹⁸⁶ The Act further empowers a minister to make regulations regarding the management of markets and other incidental issues but it does not define the responsible ministry. A dispute resolution mechanism is also not provided for under the Act, neither does the law empower vendors to negotiate their interests or participate in the decisionmaking process with the local authorities.
- xi. The trade laws only regulate the activities of workers in the informal economy in a rather prohibitive manner, as opposed to providing an enabling environment that protects the livelihoods of workers in the informal economy. For instance, the Kampala Capital City Authority Act of 2010 prohibits hawking or street vending unless licensed but does not currently provide a mechanism or procedure to acquire a licence. The Authority is authorized to do so, but to date, it has not.

Additionally, the Trade (Licencing) Act cap 101 is prohibitive and discriminatory when it gives the Licencing authority discretion to refuse to grant a licence upon giving a reason but which reasons are not stipulated or mentioned in the law leaving room for abuse and exploitation of hawkers. This provision contradicts Article 42 of the Constitution, which gives every person appearing before any administrative official or body a right to be treated justly and fairly. Further, it contravenes Article 21 of the Constitution on equality before the law and protection from discrimination, Article 40(2) on the right to work and Article 22 on the right to life.

- xii. There is currently no law that protects workers in the informal economy against violence and harassment at the workplace. This violates Article 21 of the Constitution which prohibits discrimination.
- xiii. The conceptualization of the informal economy in the existing policies is still narrow and many categories of workers in the informal economy are excluded from protections. The policies give more focus to wage employees in the informal economy, to the exclusion of self-employed workers. Additionally, all the existing policies use the terminology of the informal sector which is limited and narrow in scope.

¹⁸⁶ *Legal Brains Trust (LBT) LTD v. Hassan Basajjabalaba & ors*, [2020] UGCC 5 (Uganda).

9.0 RECOMMENDATIONS

9.1. STRATEGIC LITIGATION

Strategic litigation is an effective legal tool to challenge unfair and outdated policies, laws and practices. The Constitution of the Republic of Uganda provides for enforcement of fundamental human rights and freedoms before a competent court.¹⁸⁷ Article 50(2) of the Constitution allows any person or organization to bring an action against the violation of another person's or group's human rights. In *Adrian Jjuuko v. Attorney General*, Constitutional Petition No.001 of 2009, the Constitutional Court of Uganda ruled that a petition can be validly filed by an individual who is not necessarily aggrieved.

Further, Article 137(3) of the Constitution empowers the Constitutional Court to deal with all questions of interpretation of any law, act, or omission by any person or authority that may be allegedly inconsistent with, or in contravention of, the Constitution. Article 137(3) of the Constitution states:

A person who alleges that-

- (a) an Act of Parliament or any other law or anything in or done under the authority of any law; or
- (b) any act or omission by any person or authority, is inconsistent with or in contravention of a provision of this Constitution may petition the constitutional court for a declaration to that effect, and for redress where appropriate

Justice Kakuru Keneth in *Legal Brains Trust v. Hassan Basajjabalaba and Others*¹⁸⁸ stated that;

the above article emphasizes that the Constitutional Courts doors should remain wide open for the people of Uganda to have access to it at all times for interpretation of the Constitution and declarations and redress where appropriate....all acts of parliament or other laws and things done under the authority of any law and all acts or omission by any person or authority, (which includes acts and omission of the executive in relation to rights under the constitution) if brought before the Constitutional Court for interpretation as to whether they are inconsistent with or in contravention of the Constitution become justiciable under Article 137 of the Constitution.

The learned Justice further held that citizens have a right to challenge unconstitutional actions of the executive and the legislature, and this extends to policies and laws.

It follows from the above that strategic litigation may take two forms; one under Article 50(1) to enforce rights of the informal economy vendors that have been violated. The court that has jurisdiction to handle matters of enforcement of human rights is the High Court of Uganda. The other option is a constitutional petition before Uganda's Constitutional Court disclosing questions for constitutional interpretation under Article 137.

Possible target cases under the Constitution could include:

- Challenge the act of evicting street vendors, and arbitrary restrictions on vending, as incompatible with Constitutional protections, including the right to work under satisfactory, safe and healthy conditions and the right to practice a profession and to carry on any lawful occupation, trade or business under Article 40, as well as the right to assembly. The evictions deprive street vendors of their right to life which includes the right to livelihood as has been interpreted in *Salvatori Abuki & another v. Attorney General*, the right to medical care and education of their children.
- Challenge Sections 2 and 3 of the Labour Unions Act, that limit the right to form or join a Labour union to

¹⁸⁷ The Constitution of the Republic of Uganda 1995, art.50(1).

¹⁸⁸ *Legal Brains Trust (LBT) LTD v. Hassan Basajjabalaba & ors*, [2020] UGCC 5 (Uganda).

employees as inconsistent with and in contravention of the right to freely form and join trade unions under Articles 29(1)(e), 40(3), as well as the obligation on the state under Article 21 on equal protection under the law in all spheres of economic life.

- Challenge the cumbersome, lengthy and confusing procedures for registering trade unions under the Labour Unions Act No. 7 of 2006 and Labour Unions (Registration) Regulations of 2012 as contrary to Articles 29(1)(e) and 40(3).
- Challenge the fact that informal workers are deprived of the protections in the Employment Act No. 6 of 2006 because the Act only applies to employees, contrary to Article 21 on equal protection under the law in all spheres of economic life. Given that informal workers are generally more likely to be from marginalized social groups, such as women, people with disabilities, ethnic, indigenous and/or racial minorities; it may also be possible to argue discrimination based on social standing, and that it contravenes Article 32 which places an affirmative obligation on the state to address such discrimination.
- Challenge the exclusion of informal workers from the Labour Disputes Arbitration and Settlement Act No. 8 of 2006, which leaves informal workers with no way to vindicate their rights, in a specialised, simple and accessible court.
- Develop arguments to ensure that entities that profit from informal worker labor, such as market owners and operators, Public authorities or Local governments and platform companies, should make obligatory contributions under the National Social Security Fund in line with formal employers, which would ensure the right to equal protection
- Challenge the process for licensing and permitting of plays and performers, particularly requirements that government officials review and approve the content of plays, as violating the right to freedom of expression of performing artists and their right to work and practice their profession under the Constitution.

Other strategic litigation might include:

- File claims against relevant officials in the Kampala municipal government and police concerning unlawful arrest and detention, violation of due process, assault, battery, excessive use of force, and conversion of property for the arrest and mistreatment of street vendors that occurred recently in Kampala¹⁸⁹
- Utilize the broader scope of coverage in the Occupational Safety and Health Act of 2006 to bring claims regarding OSH violations in the informal sector, including protection from violence and harassment at work and access to personal protective equipment and adequate safety measures with respect to COVID-19. Potential targets could include domestic work, mining, platform work or street vending, among others.
- Explore options to establish an employment relationship between entities that are currently not regarded as employers across different sectors, such as mine owners and/or operators, private entities that control and/or operate street markets, platform companies, and companies that engage workers through temporary agencies. This could rest on both rights-based arguments focused on substantive equality under the Constitution, and also on theories under contract law, torts, agency or other provisions.
- Challenge the use of short-term and casual contracts to disguise a formal employment arrangement
- Use the broader provisions of the Workers' Compensation Act of 2000 to extend compensation to informal workers for workplace injuries.

A strategic litigation case may be taken to court by any person or organisation, to enforce the rights of workers in the informal economy or to seek interpretation of certain provisions of the law and practices that may contravene the

¹⁸⁹ However, this would have to be done with the consent and involvement of individual workers so affected.

Constitution. The ILAW network can work with unions organizing in the informal economy like ATGWU and UMAEU and civil society organisations involved in the area of labour and employment such as Voices for Labour (VFL) and Platform for Vendors in Uganda (PLAVU) to demand the nullification of sections of legislation that are discriminatory and unfair to the workers in the informal economy, advocate for legislation that protects the rights and interests of workers in the informal economy and enforce the rights of workers in the informal economy protected in the Constitution. Individual workers in the informal economy can also be petitioners.

In addition, strategic litigation can also be implemented at a sub-regional and regional level through the East African Court of Justice and African Court on Human and Peoples' Rights. Both have jurisdiction to hear cases pertaining to human rights violations.

9.2. ADVOCACY, POLICY DIALOGUES AND CAMPAIGNS

There is a need to undertake more advocacy programs and campaigns to bring to light the many challenges faced by workers in the informal economy. Policy dialogues with relevant stakeholders and actors may influence mindset change in the policymakers and contribute towards legal reforms in favour of workers in the informal economy. Campaigns may also be designed to strategically frame points of concern, for instance, on the recognition and protection of workers in the informal economy in legislation. Therefore, the International Lawyers Assisting Workers Network (ILAW) network may work with Unions organizing in the informal economy in Uganda, including National Labour centres and civil society organisations, to advocate and influence policy and legal reforms in favour of workers in the informal economy. Opportunities for specific advocacy might include ensuring:

- The Employment (Amendment) Bill of 2019 extends some protections to informal workers, including protections against violence and harassment and lactation accommodations, and provides meaningful remedies;
- Ensuring the Kampala Capital City Regulation of Street Trade Ordinance of 2019 creates inclusive, accessible procedures for licensing and provides protections and rights to informal workers, including those regarding occupational safety and health.
- More broadly, the Employment Policy and Social Protection Policy need to ensure rights and social protections for informal workers and to ensure a rights-based approach to development.

Doing this requires engaging in meaningful consultation with informal workers to develop effective workplace protections, and changing outdated colonial laws to reflect the lived reality of informal workers.

9.3. LEGAL AID AND REPRESENTATION

Legal aid is the pillar of the Justice system. Workers in the informal economy are vulnerable and not always aware of their legal rights. Because of their low levels of income, access to justice is a challenge since many cannot afford the costs of hiring a lawyer. Additionally, some of the Unions organizing workers in the informal economy may not have enough capacity to extend legal aid to informal workers, particularly to pursue novel claims. Therefore, in the premises, the role of labour lawyers is very key. For instance, ILAW can work with members in Uganda to extend legal aid and representation to workers in the informal economy, including their Unions and or Associations, to enable them to access justice. Some of these areas could include:

- Representation of street vendors before the City hall court on counts of hawking without a licence, plying street trade without a licence, public nuisance e.t.c
- Assist Unions and informal economy worker's organizations in instituting the strategic litigation cases as already highlighted.
- Institution of OSH claims regarding casual workers, temporary agency workers and other workers in disguised employment relationship

- The National Union of creative and Performing Artists challenging the draconian legislation on stage plays and performance.

9.4. RESEARCH AND DOCUMENTATION

There is little research on the informal economy in Uganda and perhaps, this may be the reason its conceptualisation is still narrow under law. More research is needed to guide policymakers in making informed decisions. This could include more research to understand pressing labor rights violations in specific occupations and sectors, and more research to understand the demographic breakdowns in specific occupations and sectors to identify patterns of discrimination and exclusion. The ILAW network may work with members in Uganda and Unions organizing in the informal economy to undertake more research and documentation of Uganda's informal economy.

9.5. MAKING USE OF THE ILO SUPERVISORY MECHANISM

Although Ugandan law does not fully protect workers in the informal economy, there are many ILO conventions that Uganda has ratified and is under an obligation to implement and report on the status of their implementation to the supervisory organs of the ILO. For instance, as already noted, Uganda has ratified C87 on Freedom of Association and C98 on the Right to Organise and Collective Bargaining, C81 on Labour Inspection, C122 on Employment Policy, C100 on Equal Remuneration, C111 on Discrimination in Employment and Occupation, among others.

The ILO Supervisory Mechanism has two systems of supervision: Regular and Special. The Regular system is based on the obligation to report on the application on each ratified convention. Under the regular system, the ILO Committee of Experts on the application of Conventions and Recommendations (CEACR) and the Committee on the Application of Standards (CAS) examine reports on the application in law and practice sent by member states and on observations in this regard sent by workers and employer's organizations. The special system involves cases of specific allegations of violations against a member state. Under this system, there are three special procedures based on the submission of a representation or a complaint. These include a special procedure on making representations under Article 24 of the ILO Constitution on the application of a ratified convention, a procedure for complaints about the application of ratified convention, and a special procedure for complaints regarding freedom of association (Freedom of Association Committee).¹⁹⁰ ILAW members in Uganda can assist worker organizations in examining reports on the application of conventions and making observations in addition to drafting complaints and representations to the ILO supervisory bodies.

9.6. LEVERAGING ON COLLECTIVE POWER

Collective power still plays a significant role in advancing the rights of workers in the informal economy. Using a power resources approach, the National Organization of Trade Unions being the most representative federation of Labour Unions can mobilise Labour Unions both in the formal and informal economy to support the interests of workers in the informal economy. This can be done first by sensitizing and creating awareness to its affiliates on the importance of protecting the rights of workers in the informal economy especially on contribution to building the associational power of the Labour movement in Uganda given that they form the majority of Uganda's Labour force. Further building alliance with other like-minded organizations like StreetNet, Women in the Informal Employment Globalizing and Organizing (WIEGO) and others is vital in ensuring that the demands and interests of workers in the informal economy are met.

9.7. ROLE OF MEDIA

Media also plays a vital role in highlighting the plight of workers in the informal economy and their contribution to economic development. Luckily, there are two registered Labour Unions organizing and representing workers in the media Industry, the Uganda Journalist Union and Uganda Media Union. Also, there exists a worker's magazine called *the Worker's Eye* that highlights workers' issues every month. Partnerships can be created between these

¹⁹⁰ It should be noted that for the ILO Core conventions for instance Convention 87 on Freedom of Association and 98 on collective bargaining, a complaint or representation can be lodged whether a member state has ratified or not.

media spaces and Unions organizing in the informal economy to advocate for the rights of workers in the informal economy.

9.8. SENSITIZATION, AWARENESS-RAISING AND CAPACITY BUILDING.

Since the rights of workers in the informal economy are not well appreciated as noted in the gap analysis, ILAW members may play a role of sensitization, awareness-raising and building the capacity of Unions organizing workers in the informal economy on their rights and relevance to the economic development of Uganda as a country. This sensitization and awareness can also be extended to workers' councillors in various local councils across the country that pass bylaws and oversee the implementation of government policy at local levels.

In conclusion, save for the Constitution of the Republic of Uganda that extends protection to all workers, the Acts of Parliament meant to bring constitutional provisions into effect are discriminatory and blind to the rights of workers in the informal economy. The Labour legislation neither recognizes nor covers workers in the informal economy. Luckily the Constitution is the supreme law and any other law, custom, or practice that is inconsistent or in contravention with any of the constitutional provisions. Strategic litigation may be brought under Article 50(1) and (2) to enforce human rights, or under Article 137 on questions of constitutional interpretation. Alongside litigation, there is also a need to engage in advocacy, policy dialogues and campaigns, research and documentation, and further extend legal aid and representation to the marginalised and vulnerable workers in the informal economy who may need it.

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