

I. About the Organizations

The Initiative for Social and Economic Rights (ISER) is a Non- Governmental Organisation which was established to promote the effective understanding, monitoring, implementation, accountability and full realization of social and economic rights in Uganda. ISER also hosts the Uganda Consortium on Corporate Accountability (UCCA)—a Civil Society Consortium on Corporate Accountability aimed at enhancing accountability by corporations, States, international finance institutions and development partners for violations or abuses of Economic, Social and Cultural Rights (ESCRs). Among other objectives, the UCCA works to promote protective labour regulations where employees work in safe environment with equal pay for equal work.

It is on this background that ISER and the UCCA presents its proposals on the Minimum Wages Bill, 2015 (hereinafter referred to as the '*Bill*').

II. A Brief Overview

For 33 years now, Uganda's minimum wage has stagnated at the 1984 adjustment of UGX 6,000.¹ However, the 1999 devaluation of the shilling left the minimum wage at UGX. 60, which sum is not commensurate with the general standard and cost of living in the country—factoring in inflation levels and the high cost of basic goods and services.² According to the 2014, Ministry of Finance, Planning and Economic Development Poverty Status Report, the national poverty line is equivalent to USD 30 per month. The Minimum Wage Advisory Boards and Wages Council Act of 1957 was enacted to provide for the establishment of minimum wages advisory boards and wages councils, and for the regulation of the remuneration and conditions of employment of employees. For over 3 decades now, the Advisory Boards and Wages Council have been rendered redundant.

The Country is on an ambitious drive to attain upper middle income status by 2020. The NDP II promotes a strong public private partnership framework and is largely focused on creating a more conducive environment for private actors to do business. However, the States lacks a strong regulatory framework to back these initiatives and ensure that non-state actors respect human rights of workers. Specifically, the labour protection regulations in place are wanting especially in the informal sector, which largely employs semi-literates with a low bargaining power.

It is from this perspective, that the Minimum Wages Bill 2015 (the Bill) is a welcome, critical and timely move especially for sectors within the informal employment structure that are largely scattered, unregulated and experiencing deplorable working conditions for little pay nearing to modern day slavery.

¹ Development Research and Training (DRT) (2013), "*The Minimum Wage in Uganda: An Urgent Call*" DRT Policy Brief No. 4, October 2013 accessed at http://www.fcs-uganda.org/media/documents/Final_Policy_Brief_Minimum_Wage_An_urgent_call.pdf

² Ibid. Sanyu, R. (2013), "*Social Protection in Uganda: What is the Role of a Minimum Wage?*" Development Research and Training (DRT), October 2013 accessed at

https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwir7q6-icPWAhWGMBoKHbWMAGAQFgg3MAM&url=http%3A%2F%2Fdrt-ug.org%2Fwp-content%2Fplugins%2Fdownload-attachments%2Fincludes%2Fdownload.php%3Fid%3D846&csug=AFOjCNGjGrts--TL3FuN2jyab_lro9jSA

The existing policy and legal framework on minimum wage is weak, outdated and offers near to nothing to address the high levels of employee exploitation by employers and no protective labour framework especially as it relates to remunerations. It is critical that the Minimum Wages legislation is well developed to protect those in sectors that employ large scores of illiterate and semi-illiterate Ugandans with low capability to bargain for better wages.

The informal employment sector lacks comprehensive protective labour regulatory systems and even where they exist, they are intrusively weak in both design and enforcement. Many workers are exploited due to poor working conditions, long hours of work with no contracts and low wages, not commensurate to the nature and length of work.³ Therefore, the Bill sets the course to enact a comprehensive protective labour market standard setting and regulatory framework to address the rampant workers exploitation. The enactment of the Bill will act a social protection tool for the poor Ugandan workers who are being exploited in the private sector.

III. Regional and International Frameworks:

Uganda joined the International Labour Organisation (ILO) in 1963 and over the years has ratified various ILO conventions including the 1930 Forced Labour Convention (No. 29), the 1949 Protection of Wages Convention (No. 49), and Convention No.26, the Minimum Wage-Fixing Machinery Convention of 1928. Article 1 of Convention No. 26 requires ratifying member states to “*create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain trades or parts of trades (and in particular in home working trades [including manufacture and commerce]) in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low.*” Uganda is also a state party to the International Covenant on Economic Social and Cultural Rights (ICESCR) and the African Charter on Human and Peoples’ Rights (ACHPR) that guarantee the people’s rights to just and favorable conditions and equal work for equal pay.

At the East African Community level, Uganda is a member of the EAC and in 2009, signed the common market protocol within which, it agreed to harmonize its policies with member states, in particular labour practices and in turn allowing for a deeper economic integration including free movement of labour. Kenya and Tanzania have operationalized the minimum wage framework set according to various employment sectors and geographical location. As of May 2017, Kenya’s minimum wage for workers in the agricultural sector is 6,415.55 Kenya shillings (Approx. UGX. 218,000/=) per month for unskilled labourers and 7,323.65 Kenya shillings (Approx. UGX. 249,004/=) per month for skilled and semi-skilled

³ Wanjiru, C. W, (2012), “*Informal Sector Workers: Sheep without Shepherd*” Daily Monitor, May 1, 2012 accessed at <http://www.monitor.co.ug/artsculture/Reviews/691232-1396926-11xufdaz/index.html>

employees.⁴ Tanzania’s Minimum wage, last adjusted in 2013, ranges from 40,000 Tanzanian shillings (Approx. UGX 64,000) per month to 400,000 Tanzanian shillings (UGX 642,000).⁵

This Bill presents an opportunity for Uganda to enact a law that will promote economic integration within the EAC. It also creates a platform for Parliament to critically assess the current challenges in the employment sector especially the informal sector and enact a law to strengthen the labour protective regime—in line with the other Minimum Wage frameworks in the region.

However, there are some general comments and observations as noted below that need revisiting to ensure a more comprehensive law that ensures social protection for the vulnerable and marginalized people to effectively address the inequality gaps in the country.

IV. General Comments

- a. **Long Title and Object of the Bill:** The Long title states that the Act shall “amend, repeal and reform the law” on minimum wages, remuneration and conditions of employment. This creates ambiguity because it is not clear whether it also applies to the existing employment laws and which provisions it seeks to amend or reform.
- b. **Sector Determination:** The object of the Bill is to provide for a determination of a minimum wage based on the sectors of the economy. Although it is good that Clauses 4 (1), 5 (a) and 9 (1) of the Bill empower the Minimum Wage Board to fix sector-based minimum wages, the practical reality that cost of living differs from region to region should be given due consideration. The proposed law should start with the most critical sectors including agriculture, manufacturing, extractives, construction, private security and fisheries among others where high levels of exploitation of labour have been reported. It is particularly important to ensure that the sectoral or occupational minimum wages are not inherently discriminatory.
- c. **Minimum Wage cutting across all sectors:** The Minimum Wages Advisory Board set up in 2015 by the Ministry of Gender, Labour and Social Development, recommended that a minimum wage of UGX 136,000 per month should be set as the lowest pay to any worker in Uganda.⁶ The Bill should consider this recommendation and empower the board to establish a minimum wage which cuts

⁴ The Regulation of Wages (Agricultural Industry) (Amendment) Order, 2017 accessed at <https://www.taxkenya.com/wp-content/uploads/2017/08/Minimum-Wages-Order-Kenya-2017.pdf> Under the Regulation of Wages (General) (Amendment) Order, 2017, the minimum wage for general labourers including cleaners, sweepers and house servants in cities in Kenya such as Nairobi and Mombasa is Kenya shillings 12,926.55 (Approx. UGX. 439,500/=).

⁵ Minimum Wages in Tanzania with effect from 01-07-2013, accessed at <https://wageindicator.org/main/salary/minimum-wage/tanzania>.

⁶ Stephen Kafeero, “Government Sets 130,000 Shillings Minimum Wage,” The Daily Monitor, June 2, 2017 accessed at <http://www.monitor.co.ug/News/National/Government-sets-Shs130000-minimum-wage/688334-3952236-dtv5xs/index.html>.

across all sectors in Uganda as a matter of first priority before sectoral minimum wage determinations are carried out.

- d. **Appointment of a permanent Minimum Wage Board:** Clause 4 (1) of the Bill empowers the minister to appoint a minimum wage board as and when it is necessary to fix a sector minimum wage. We propose that a permanent board is established to fix minimum wages in all sectors in Uganda. It should be able to call upon experts in various sectors in the country to advise and when it deems it fit to fix or revise a sector minimum wage.
- e. **Non-Unionized Employees:** Article 40 (3) (a) of the 1995 Constitution of Uganda guarantees the right of every worker to form or join a trade union of his or her choice, if they so desire. The proposed constitution of the Minimum Wage Board under Clause 4 (2) of the Bill seems to imply that all workers subscribe to unions, whereas not. Therefore, the Bill should make provision for representation of the non-unionized workers on the Board.
- f. **Marginalized and Vulnerable Groups:** The proposed Bill does not accord vulnerable groups special protection especially women and persons with disabilities. It is of utmost importance for the Bill to address the issue of exploitation these persons especially those working in the informal sector, which will broadly assist in addressing the existing inequality gaps. Women workers constitute the highest number of employees in the informal sector, which largely offers them little or no labour and social protection mechanisms. A minimum wage targeting these critical sectors will go a long way in addressing inequality and bridging the gender pay gap.
- g. **Poverty Alleviation:** The national poverty line is equivalent to USD 30 per month. The proposed minimum wage should be determined as a tool to alleviate poverty. There is a lot of casualisation of labour in total disregard of the Employment Regulations. Most casual labourers work for years without contracts and low bargaining power. The meager salaries earned cannot even afford them two meals a day let alone push them out of poverty. Therefore, to effectively address abject poverty in the country, the minimum wage should be set above the national poverty line and cognizant of the inflation levels.
- h. **Minister Powers:** The powers of the minister across the Bill including appointing powers and reviewing of board recommendations are broad and can profoundly affect the independence of the board and influence the effective determination of the minimum wage. The board once established should be guaranteed independence in its decision making processes.

Commentary on Specific Provisions

Clause	Contents of the Clause	Comment	Proposal
Clause 2	<p>The Clause provides that the Bill shall not apply to the UPDF, Police and Public Servants.</p> <p>Clause 3 (c) in the definition of an Employee, includes employees of local authorities and government parastatals.</p>	<p>The Bill is unclear and ambiguous on who is a government employee.</p> <p>Nonetheless, it should provide for all workers in Uganda including public servants.</p>	<p>The Bill should not exclude public servants.</p>
Clause 4(1) and (3)	<p>4(1) The minister shall appoint a minimum wage board whenever he or she considers that it may be desirable to fix a minimum wage in a given sector and to determine other conditions of employment in that sector.</p> <p>(3) The Board shall be chaired by a chairperson who shall be appointed by the Minister from amongst members of the Board.</p>	<p>The Bill gives the minister authority to appoint a Minimum Wage Board and its Chairperson without any checks and balances required to ensure that this discretion is exercised in a proper manner.</p> <p>This discretion extends to the Minister determining when it is “desirable to fix a minimum wage for a given sector and determine other conditions of employment in that sector.”</p>	<p>The Bill should check the appointing powers of the Minister by requiring appointment of the Board and Chairperson to be done in consultation with the Public Service Commission.</p> <p>The Bill should make provision of a permanent board which acts independently with the powers to determine both the general and sectoral minimum wages.</p> <p>This should be done in consultation with the public, especially vulnerable and marginalised groups like women and persons with disabilities.</p> <p>Sector boards should be removed and broader mandate given to the board.</p>

<p>Clause 4 (2)</p>	<p>The Board shall consist of four (4) persons who shall as far as possible be drawn from the Ministry of Gender, Labour and Social Development, Ministry of Finance, Planning and Economic Development, Central Organisation of free trade unions, National Organisation of Trade Unions and the Federation of Uganda’s Employers.</p>	<p>The composition of the Minimum Wages Board is too narrow and does not reflect representation of all workers including the non-unionized labourers.</p> <p>The Bill should not make reference to any employer and employee associations nor limit bodies which should be represented on the Board because this list cannot be exhausted.</p>	<p>The Board should consist of representation of all workers including vulnerable groups such as women, persons with disabilities, non-unionized labourers and the informal sector workers as a whole.</p>
<p>Clause 4(4) & 6</p>	<p>(4) The Minister shall appoint four (4) additional persons to act as assessors.</p> <p>(6) The assessors appointed under subsection (4) shall be representatives from Bank of Uganda, the National Planning Authority, the Uganda National Bureau of Statistics and any other person with expert knowledge of any of the matters with which the board’s inquiry is concerned in the particular sector.</p>	<p>The Bill should not grant the minister sole and unchecked authority to appoint the assessors who assist the Board in making decisions.</p>	<p>The Bank of Uganda, The National Planning Authority, the Uganda National Bureau of Statistics, shall appoint one member as an assessor to assist the board.</p> <p>The other assessor should be a legal expert in labour relations particularly, rights of employees.</p>
<p>Clause 4 (5)</p>	<p>In appointing members to the board, the Minister shall take into consideration a person’s knowledge or experience of, or interest in, trade unions or matters relating to workers generally.</p>		<p>Consideration for the Board should go beyond knowledge and experience but also look at the personal integrity of such nominees and whether they have been convicted of corruption related offences.</p>

<p>Clause 5 (c)</p>	<p>The Board shall be responsible for – carrying out periodical revision of minimum wages fixed by the Board as directed by the Minister.</p>	<p>This Clause is very problematic because it has the potential of affecting the independence and effective operation of the board, if it has to act only on the direction of the Minister before carrying out periodic revision of the minimum wages it fixed earlier.</p>	<p>It is proposed that the Board should act independently from the Minister in carrying out its periodic reviews.</p> <p>The Minister should not be empowered to influence the board in carrying out its mandate.</p> <p>The Board should carry out periodic review of the minimum wage, indexed at least to the cost of living.</p> <p>Workers, employers and their representative organizations should be consulted broadly and meaningfully participate directly in the review processes of the Board. (ICESCR General Comment No. 23 on the Right to just and favourable conditions of work)</p>
<p>Clause 7(4)(c)</p>	<p>The validity of proceedings of the Board shall not be affected by –</p> <p>(c) any defect in the appointment of a member.</p>	<p>This Clause should be qualified to give instances when such defect in appointment should be taken into consideration.</p>	<p>The proceedings of the board be done in a lawful manner and a defect in appointment of any member of the board shall affect the validity of the proceedings of the members of the board, except if the board proves that such decision made during the proceedings will not</p>

			amount to an injustice against workers in a particular sector
Clause 8 (7) (f)	The Board in making its recommendations on the minimum wage and other conditions of employment shall take into consideration the following – f) needs of a workers and his family	This Clause is very problematic and abstract and cannot be used to determine a standard minimum wage for a particular sector. The practicability of this condition is wanting as it is discriminatory and may widen inequality gaps as the needs of the poor cannot be measured to the rich. What standard will apply?	This condition should be deleted. The Board should also consider social security benefits and contributions which workers may be required to comply with.
Clause 9	Duties and Powers of the Board to recommend minimum wages to be paid to employees hourly, weekly and monthly	The Bill limits the powers of the Board to making recommendations to the Minister.	The Board with its wide reaching expertise should be empowered to make any further recommendations as it deems appropriate and necessary to enhance social protection. The minimum wage is a key tool to enhance social protection and address inequality gaps, therefore the Board appointed should be equipped into make independent decisions on minimum wage.

<p>Clause 10</p>	<p>This provides for Board submitting a Report with its recommendations to the Minister, who has powers to approve the report.</p>	<p>The board constitutes of various representatives with rich expertise in the field and thus to maintain their independence, they should not be influenced or directed by the Minister.</p>	<p>Clause 10 (1), should clearly state a time limit within which the board should conclude its work.</p> <p>We propose a period of four (4) months as a sufficient timeframe within which the Board should conclude any inquiry and report to the Minister.</p> <p>Clause 10 (2) should specifically provide for refrain the Minister from altering the report of the board. The Minister may make note of his or her reservations and any other recommendations but he or she should submit the report as received to the Parliament, as opposed to Cabinet.</p>
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<p>Clause 12</p>	<p>Employees in any employment or sector in which a minimum wage is not prescribed may initiate negotiations with their employer or employees to establish a minimum wage applicable to various categories of employees.</p>	<p>The Establishment of a contractual minimum wage is impracticable. The provision assumes that the employer and the employees have equal bargaining power whereas not.</p> <p>To address gender pay inequalities and discrimination especially within the informal sector, we propose a Labour protection mechanism for employees opting for contractual minimum wage. This should be sector focused with clear criteria capturing key social protection issues.</p>	<p>The Board, as a matter of first priority, should set a general minimum wage which will cut across all sectors while it determines sectoral minimum wages.</p> <p>The Bill should allow workers in sectors where a minimum wage is not set to write to the board in order to be considered.</p>
<p>Clause 14</p>	<p>Reference of disagreements about minimum wage negotiation to be referred to the Industrial Court</p>	<p>The employer and the employee do not need to refer the matter of their failure to agree on the basic minimum wage to the industrial court. The industrial court already has many challenges of backlog and referring such matters there will only worsen the problem.</p>	<p>Such disagreements should be referred to the board.</p>

Conclusion

Operationalizing the minimum wage in this country is long overdue. In the NDP I 2009/10- 2014/5, government committed itself to establish a minimum wage. This was not achieved. The current NDP 2015/16- 2020/21 is emphasizing a private sector led economy. This calls for robust legal and institutional framework to ably regulate the private sector from exploiting the public, in this case the employees. The minimum wage is an equal-income sharing tool which will enable all workers in Uganda to earn favorably better incomes that enable them access basic needs and necessities for human life.

Sincerely,



Salima Namusoby
Executive Director