UGANDA CONSORTIUM ON
CORPORATE ACCOUNTABILITY
U C C A

THE CAPACITY OF THE STATE TO REGULATE CORPORATIONS

Analysis of Uganda's Labour Policies, Legal and Institutional Framework within the Context of Business Activities

October 2018

Cover Picture: Child working on a Sugarcane farm in Luuka district.

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LIST OF ACRONYMS

CA	Court of Appeal of Uganda
CCG	Codes of Corporate Governance
CSO	Civil Society Organisations
CSR	Corporate Social Responsibility
FDI	Foreign Direct Investment
GC	United Nations Global Compact
HC	High Court of Uganda
HURINET	Human Rights Network-Uganda
IGWG	Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises
ICESCR	International Covenant on Economic Social and Cultural Rights
ILO	International Labour Organisation
J	Judge
JA	Justice of Appeal
JSC	Justice of the Supreme Court
MNCs	Multinational Corporations
MoGLSD	Ministry of Gender Labour and Social Development
NETPIL	Network of Public Interest Lawyers
NGO	Non-Governmental Organisations
OECD	Organisation for Economic Cooperation and Development
PLWHIV	Persons Living with HIV
PSFU	Private Sector Foundation Uganda
SC	Supreme Court of Uganda
TIA	Trade and Investment Agreements

TNCs	Transnational Corporations
UCCA	Uganda Consortium on Corporate Accountability
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
WTO	World Trade Organisation

EXECUTIVE SUMMARY

With arguably, an increase in foreign and local direct investment in Uganda, there is growing concern among the larger public about the efficacy and institutional competence to regulate and monitor corporations in Uganda.[1] Questions consistently asked revolve around whether the text of our labour policies and regulation is comprehensive enough to address emerging issues arising from the interaction between labour and investment. Similarly, whether in case of any breaches by the corporations, the available institutional framework is with the requisite capacity to bring wrong doers to book. This report is premised on a research study, which sought to review the labour policies in Uganda, the laws in force and the institutions there under. This subject is of critical importance in the context of Uganda now— as it is keenly focused on private sector led growth and is in preparations to go into full scale oil exploration and extraction.

The overall objective of the research was to identify and document deficiencies (if any) in the policy, regulatory and institutional frameworks, and suggest appropriate remedial actions and where necessary, appropriate legal and institutional reforms to meet minimum international standards especially in the context of the International Covenant on Economic Social and Cultural Rights (ICESCR). The research also highlights some best practices key to enhancing corporate accountability and respect for human rights generally, and in particular, labour rights in Uganda.

Similarly, there is also growing concerns arising from externalisation of labour and in particular, what mechanisms Uganda has put in place to ensure the safety of its working citizens abroad.

Although this latter question was not originally part of the research question, it was found necessary— owing to the worrying trends and reports around externalization of

1 Corporations or Transnational Corporations ('TNCs') or Multinational Enterprises ('MNEs') in this context should be understand to mean 'an economic entity operating in more than one country or a cluster of economic entities operating in two or more countries-whatever their legal form, whether in their home country or country of activity, and whether taken individually or collectively: Source UN Norms on the Responsibilities of TNCs with Regard to Human Rights E/CN.4/Sub.2/2003/12/Rev.2 p7.

labour, including issues of torture and sexual abuse especially of young women working in the Middle East. In both these two broad questions, international consensus appears to be that the state retains the primary obligation to protect and promote human rights and that non-state actors including business enterprises must respect human rights—to ensure that business is not done at the expense of human rights and their enjoyment. Corporations must remain subordinate and subject of the law at least, in the area of human rights. One such area is labour rights in its broader sense. The study also covers the now recognised responsibility of corporations to respect human rights.

While the study was primarily a desk review of the policy, legal and institutional framework and the existing literature, some interviews were conducted in selected institutions and other relevant stakeholders. Most specifically, the Ministry of Gender Labour and Social Development (MoGLSD), the Industrial Court, the Network of Public Interest Lawyers (NETPIL) at Makerere University School of Law, Uganda Law Society, Human Rights Network – Uganda (HURINET), and Makerere University School of Law.

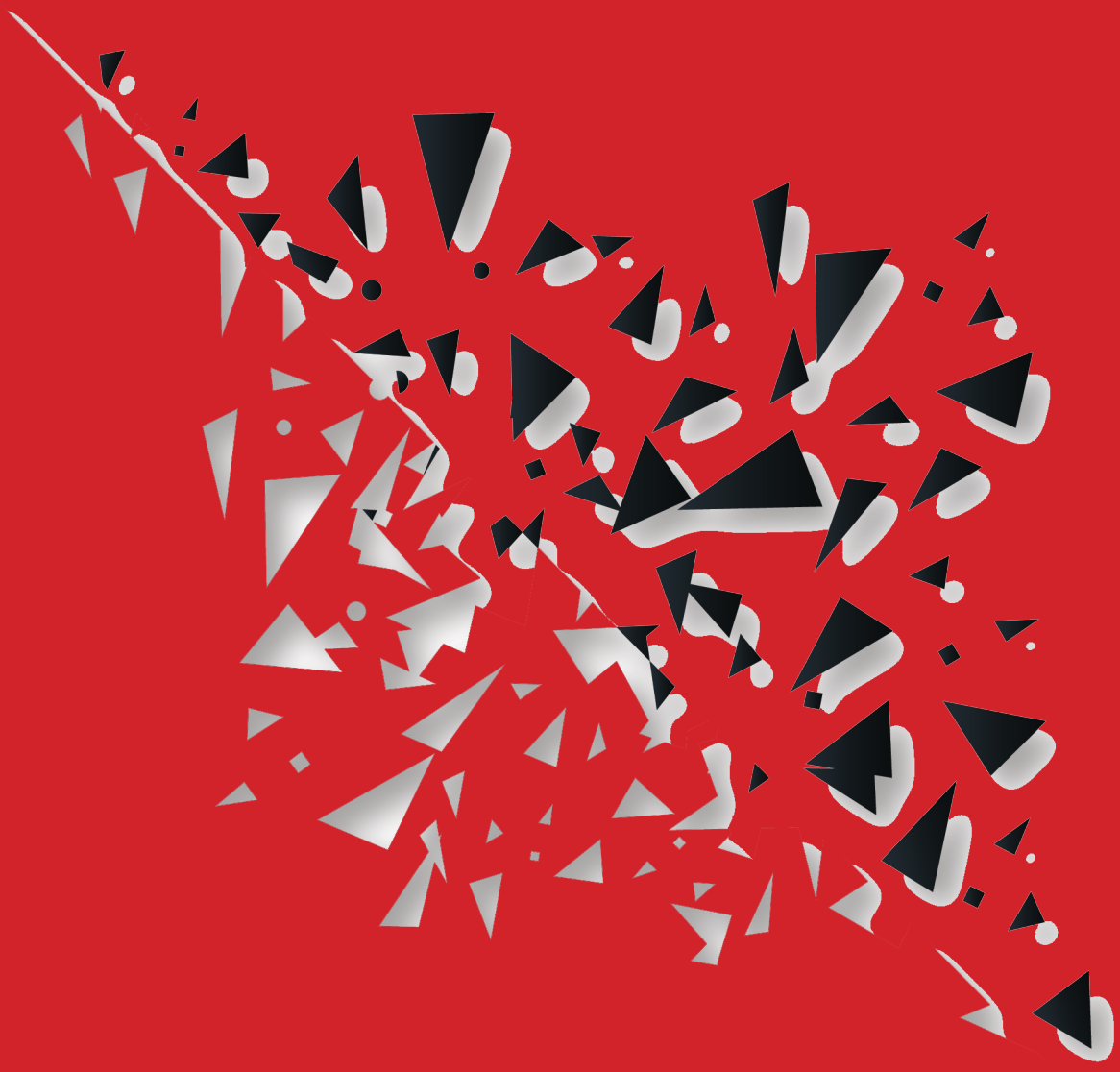
This Report is divided into five parts namely; Part One gives a broad introduction to the general problem at hand, Part Two reviews the literature so far had on the subject, Part Three is an analysis of the existing policy, legal and institutional framework, Part Four looks at the Non-State Actors and their role in the equation. Finally, Part Five contains Findings, Summary, Conclusions, Recommendations and the Way Forward.

Evidently, considerable effort has been directed towards international initiatives and interventions at regulating corporations in areas of human and workers' rights. This is deliberate for three reasons: Firstly, human rights are universal in nature and in application. Secondly, abuse of labour rights anywhere is abuse everywhere.[2] Thirdly, corporate abuse of human and labour rights is a matter of global concern and so is their regulation.

In the context of Uganda therefore, it is hoped that, its efforts at regulation of corporations will be in accordance with international standards and norms.

2 See the ILO 1944 Philadelphia Declaration largely seen as the '*rebirth*' of global social justice. *See also Note 5 infra.*

"The question of the capacity of the state to regulate corporations, is a question to consider how capital, the state, and the law on the one hand relates with labour on the other."



THE REGULATION OF CORPORATIONS TO ENHANCE CORPORATE ACCOUNTABILITY AND RESPECT FOR LABOUR RIGHTS IN UGANDA

A. Introduction

From the theories of corporate law, especially the *Consensionist theory*, it is uncontroversial that activities of corporations must be regulated.[3] A number of reasons are advanced for the regulation of corporations. However, for this report, we are more concerned with the fact that corporate activity has a direct impact on human lives and if not contained, it significantly and negatively affects human life in many respects. One such critical area, which has dominated the global space for a long time has been in the area of business and labour. The global narrative in the context of labour is no-longer just about 'decent wage.' How business (capital) relates with labour has now been taken as a whole to incorporate many other components of labour hitherto not thought to be important. This includes commitment by businesses that they will respect the right to freedom of association and effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of harmful child labour, the elimination of discrimination in respect to employment and occupation, social security and social protection.[4]

However, regulating corporate entities has not been as easy as it is said, especially for a developing country like Uganda, that looks to private corporate entities as development partners to improve on its economy and create jobs. In those circumstances, developing countries must provide a 'conducive' investment environment so as to attract foreign direct investment. It is unlikely that they would be willing to put in place or enforce a strict regulatory framework to deal with any corporate firm excesses. Secondly, these corporate firms enjoy a dominant economic muscle over their host countries in terms of actual liquidity. They also constitute the highest tax contributors. Using their financial muscles, they can lobby, sponsor for a certain line of regulatory and institutional framework to minimize or completely extinguish public scrutiny of their activities. Thirdly is the problem of neoliberal ideas founded on the *contractualist* theory of corporate law that the market must be allowed to regulate itself and regulation only employed where the markets have failed or cannot provide a tangible solution. This model of business regulation

3 Dine J, 'The Governance of Corporate Groups'(2000)CUP pp 1-37. But see specifically Chapter 5 'Transnational Corporations out of control' pp 151-175.

4 See Note 2.

allows for corporate firms to play a lead role in regulating themselves largely on soft law such as 'best practices' codes of corporate governance, and philanthropy through corporate social responsibility (CSR). These forms of soft law have been found to be deficient in the areas of human rights for three reasons; Firstly, the business entities play a role in designing and enforcing them with no clear way of independently verifying compliance. Secondly, there are no clear enforcement mechanisms in case of non-compliance or breaches and thirdly, CSR engagements remain very popular within communities which largely affects pursuit of accountability for corporate abuses.

The public generally relies on commitments by the corporate firms. The consequence of this form of model of business regulation is that critical aspects of labour rights become optional and at the mercy of the business corporate firms which they can choose, as and when convenient, whether to respect or disregard.

The finding in this study is that labour issues are human rights issues and cannot be left for the market forces to determine how and when they should be enforced.

That obligation must naturally fall on, and is with the state.[5] The problem has not been helped by lack of consensus at international level on how corporate activity should be regulated.[6]

5 See for example General Comment No. 24 dated 23rd June 2017 cited as E/C.12/GC/24 (advance un edited version). But see also the Constitution of the Republic of Uganda

6 This has been so in the areas of labour where the Global South argues that they are not in the same economic standard as the Global North in order to apply same standards on labour issues and their enforcement. This has brought about non-uniform application of standards and thereby afforded corporate firms an opportunity to locate and concentrate their investments and operations in jurisdictions with less-stringent labour conditionalities. For this see: the Twenty-Six Session of the International Labour Conference: Philadelphia, April-May 1944, Int'l Lab. Rev. Vol. 50 No. 1, 1944, pp 1-37; B. Hepple, 'Does Transnational Labour Regulation Matter? Chapter 1 in Labour Laws and Global Trade (2005) Oxford: pp 1-24 at 1-4 specifically; See also Harry Arthurs, 'Reinventing Labour Law for the Global Economy: The Benjamin Aaron Lecture (2001) Berkeley Journal of Employment and Labour Law, Vol. 22 No. 2 pp 271-294; Thomas I. Palley, 'The Economic Case for International Labour Standards' (2004) Cam. Jnl. Of Economics Vol. 28, pp 21-36; Stiglitz Joseph, 'Employment, Social Justice and Societal Well-being' (2002) International Labour Review Vol. 141 No. 1-2 pp 9-29; Fung Archon, 'Deliberative Democracy and International Labour Standards' (2003) An International Journal of Policy, Administration and Institutions Vol. 16 No. 1 pp 51-71; Young Iris Marion, 'Responsibility and Global

This gives room for individual states to adopt own regulatory and policy models which 'suit' their needs. Many times the state has had to adopt a regulatory model which is 'concessionary' in nature so that both interests namely of the state to broaden its tax base and attract investment is balanced out with the legal and political role of the state to its citizens to protect them from business excesses. This promotes corporate complicities as the state will only reign in the corporate firms when it is absolutely necessary and the complicities are a threat to legitimacy of the government/state. In such situations, where the political will of the state is at cross roads, the only remedy is to be had in an active citizenry and civil society that can initiate, sponsor and pursue sustained-parallel people driven interventions. These can be in two ways— to either call their governments to order and require them to take appropriate actions against complicities of corporate firms or, better still, take on the corporations directly through mass mobilisation and public interest actions.[7]

In some other cases, it ought to be noted, that the policy, regulatory and institutional frameworks are actually in place. Their inadequacy however is brought about by limited budgets and personnel to carry out implementation.[8] In others, lack of political will brought about unnecessary vetoes in the enforcement chain. It is noted that state capacity should not be looked at in terms of the regulatory and institutional framework in place but more, on whether the state gives effect to the laws and empowers the available institutions to carry out their mandate.

For the case of externalization of labour, this has posed real challenge and questions keep being asked including, what mechanisms Uganda has in place to provide safety for its people working abroad. There is no substantive law in place to regulate externalization of labour save for a statutory instrument.[9]

Labour Justice' (2004) The Journal of Political Philosophy Vol. 12, No. 4 pp 365-388; Harry Arthurs, 'Who's afraid of globalisation? Reflections on the future of labour law' in J. Graig & S.Lynk (eds), Glo balisation and the Future of Labour Law (Cam.2006)pp 51-74; and Wells Don, 'Too Weak for the Job: Corporate Codes of Conduct, Non-Governmental Organisations and the Regulation of International Labour Standards' (2007) Global Social Policy vol. 7(1) pp51-74.

7 Trade Unions too, in Uganda have played a key role in ensuring that labour rights are respected and enforced.

8 Source: Interview Ministry of Gender Labour and Social Development (MoGLSD). But see also the Annual Report of Inspection Services of the Ministry of the MoGLSD 2016/2017 p 8, 14.

9 The Employment (Recruitment of Uganda Migrant Workers Abroad) Regulations No. 62 of 2005, see

The working conditions of these workers, their places of final destinations, is always an illusory. And yet, externalisation of labour is something government may not easily prohibit because of the biting unemployment and low income levels among the ordinary Ugandan households.[10] Until there was a public outcry, following media reports of how Ugandan workers abroad had been mistreated, every Uganda worker abroad appeared to have been on their own and 'God for them All'. From the interviews at the Ministry of Gender, Labour and Social Development, the Government has now put in place some mechanisms to attempt to keep track of its workers abroad. These have been in the form of bilateral agreements between Uganda and the host country. One may wonder however, the enforcement mechanisms in case of breaches of these bilateral agreements. Secondly, there is likely to be disparity in regulatory frameworks between Uganda and such countries setting in the problems of conflict of laws and how they would be resolved.

In summary therefore, the question of the capacity of the state to regulate corporations, is a question to consider how capital, the state, and the law on the one hand relates with labour on the other.

In the equation, the state remains a dominant player. It is first a custodian of the law, and to a large extent, it is still defined by territory. It also requires both capital and labour to operate well. Labour is the weakest party in the equation.[11] It is in most cases consumed by capital and the state one way or the other. It is therefore vulnerable to both state and capital exploitation. The only relation labour has with the state is that the people who offer it, whether to the state or corporations, have a social contract with the state to protect them from any form of exploitation. The state is obliged to put in place the requisite legal and institutional framework to protect its citizens at the work place. However, law is important in the equation because in case of conflict of the various interests, the only neutral party ought to be the law.[12]

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infra, externalisation of labour.

10 Source: Interview, MoGLSD.

11 Labour markets structures in Uganda still have feudal tendencies. See Barya JJ (1991) Workers and the Law in Uganda' CBR Working Paper No. 17pp12-38.

12 The Uganda Constitution, and presumable all other laws made under it presupposes law made for equity and justice and where there is respect for, and enforcement of human rights, and human dignity. Article 40 specifically deals with 'Economic Rights' and among others provides that 'Parliament shall

And no doubt, the universal concern is that corporations must be regulated one way or the other. So that irresponsible corporations are held accountable for abuses that arise in course of their activities.

enact laws-to provide for the right of persons to work under satisfactory, safe and healthy conditions.. including the right to form or join a trade union of their choice for the promotion and protection of one's economic and social interests, collective bargaining and representation, withdrawing one's labour [in accordance with the law] and protection of women employees during pregnancy and after birth, in accordance with the law.

"What is disturbing is that corporations are actually products of regulation and therefore, there is an absolute obligation on the part of the state to regulate corporate activities, so as to ensure that they do not simply 'observe' human rights but in fact, they respect and uphold them."

REVIEW OF LITERATURE

REVIEW OF LITERATURE

There appears to be general consensus that Corporations have human rights obligations and they should be held accountable for human rights abuses.[13] The challenge has always been and remains, how this can be achieved. Regulation of corporations generally, but specifically in the context of business and labour, is always problematic. Globally, while corporate abuses of labour rights remain a dominant concern, the world, and most specifically, the global working people are yet to witness an effective regulation of corporations.[14] At global level, there is no concrete measure, which has been agreed upon as a means of regulating corporations. This explains why there has never been consensus as to whether corporations should be regulated by hard law or soft law. As this report has attempted to show, the states themselves that have a high duty to protect their citizens against human rights abuses by corporations have never agreed on the subject.[15]

And yet it is generally agreed that corporations/businesses do have responsibilities beyond simply making profits.[16] What is disturbing is that corporations are actually products of regulation and therefore, there is an absolute obligation on the part of the state to regulate corporate activities, so as to ensure that they do not simply 'observe' human rights but in fact, they respect and uphold them. However, it should not be lost that any attempts at hard regulation of corporations has been countered by the corporations themselves through voluntary corporate social responsibility initiatives (CSRs) where they control the narrative.[17] The related problem is the economic disparity among the states to match the economic muscle of the corporations they seek to regulate.[18] Some governments also play

13 See Dine J, 'Companies, International Trade and Human Rights' (2005) pp168-169 at 169.
14 See generally Baseline Report for the Uganda Consortium on Corporate Accountability: The State of Corporate Accountability in Uganda (2016) pp16-20.
15 See Global Initiatives, *in fra.* P9.
16 Crane A & Matten D, "Business Ethics" (2004) OUP p 41.
17 For a wider discussion on CSR see: Jerome J. Shestack, "Corporate Social Responsibility in a Changing Corporate World", Chapter 6 in Mullerat R (ed). "Corporate Social Responsibility", (2005) Kluwer pp 97-109. Mullerat R (ed). "Corporate Social Responsibility: The Corporate Governance of the 21st Century.97-109.
18 See Shestack, *Id.,* at p 98

the 'non-interference' and 'neutrality' doctrine.[19] Non-interference or neutrality of state means that the states may be politically unwilling to crack the whip on the corporations. These factors have played in the hands of the corporations and made attempts to regulate them always problematic and it is on that basis that literature on the subject will be assessed. This study has revealed that in such situations, the peoples' backed 'self-up' initiatives become desirable.

Uganda's efforts therefore at regulation of corporations cannot be looked at in isolation of these global trends. This has been elaborated in material detail from page 16, *infra*. It can be said that Uganda's problem at effective regulation of corporations has been a combination of factors. Some of the factors are local while others are influenced by global trends and from its trading and/or development partners.

A. Global Initiatives and Interventions

At a global level, there have been efforts at generating consensus on how to build capacity and consensus on how to regulate corporations.[20] Some of these interventions have been state driven while others have been driven by corporations themselves. What is true in all these interventions is that there has been back and forth debates on the subject with no clear road map on what should constitute a global text for regulation of corporations. International organisations which play lead roles in labour matters and in particular, the International Labour Organisation ('ILO') has faced similar challenges.

19 *Id.,* p 101

20 See an earlier Baseline Study Report for the Uganda Consortium on Corporate Accountability: 'The State of Corporate Accountability in Uganda' (2016) September pp16-20.

i. UN Guiding Principles on Business and Human Rights (UNGPs)

The UNGPs[21] core framework is 'Protect, Respect, and Remedy', commonly referred to as the three pillar framework ('PRR)'. The PRR Framework clearly reaffirms the state obligation to protect human rights and in particular to ensure that there is in place appropriate legal, policy, and institutional framework to provide redress in cases of human rights lapses.

The UNGPs focuses on human rights, transnational corporations and other business enterprises. The UNGPs are grounded under three pillars; the state duty to protect human rights, the corporate responsibility to respect human rights and access to effective remedies. The UNGPs do not create nor impose new legal obligations on businesses, or even attempt to change the nature of existing human rights instruments. They aim to articulate what the established instruments mean for both state and other non- state actors including business entities, and attempt to address the gap between law and practice. The UNGPs are grounded in recognition of:

(a) States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;

(b) The role of business enterprises as specialised organs of society performing specialised functions, required to comply with all applicable laws and to respect human rights;

(c) The need for rights and obligations to be matched to appropriate and effective remedies when breached.[22]

The remarkable feature of the UNGPs is that it applies to all states and to business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.[23] Moreover, the implementation of the UNGPs is supposed to be 'non-discriminatory with particular attention to the rights and needs of, as well as the challenges faced by,

21 HR/PUB/11/04
22 *Id.*, p2.
23 *Id.*, p2.

individuals from groups or populations that may be at risk of becoming vulnerable or marginalised, and with due regard to the different risks that may be faced by women and men.[24]'

Remediation is a key aspect under the UNGPs where business enterprises acknowledge the adverse impacts and provide for legitimate processes to make good the loss.[25] Under Principle 17 of the UNGPs, business enterprises are encouraged to carry out human rights due diligence to encourage, identify, prevent and account for how they address adverse human rights impacts.

The obvious challenge to the UNGPs is their implementation and enforcement—largely due to their voluntary nature. It is still very much state centred. The state has a pivotal role to play and to act in the interest of its people.[26] The success of the UNGPs is dependent on the ability and willingness of the states to incorporate the UNGPs into the legal and institutional framework of a given country.[27] It goes back to the question of policy, regulatory and institutional efficiencies of a given country to deal with human rights complicities arising from doing business. All the Operational Principles 'Ops' as listed in the UNGPs, require robust legal and institutional systems in place.[28] The same argument would be made of the corporate responsibility to respect human rights,[29] and the access to remedy pillar. Both these pillars put emphasis to having in place, effective domestic judicial mechanisms when addressing business –related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial to access to a remedy.[30] To achieve the UNGPs goals, there has to be unequivocal commitment by states to the respect and promotion of human rights as well as, putting in place effective remedial mechanisms in case of human rights abuses.

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24 *Id.,*
25 See Principle 22 of the UN Guiding principles on Business and Human Rights.
26 Under foundational Principles, the State has a duty to protect human Rights and are also duty bound to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations, UNGPs *Id.*, p 3.
27 See for example, Operational Principles at p 4.
28 See pp 4-12.
29 *Id.*, p 13
30 *Id.*, p 27.

This framework has influenced the development of several National Action Plans (NAP) on Business and Human Rights. There are calls for the domestication of the UNGPs on Business and Human Rights[31] in order to give them stronger legal force in Uganda. During the 2016 Universal Periodic Review (UPR), Uganda received and accepted a recommendation to develop a NAP on Business and Human Rights.

ii. United Nations Global Compact

Before the endorsement of the UNGPs, the most cited intervention by the United Nations in the recent past, on matters of corporations and regulation of their activities, had been no doubt the UN Global Compact ('GC').[32] The GC established in 1999 lists ten principles to which corporations commit to respect in their operations. It was a response to the ongoing allegations of corporate misbehaviour in the human rights sphere.[33] Like similar interventions elsewhere, the GC is largely voluntary and is soft law. It's success is dependent on the commitment of the corporations, and perhaps, pressure from those who are affected by operations of the corporations. This has brought about inconsistency in the respect for, and enforcement of the code and by far, brought about its failure. It has also been classed largely as a 'network of corporate and civil society participants'.[34] The Global Compact therefore in a strict sense is not a regulatory tool but rather a collection of corporations and organisations who share common concerns.[35] As such it does not police or enforce or measure the behaviour or actions of companies.[36] The same can be said of the Organisation for the Economic Cooperation and Development ('OECD') Guidelines for Multinationals which were adopted in 1976. This too, is in form of recommendations directed at Transnational Corporations ('TNCs') on standards of acceptable behaviour in areas of labour, human rights and the environment.

31 See Humans Rights Defenders and Corporate Accountability in Uganda at page 17.
32 Text and background via UN website, principles are listed at http://www.globalcompact.org/AboutTheGC/TheTenPrinciples/index.html)
33 See MacLeod Sorcha, 'Reconciling Regulatory Approaches to Corporate Social Responsibility: The European Union, OECD and United Nations Compared', (2007) European Public Law, Vol. 13 Issue 4 pp 671-698 at p 696.
34 *Id.,*
35 *Id.,*
36 *Id.,*

Typical of such interventions, they are broad in content, but voluntary in nature.[37] However, comparatively, the GC is credited for its participatory stakeholder approach, which seeks to involve a wide variety of business enterprises, and representatives of civil society.[38] This has attracted a great deal of participants and other international organisations like the ILO creating a platform of exchanging ideas on matters of corporations and human rights.[39]

Both the OECD and the GC contain certain common features in the areas of protecting the environment, occupational health and safety, labour and human rights.

The GC outlines Ten Principles which it asks companies to embrace, support and enact, within their sphere of influence, in areas of: Human Rights, Labour, Environment and Anticorruption.

In the area of Human Rights, the GC in Principle 1 requires businesses to support and respect the protection of internationally proclaimed human rights. Under Principle 2, corporations should ensure that they are not complicit in human rights abuses. In principle 3, Businesses should uphold the freedom of association and effective recognition of the right to collective bargaining. Others are the elimination of all forms of forced and compulsory labour;[40] the effective abolition of harmful child labour;[41] the elimination of discrimination in respect of employment and occupation.[42] In the areas of the environment are principles 7 to 9, which provide thus: Businesses should support a precautionary approach to environmental challenges;[43] Businesses should undertake initiatives to promote greater environmental responsibility;[44] and Businesses should encourage the development and diffusion of environmentally friendly technologies.

37 See for example: Guidelines 1(i), II(1) &(2), II(3),(6) &(7), III(1),(2),(3), &(4),IV,V, VI,VII,IX, &X.
38 Sorcha, Op.cit., p 697.
39 Id.,. But see also: the UN Economic and Social Council: Commission on Human Rights Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12 (2003) available electronically at: http://www.unhchr.ch/Huridocda/Huridocda.nsf/0/64155e7e8141b38cc1256d63002c55e8?Opendocument
40 Principle 4.
41 Principle 5.
42 Principle 6.
43 Principle 7.
44 Principle 8.

Moreover, within the UN framework, most specifically, the UN Norms on the Responsibilities of the TNCs with Regard to Human Rights, States have no excuse not to reign over corporations operating within their territories. Under obligation 10, TNCs are obliged to respect national sovereignty and human rights.It provides for, "Respect for national sovereignty and human rights", in that;

> Transnational corporations and other business enterprises shall recognise and respect applicable norms of international law, national laws and regulations, as well as administrative practices, the rule of law, the public interest, development objectives, social, economic and cultural policies including transparency, accountability and prohibition of corruption, and authority of the countries in which the enterprise erate.[45]

The Norms further oblige TNCs to respect worker's rights. This includes prohibition against use of forced labor or compulsory labour as forbidden by the relevant international instruments and national legislation, as well

as international human rights and humanitarian law.[46] They further provide for the protection of children from economic exploitation,[47] obligation to provide a safe and healthy working environment,[48] and obligation to provide workers with remuneration that ensures an adequate standard of living for them and their families.[49] Lastly, TNCs and other business enterprises shall ensure freedom of association and effective recognition of the right to collective bargaining.[50] This shall be realised by protecting the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without distinction, previous authorisation, or interference, for the protection of their employment interests and for the collective bargaining purposes as provided in national legislation and the relevant conventions of the International Labour Organisation.[51]

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45 The UN Norms on the Responsibilities of the TNCs with Regard to Human Rights cited as E/CN.4/Sub.2/2003/12/Rev.2 p4.
46 Obligation D5
47 Obligation D6.
48 Obligation D7.
49 Obligation D8.
50 Obligation D9. See also Obligation G14 with regard to Environmental Protection.
51 *Id.*,

Going by the text of the GC, like in the cases of ILO, OECD, and to an extent, the WTO, compliance is quite clearly discretionary at the instance of the corporations. The compliance would only be complete if the host states have the political resolve and develop the necessary regulatory (which for Uganda this study has showed is largely adequate), and institutional framework to ensure compliance. As demonstrated, Uganda's regulatory framework in greater material particulars is premised on most of these international instruments.[52] This study has attempted to show and justify that in cases where the state lacks the capacity to take on the corporations, the remedy lies in the non-state interventions such as trade union movements, public interest litigation, and popular mass class actions against corporations, and to some extent, the state for human rights complicities.[53]

iii. The World Trade Organisation (WTO)

The WTO has made remarkable strides in infusing labour and human rights issues into trade and investment agreements ('TIA') through *social clauses*. This has in some instances, been referred to as the *'human face'* in trade and investment. The WTO intervention has been aimed at a complete respect for the core labour standards as promulgated by the ILO. It is generally agreed that breach of these core standards constitute breach of the rules of trade.[54] For example, use of prison labour to produce exports has been outlawed under the trade rules as unduly exploitative and a form of unfair social dumping.[55] Other labour rights that have been a subject of WTO debates include: freedom of association and collective bargaining, the abolition of harmful child labour and forced labour, and freedom from discrimination. However, this too has not been without challenge: Firstly, Individual countries, the bulk from the global south, find it increasingly impossible or undesirable, to tame the activities of the MNCs.[56] This is because of the disparity in their economic levels and the need to

52 See for example the Constitution, the Employment Act, 2006, and the Labour Unions Act, 2006 of which prohibit among others, discrimination at the work place, prohibition of child labour, protection of the right to freedom of association and the right to collective bargaining.

53 See the Section on Non-state Actors, infra.

54 See Foley Canar, 'Global Trade, Labour and Human Rights' (2000) Amnesty International, pp 29-65 at p29.

55 *Id.,*

56 Shamir Ronen, 'Corporate Social Responsibility: A case of Hegemony and Counter-Hegemony' (2005) in Santos B & Rodriguez-Garavito C (eds.) Law and Globalisation from Below: Towards a Cosmopolitan Law: Cambridge CUP PP 94-117 at pp 96-97.

create investment 'friendly' environment so as to attract foreign direct investment ('FDI').[57] A related argument is that this is a 'coded means of justifying the protectionist practices of developed countries by eroding the comparative advantage of low wage development countries.'[58] These arguments notwithstanding, within the WTO framework, it is recognised that there is a clear linkage between trade and respect for human rights and in particular, promotion of labour standards.[59] Social clauses are therefore seen as a means within trade to offer social protection and promotion of core labour standards. And it explains why there has been a push for the WTO to adopt a social or human rights clause, based on the core labour standards of the ILO backed by the threat of trade restrictions against states that fail to meet these standards.[60] However, there has been no consensus on the threat of sanctions for non-compliant member states for the reasons already advanced. This variance in views on the need for strict adherence to trade sanctions remains one single challenge to enforcement of social clauses in Trade and Investment Agreements (TIA) to uphold core labour standards and human rights generally.[61]

Other challenges include firstly, the likelihood that most people affected by activities of corporations are rarely parties to these trade and investment agreements (TIA). Any challenge therefore by such a group is likely to encounter legal challenges on locus. Secondly, they may also suffer a challenge of obtaining the right text of the TIA in order to prosecute the corporation in the courts of law. These technical challenges can have a huge toll on the victims of the corporate wrong in terms of logistics and time. Other challenges can be lack of a vibrant and activist judicial system which is usually characteristic of developing countries like Uganda. Other actors feel that the WTO is an inappropriate body to enforce labour standards because it is essentially focussed on trade while some governments of developing countries claimed that the proponents of a social clause were seeking to impose 'western standards' on them.[62]

57 *Id.*,
58 Foley, Op.cit., p 29.
59 For related argument see Foley, Id.,
60 *Id.*, p42.
61 *Id.,*
62 *Id.*, p43.

It is the observation in this report that the politics involved in these international organisations call for international approaches. Local interventions may need to re-align and create some international networks to have an impact that comes to bear on the corporations especially, the TNCs that operate in more than one jurisdiction.

iv. International Labour Organisation ('ILO')

The ILO is the custodian of social justice for workers in the world.[63] It is a specialised agency of the United Nations that has spearheaded the formulation of labour policies which have influenced domestic legislation of its member countries. Its main policy and legislative frameworks are in form of conventions, recommendations, reports and interpretations by its committee of experts. In the recent past, the ILO has formulated the core labour standards, the 1998 Declaration of Fundamental Principles and Rights at Work,[64] and the Decent Work Agenda.[65] It operates a tripartite structure with representatives of government, workers and employees. The ILO has been credited for promoting the core labour standards which have informed most domestic legislations of its member countries. Some of these standards are found in the numerous Conventions adopted by the ILO, including; the Freedom of Association and the Effective Recognition of the Right to Collective Bargaining Conventions 87 and 98, the Elimination of All Forms of Forced and Compulsory Labour Conventions 29 and 105; the effective Abolition of Child Labour Convention No. 138 and 182, and the Elimination of Discrimination in Respect of Employment and Occupation.[66] Like any international organisation, the ILO also faces a number of challenges: Firstly, it is a standard setting institution which largely relies on member states for enforcement. Secondly, for various reasons, the uneven ratification of the conventions and implementation of its standards (ILS) and recommendations, has also been a problem[67]

63 See: http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm accessed on 20.11.2015.
64 See Hepple, infra, p59
65 See Hepple, infra. P56-57, 63..
66 But see also: Hepple B, 'The effectiveness of International Labour Standards, Chapter Two in Hepple B, 'Labour Laws and Global Trade (2005) Oxford pp25-67 at p29.
67 Hepple, p35.

It should however be noted that Uganda's regulatory and policy frameworks conform to these ILO ideals significantly. This can be seen in the 1995Constitution, the Employment Act, the Workers Compensation Act, theOccupational Safety and Health Act, the Labour Disputes (Arbitration and Settlement) Act, and the Labour Unions Act. Read together, it can be positively argued that Uganda has made significant in roads in legislative reforms in line with minimum core labour standards,— where states are obliged to ensure that employers respect and promote principles and rights at work such as; freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labour, the abolition of harmful child labour and the elimination of discrimination in respect of employment and occupation.[68]

v. General Comment No. 24 on State Obligations under the International Covenant on Economic Social and Cultural Rights in the Context of Business Activities.

In its numerous States' periodic reports engagements, the Committee on Economic Social and Cultural Rights (CESCR) has dealt with multiple examples of corporate violations of human rights ranging from child labour, unsafe working conditions, restrictions on trade unions and economic exploitation among others.[69] General comment No 24 reinforces State parties' primary obligation to respect, protect and fulfil Covenant rights in the context of business activities.[70] Of critical importance, it addresses the issue of extraterritorial obligations.[71] General Comment No 24 notes that the Covenant obligations "apply both with respect to situations on the State's national territory, and outside the national territory in situations over which States parties may exercise control."[72]

The Comment further adds that "such extraterritorial obligations …follow from the fact that the obligations of the Covenant are expressed without any restriction linked to territory or jurisdiction."[73] Similarly, the issue of

68 See generally Objectives XIV, XV,XVI, and Articles 32, 33, 35, 40 of the Constitution and Sections 5, 6, and 7 among others, of the Employment Act, 2006.
69 See E/C.12/2011/1, Para. 1
70 See E/C.12/GC/24
71 *Id.*, C
72 *Id.*, Parag. 10
73 *Id.,* Parag. 27

extraterritorial obligations was noted in the Committees' 2011 statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights.[74] The Committee then reiterated that,

> States parties' obligations under the Covenant did not stop at their territorial borders. States parties were required to take the steps necessary to prevent human rights violations abroad by corporations domiciled in their territory and/or jurisdiction (whether they were incorporated under their laws, or had their statutory seat, central administration or principal place of business on the national territory), without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.[75]

Over all, these principles are critical in Uganda with the oversaturated foreign direct investments in infrastructure, manufacturing and the extractive industry among others. State parties must reinforce the corporate responsibilities to respect human rights and where there are violations, undertake measures to hold these corporations accountable.

vi. General Comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work (Article 7 of the International Covenant on Economic, Social and Cultural Rights)

The right of everyone to the enjoyment of just and favourable conditions of work is recognized in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and other international and regional human rights treaties.[76] It is an important component of other labour rights enshrined in the Covenant and the corollary of the right to work as freely chosen and accepted. Similarly, trade union rights, freedom of association and the right to strike are crucial means to introduce, maintain and defend just and favourable conditions of work. The enjoyment of the right to just and favourable conditions of work is a pre-requisite for, and result of, the enjoyment of other Covenant rights, for example, the right to the highest attainable standard of physical and mental health, by avoiding occupational accidents and disease, and an adequate standard of living

74 See E/C.12/2011/1,
75 See E/C.12/2011/1, Paras. 5 and 6.
76 UDHR, articles 23 and 24; ICERD, article 5; CEDAW, article 11; CRC, article 32; ICRMW, article 25; CRPD, article 27, African Charter on Human and Peoples' Rights, article 15

through decent remuneration. Under Part B of General Comment No. 23, states have specific legal obligations in the protection of the right to just and favourable conditions of work. The state has the specific obligations to Respect, Protect and Fulfil specific legal obligations.[77] Under Part E of General Comment 23, the obligations of non-state actors, which are hinged on the UNGPs, impose duties on business enterprises irrespective of their size and sector, to realise the right to favourable conditions of work.

vii. The Organisation for the Economic Cooperation and Development ('OECD')

The OECD Guidelines for Multinational Enterprises ('MNEs') were adopted in 1976. According to *Blanpain*, the Guidelines were a response to the advent of MNEs on the world scene in the 1960s, and to their growing economic influence which gave rise to concerns, especially among some governments and the international trade union movement.[78] *Blanpain* makes very interesting arguments which are critical to the concerns today of how the state can regulate corporations: Firstly, the MNE Guidelines affirm that every country has the right to prescribe the conditions under which MNEs operate within its national jurisdiction. This statement is both politically and legally correct. Sovereignty of states is the primary tool for which they must take stock and account completely to its citizens of what goes on in their territories. That appears to be the cardinal principle upon which the citizens surrender their power to the government to look after their welfare and in most material particular, protect them from any political, and in this case, economic exploitation. Secondly, the learned author argues, quite correctly, that the MNEs Guidelines are not substitute to national laws of countries in which they ('MNEs') operate.[79] He concludes that these Guidelines too, have over the years suffered a great set back because of global trends in economic activity, which has seen most MNEs adopt other cheap methods of production such as outsourcing of labour to cut costs, and to avoid scrutiny by the host countries whose regulations may be strict.[80]

77 See paragraphs 58, 59 and 60 of General Comment No.23.
78 See Blanpain R (2001) 'Multinational Enterprises and Codes of Conduct' Chapter 9 in Comparative Labour Law and Industrial Relations in Industrialised Market Economies' , (eds.) Kluwer Law International, pp 185-206 at p 185.
79 *Id.*,
80 *Id.,* p 186.

This has remained a challenge for the nation states, especially less developed economies like Uganda, who seek to attract Foreign Direct Investment ('FDI') by creating competitive and conducive investment environment. In a bid to achieve this, they have ended up lowering the labour standards to an unacceptable levels thereby compromising state obligation to regulate Corporations.[81] This has been held so in areas of core labour standards such as minimum wage requirements, child labour prohibitions, health and safety standards, environmental protections and preservation and collective bargaining rights among others.[82]

viii. Open Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises (IGWG)

The Open Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises was established by the Human Rights Council at its 26th session, on 26 June 2014.[83] The Working Group was granted a mandate "to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises."[84] Resolution 26/9 which established IGWIG stressed that, "the obligations and primary responsibility to promote and protect human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including transnational corporations."[85] It further emphasizes that "transnational corporations and other business enterprises have a responsibility to respect human rights, [and] that civil society actors have an important and legitimate role in promoting corporate social responsibility, and in preventing, mitigating and seeking remedy for the adverse human rights impacts of transnational corporations and other business enterprises."[86]

81 See Shamir R (2005) Corporate Social Responsibility: A Case of Hegemony and Counter-Hegemony in Santos B and Rodriguez-Garavito C eds. Law and Globalisation from Below: Towards a Cosmopolitan Law, CUP, p96.
82 *Id.,*
83 UN Human Rights Council, A/HRC/RES/26/9, accessed at http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9.
84 *Id.,*
85 *Id.,*
86 *Id.,*

The IGWIG mandate is in its fourth year[87] where the will discuss the ZERO Draft "legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises,"[88] as well as the ZERO Draft Optional Protocol[89] will be discussed. The proposed draft treaty is a commendable for keeping track of the current global business and human rights challenges and attempts to address some of the existing gaps that limit States' capacity to regulate corporations with business activities of a transnational nature and rights of victims to access remedy for corporate abuses. The draft also expands victims access to remedies for corporate abuses occurred extraterritorially and it further confers extra-territorial obligations to States to regulate and ensure that they companies operating abroad respect human rights in all their operations.

Whereas, this initiative is a welcome and commendable attempt to enhance corporate accountability, its incumbent on individual states to strengthen national remedial mechanisms and build capacities of both national regulatory and enforcement institutions to ensure that corporate entities respect human rights in all their operations. It is also critical that human rights awareness is created within affected communities and empowerment is done to build their capacities to self advocate and demand for corporate respect of human rights and accountability for abuses.

B. INITIATIVES BY CORPORATIONS

i. Codes of Corporate Governance

Codes of Corporate Governance 'CCG' are corporate interventions whose narrative is greatly controlled by the corporations. The CCG are criticised for being diversionary, wide and general in application with no clear

87 UN Office of the High Commissioner for Human Rights, accessed at https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session4/Pages/Session4.aspx.

88 UN Office of the High Commissioner for Human Rights, accessed at https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf

89 UN Office of the High Commissioner for Human Rights, "Draft Optional Protocol," accessed at https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session4/ZeroDraftOPLegally.PDF.

enforcement and monitoring mechanisms.[90] In some cases, corporations have hired private social audit firms and Non-Governmental Organisations 'NGOs' such as PricewaterhouseCoopers to carry out verification audits with respect to compliance with the Codes. Quite obviously, the firms under audit meet the cost of remuneration for such verification audits. But these too, have come under severe attack as their independence is doubted. The audits are done for a fee.[91] These concerns make CCG a shaky structure for transparency and accountability of companies on labour rights. Inevitably, more often than not, breaches by companies pass undetected and yet the codes are not legally enforceable.[92] And yet, CCGs should not be dismissed completely, their weaknesses notwithstanding. It has been argued that the proliferation of CCGs is a manifestation of issues arising from investments—which have not been adequately addressed by national legal systems and global governance.[93] Of course, it has not been any easy to make corporations accountable on the basis of these CCGs for a number of reasons: The most outstanding appears to be the voluntary nature of the codes, and secondly, the economic leverage of corporations which has enabled them to avoid strict rules particularly in less-restrictive countries mostly in the developing world.[94]

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90 See Redmond, P. (2003) "Transnational Enterprise and Human Rights: Options for Standard Setting and Compliance," 37, 1, The International Lawyer, pp 69-102 at pp 87-90 & 91-95. See also Blackett, A. (2001) "Global Governance, Legal Pluralism and the Decentred State: A Labor Law Critique of Corporate Codes of Conduct," Vol. 8, Indiana Journal of Global Legal Studies, pp 401-447 at pp 401-412; Fung, A. (2003) "Deliberative Democracy and International Labour Standards," Vol. 16, No. 1, International Journal of Policy, Administration, and Institutions, pp 51-71 at 55, and a Special Report on Corporate Social Responsibility in the Economist of January 19th– 25th 2008 pp 3-22. See further Cleveland, S. (1998) "Global Labor Rights and the Alien Tort Claims Act," 76 Texas Law Review, pp 1533, 1551, see also Cassel, D. (1963) "Corporate Initiatives: A second Human Rights Revolution?" 19, Fordham International Law Journal cited in Redmond op cit, at p 87 but see further pp 89-91; Baade, W. (1980) "The Legal Effects of Codes of Conduct for Multinational Enterprises," Horn, N (ed) Legal Problems of Codes of Conduct for Multinational Enterprises, p 3.

91 Fung , Id., pp 51-71 at p 62.; See also O'Rourke, D. (2000) Monitoring the Monitors: A critique of PricewaterhouseCoopers (PWC) Labour Monitoring at http://www.wcb.mit.edu/dorouke/www/pdf/pwc.pdf

92 See Harry, A. (2001) "Reinventing Labour Law for the Global Economy," Vol. 22, No.2, Berkeley Journal of Employment and Labour Law, pp 274-294 at 289. See also Articles 14-21 of the ILO Constitution at: http://www.ilo.org/global/About_the _ILO/Origins_and _history/Constitution /lang--en/But see Redmond op cit, p 91; Chandler, G. (1999) "Key Note Address: Crafting a Human Rights Agenda for Business," in Addo, M(ed). Human Rights Standards and the Responsibility of TNCs, at p 40.

93 Redmond, op.cit, Hurry Arthurs, op.cit, and Baker, Op.cit.

94 .Redmond, Id., pp69-80.

And, further that, corporations were not envisaged in the pre-liberalization framework, and this accounts for the lack of direct regulatory and monitoring means both at national or global level to hold corporations to account for labour standards abuses.

ii. Corporate Social Responsibility

Corporate Social Responsibility ('CSR') in this report should be understood to mean deliberate initiatives and/or undertakings by corporations to behave responsibly to the interests of the communities in which they operate as well as other stakeholders who may be affected by their operations.[95] These interests could be of employees, suppliers, environmentalists, the state, etc outside of the conventional corporate interests of shareholders and perhaps, creditors. CSR engagements present in different forms, including but not limited to supporting community causes, such as health needs, recreation, sports and education among others. These specific interventions are good and have in most cases contributed to improved wellbeing of the people in the communities in which the corporations operate. The other form of CSR is by way of internal policies which inform corporate operations in the areas of human rights, labour standards, and respect for the environment.[96]

It has been argued that the decision to implement a CSR policy is compounded by why, where, and how it should be implemented, not to mention who should oversee the process.[97] Available literature on CSR engagements suggest that corporations can pursue an effective CSR policy for either offensive or defensive reasons.[98]

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95 See generally: Gilpin, R. (2000) The Challenge of Global Capitalism: The World Economy in the 21st Century, Princeton University Press, Princeton: New Jersey, pp172-78.

96 See also: Martin Felix, 'Corporate Social Responsibility and Public Policy', Chapter 5 pp 77-95; Zerk J, 'Multinationals and CSR: Limitations and Opportunities in International Law' (2006)CUP pp32-59, Macleod, opcit, see also Habisch A et al 'CSR Across Europe' (2005) in Gilbert Lenssen & Volodja Voroby, 'Pan-European Approach-The Role of Business in Society in Europe', pp 358-374.; See also Doh P. Jonathan et al, 'Corporate Social Responsibility, Public Policy, and the NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective' (2006) Journal of Management Studies Vol. 43 No. 1 January pp 47-73 at p54.

97 Werther W & Chandler D, 'Strategic Corporate Social Responsibility, (2006) p63-68; See also the OECD Principles of Corporate Governance (2004) at p 58. This incorporates and expect the Board to take care of other stakeholder interests beyond just the shareholders to include: employees, customers, suppliers and local communities.

98 See generally Mullerat R, The Global Responsibility of Business' (eds). Corporate Social Responsibility: The Corporate Governance of the 21st Century, 3-27.

These interventions have financial implications and can only be sustained depending on the budget support from the corporation. In some cases, these interventions have been informed by either negative publicity or campaign by the affected communities. Therefore, these CSR engagements are only done in response to a market situation. Although there are strong arguments that responsible corporate behaviour has long term invaluable profit than the economic reason that is usually touted for their adoption.[99]

At the core of these global interventions is no doubt, transparency, and accountability of corporations in their operations. To secure corporate responsiveness to the various stakeholder interests in their operations.[100] However, in developing countries such as Uganda, CSR initiatives have commonly been employed as a social licence to operate within communities. In some instances CSR engagements are used to manipulate affectedcommunities hindering corporate accountability initiatives in cases of corporate abuse of human rights.

c. Uganda's Experience with Corporations

In the context of Uganda, human rights abuses and complicities generally have been historically a matter for repressive and undemocratic regimes in the past. Secondly, its labour laws have also been informed generally by feudal tendencies where the workers had no rights. Uganda's labour laws therefore until recently have tended to reflect this history. The same would be said of Uganda's trade unions that operated under close scrutiny of the state. The Ugandan society is one therefore which is only just beginning to gain courage and over the years, developed muscle to take on corporations for human rights abuses and specifically, in the areas of labour rights.

99 See Mullerat R (ed.) 'Corporate Social Responsibility: The Corporate Governance of the 21st Century' (2005) Kluwer pp 113-139 at p116.

100 For secondary reading on stakeholder theory see: OECD Guidelines on the Principles of Corporat Governance Primary Sources; Keay A, 'Stakeholder Theory in Corporate Law: Has it Got What it Takes?', electronic copy available at: http://ssrn.com/abstract=1531065; Heath J & Norman W, "Stake holder Theory, Corporate Governance and Public Management: What can History of State-Run Enterprises Teach us in the Post-Enron era?", Journal of Business Ethics (2004) 53 pp 247-265; Donaldson, Thomas, & Preston, "The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications". The Academy of Management Review (1995)20.1 pp 65-91 obtained electronically http://www.jstor.org/stable/258887 on the 11/5/2016; See also: Caroll AB , 'Business and Society' (1996) (3rd ed.) South Western College Publishing pp 71-99.

This is supported by government initiatives contained in the policy, regulatory and institutional frameworks which have among others, enabled standard setting for corporations especially in the industry and manufacturing sectors, and inspections of the work places as has been discussed in detail in Chapter II *infra*.

i. Equal Pay for Equal Work

One major issue that continues to inform public concern is one of equal pay for equal work—especially the gender pay gaps. The 1997 Gender policy takes cognisance of the fact that "Uganda is a patriarchal society where men are the dominant players in decision making, although women shoulder most reproductive, productive and community management responsibilities, many of which are not remunerated or reflected in national statistics."[101] The gender policy seeks to resolve gender disparity in all forms and places. It makes particular mention of the influence of gender roles on labour and the need to eliminate discrimination of women on the labour market particularly regarding pay.

Whereas the state has capacity to act through the available legal framework to handle matters on gender pay gaps, so far responsive action against pay disparities seems to be led by the private sector members. The Private

Sector Foundation Uganda (PSFU) has made progress in this area, where so far twenty-seven Ugandan companies are signed up to the United Nations Development Programme (UNDP); Gender Equality Seal Certification (GES) in a bid to champion gender equality at work.[102] The companies among others include; Nile Breweries, Standard Chartered Bank, Crown Beverages, and Delight Uganda Ltd. The goal is to sign up to recruit more women into various positions, and to reduce inequalities created by sex-based discrimination.[103]

101 Ministry of Gender Labour and Social Development, National Gender Policy 1997.
102 Jacky Achan, "40 Companies Signed to End Gender Disparity at the Work Place"June 22, 2018, accessed at: https://www.newvision.co.ug/new_vision/news/1480258/ugandan-compnies-signed-gender-disparity.
103 *Id.,*

Furthermore, the issue of salary disparities within the public service sector has of recent has dominated public debates. In 2017 the Equal Opportunities Commission (EOC) conducted a study on the disparities whose findings showed a glaring disparity of salaries within the public sector. During the launch of the report, the Chairperson EOC emphasized "the Commission's commitment in advocating for equal treatment in remuneration as a prerequisite for inclusive growth, socio-economic transformation and sustainable development."[104] She further noted that it was against this background that the EOC conducted the study to ascertain the magnitude of salary disparities, modalities of salary determination and associated implications of the disparities on service delivery."[105]

ii. Maternity Leave

Article 33(3) of the 1995 Uganda Constitution recognizes the need to protect the maternal functions of women including reproduction. This provision recognizes that women have rights that arise from their maternal functions thereby implicitly places obligations upon the state to protect the sexual and reproductive health rights of women. Furthermore, article 33 (6) prohibits laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status. Specifically, the Constitution makes no provision for maternity leave beyond the provisions within the formal employment sector. Section 56 of the Employment Act 2006 provides for maternity leave. Subsection 1 of Section 56 is to the effect that

> A female employee shall, as a consequence of pregnancy, have the right to a period of sixty working days leave from work on full wages hereafter referred to as "maternity leave", of which at least four weeks shall follow the childbirth or miscarriage.[106]

104 Equal Opportunities Commission, EOC Launches and Disseminates Study Report on Salary Disparities in the Public Sector, JUNE 14, 2017, accessed at http://www.eoc.go.ug/media-udates/2017/06/eoc-launches-and-disseminates-study-report-salary-disparities-public-sector.

105 *Id.,*

106 Employment Act 2006, Section 56 (1).

Whereas most cases of violations of these provisions are rarely reported—mainly due to high levels of poverty and unemployment, some few cases end up with the labour officers. One such case is that of Anne which ended up with the Industrial Court in 2017. Anne having been employed by the respondent, Salam Vocational Education Centre effective February 2014, went into labour pains on 15 July 2014 and while being admitted in a health facility, she requested for maternity leave on July 16. She delivered by caesarean section and got discharged on July 21 2014 but while still on her maternity leave and with no formal hearing, she was on August 2 2014 unlawfully terminated.

The respondent argued that the claimant had been warned before on her performance and she had been accorded ample opportunity to improve which she failed as testified to by the students to whom she was administering her nursing skills. They further argued that the claimant was terminated while still on probation and this having been the case, she had no claim against the respondent.[107]

Notwithstanding the fact that the respondent argument steered off the maternity leave question and focused on breach of contract, Court found in favour of the claimant (Anne) and among others awarded her general damages for being terminated during her maternity leave which must have caused her great pain. As noted maternity leave protective measures operate largely within the formal work sector and are often catered for in employment contracts.

However, the situation is not that promising within the informal sector. Most of these employees don't have security of tenure and often work through out their pregnancies with little or no protection. Fears of loss of jobs force them not to take leave. Case studies within the flower farm industries share a dark light on this. Women can not even attempt to apply for maternity leave as it can lead to termination of employment and in some cases where they take a few days during their pregnancy, it will be deducted from annual leave or it will be looked at as days taken off with out pay.

107 Akankunda v Salam Vocational Education Centre Ltd (LABOUR DISPUTE CLAIM. NO. 041/2016) [2017] UGIC 16 (6 March 2017) available at https://ulii.org/ug/judgment/industrial-court-uganda/2017/16-0.

Internationally, the ILO confers maternity leave as one form of contingency that must be undertaken within the broader social protection measures in place for all workers. The ILO Maternity Protection Convention, 2000 (No. 183), greatly broadens the scope around social protection of women in the workforce and is designed to promote equality of all women in the workforce and the health and safety of the mother and child. The Convention spells out specific provisions for extending maternity protection to all women workers, including those within the informal economy and those engaged in atypical forms of dependent work. However, Uganda has not ratified the convention and is yet to strengthen provisions advancing maternity leave protections beyond the formal sector.

All in all, although Uganda has a policy framework on maternal and child health rights, the national legal framework does not explicitly address the issue of maternity leave within the informal sector. It is therefore very difficult to enforce maternity leave for women who work in informal sectors where neither formal work agreements nor trade unions exist. As with many human rights principles, so many business enterprises consider respect and compliance with human rights as another cost which they can avoid unless forced to adhere to look. Maternity leave is then viewed as another cost of production—paying someone salary when they are not contributing to the business. Similarly, ignorance and lack of awareness about the policy and legal provisions by some employees means that they view maternity leave as a voluntary undertaking by the business entity—leaving some women negotiating away their right to maternity leave.

iii. Casual Labour Regulations

Section 39 (1) of the Employment Regulation 2011 provides that "a person shall not be employed as a casual employee for a period exceeding four months. Subsection 2 provides that "a casual employee engaged continuously for four months shall be entitled to a written contract, shall cease to be a casual employee and all rights and benefits enjoyed by other employees shall apply to him or her. There have been some cases that

have addressed the issue of casual laborers.[108] Whereas, the law and some cases have attempted to define casual labour and the extent of protective measures therein, the practice still remains dire where many people remain employed as casual labourers for periods exceeding the mandated four months, sometimes stretching to years. The Uganda Human Rights Commission has noted that "the employment of casual labourers has further weakened the ability of workers to enforce their rights as employees since casual labourers are not given written contracts of employment and have no job security or union representation."[109]

iv. Right to Privacy and Forced HIV Testing

Uganda is experiencing increased foreign and local investment and the private sector is placed to play a key role in economic development. However, this drive has not been followed with strengthened policy and legal frameworks to ensure compliance and respect for human rights standards. As discussed above, there remains numerous gaps within the labour sector and the capacity of the state to regulate these private actors remains week. Of recent, there has arisen increasing violation of the right to privacy through compulsory HIV testing which sometimes leads to employment terminations. The National Equal Opportunities Policy 2006 highlights the worrying issue of discrimination in work places on the basis of HIV status. The 2006 Policy lists PLHIV among the categories of vulnerable people whose rights to equal opportunity are often at risk of being abused by private actors.[110] A case in point has been noted in the infrastructural sector especially with Chinese companies.[111]

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108 Wilson Wanyama v Development and Management Consultants International - (HCT-00-CC-CS-0332 OF 2004) [2006] UGCOMMC 17 (8 May 2006). See also Bubulo Fred (Suing as a Representative of 296 former employees of Uganda Railways Corporation) Vs. Uganda Railways Corporation, HCT-00-CV-CS-0084 -2009

109 Uganda Human Rights Commission, "Workers Rights: A Perspective on the Enjoyment of the Rights of Factory Workers In Uganda."

110 The National Equal Opportunities Policy, Page 12, The Ministry of Gender, Labour and Social Development, July 2006, available online at http://www.eoc.go.ug/sites/equalopportunities/files/publications/the-national-equal-opportunities-policy-2006.pdf

111 Amy Felon, Ugandans Take Chinese Firm to Court in Latest HIV Workplace Battle, July 26, 2017, accessed at https://www.reuters.com/article/us-uganda-aids/ugandans-take-chinese-firm-to-court-in-latest-hiv-workplace-battle-idUSKBN1AB128.

A lady who worked as a cleaner for the Chinese state-owned construction giant, China Communications Construction Company (CCCC) was after compulsory HIV testing discovered to be HIV- positive and dismissed from work.[112]

In its 2017 Annual Report, the Equal Opportunities Commission, noted that realization of the NDP II Goals calls for observance of equal opportunities for all and that the elimination of all forms of discrimination and inequalities is critical to addressing Uganda's development concerns especially for the vulnerable groups and or persons including PLWHIV. Similarly, the 2011 National HIV and AIDS Policy makes provision for review of HIV/AIDS policies at work places and specifically names the private sector as part of the implementers of this policy. This goes to emphasize the importance of putting in place stronger protective measures for vulnerable groups and hence infringement of rights to privacy especially for persons living with HIV affects their rights to work among others. According to the ILO, on the issue of HIV and the world of work,

> The workplace is ideally placed to contribute to effective national responses through a combination of education for prevention, the practical provision of care, support and treatment either directly through workplace occupational health services, or through referral to services available in the community. World of work structures offer a number of possibilities for the integration of HIV interventions in existing structures and ongoing programmes, thus enhancing relevance, effectiveness and sustainability. These include: occupational safety and health structures; the labour inspectorate; industrial tribunals; employment creation and skills development programmes, especially for young people; social protection interventions; tripartite committees and organizations of employers and workers.[113]

112 Amy Fallon, "Fired after Forced HIV Tests", Available at https://www.newsdeeply.com/womenandgirls/articles/2017/08/14/fired-after-forced-hiv-tests.

113 ILO, HIV and AIDs: Guidelines for the Mining Sector, (2013), accessed at http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/instructionalmaterial/wcms_235624.pdf.

All in all, protective measures for most at risk populations must be strengthened within the work place, even in instances where the state and its agencies are not enforcing the policy and legal provisions that provided by the 1995 constitution especially under Article 21 for equal protection for all under the law.

v. Use of Poisonous Chemicals in Flower Farms

Uganda has also registered instances of harmful chemical exposure of workers. In 2016, the Ministry of Gender, Labour and Social Development (MoGLSD) carried out an investigation into an alleged exposure of workers at the Royal Van Zanten, a flower farm in Wakiso to poisonous chemicals. The Ministry reported that some of the adverse effects resulting from the chemical exposure to included: dizziness, nausea, while other workers experienced collapse attributed to exposure to the chemical *tomentam sodium* and its metabolites (methyl *isothiocynate and hydrogen sulphide.)*[114]

Quite interesting to note is that the probable cause of the incident was stated to be lack of strict observance of the re-entry time. While the intermediate causative factor was stated to be lack of air monitoring, drifting chemicals within the greenhouse and lack of [an adequate] risk management plan. The workers (pickers) were also stated to have had minimum knowledge about their rights in regard to workplace safety and health.[115] This occurrence in terms of magnitude affected a total of 42 workers who had to receive medical treatment for close to a week.

From this report, two things are noted: Firstly, there is the element of lack of proper handling of chemicals; secondly, lack of coordination among employees to avoid exposure to the chemical. While the report does not mention the medical opinion on possibility of the symptoms re-occurring, it cannot be ruled out.

Accidents such as the Royal Van Zanten one is a rude reminder of one of the world's most disastrous industrial accident in Bhopal, India following an escape of a lethal gas which had been used as an ingredient in the manufacture of an agricultural fertilizer.[116] In the Bhopal scenario, an

114 MoGLSD Investigative Report into Chemical Exposure of Workers at Royal Van Zanten, Flower Farm in Wakiso, Uganda

115 *Id.,* see particularly pp 8-11.

116 Encyclopaedia Britannica, "Bhopal disaster industrial accident, Bhopan, India [1984],"

estimated 15,000 to 20,000 people in the neighbourhood died. Another half million survivors suffered respiratory problems, eye irritation or blindness. The investigation in the Bhopal case too revealed that substandard operating and safety procedures at the understaffed plant had led to the catastrophe.[117]

These accidents are in themselves a demonstration of the need for the host states to corporations to pay keen interest in not only corporate activity but also how they carry out those activities. Relatedly, it also shows that the state must develop the capacity to firstly monitor corporate activity, but also, in case of accidents, the capacity to investigate the incidences.

There has also been incidences of sexual harassment (and other forms of gender violence) at the work place.[118] There was no specific finding on sexual harassment from last year's annual report of inspection services.[119] By their nature, this is usually difficult to investigate. In other incidents, the-would be complainants lose interest for fear of losing the job.[120] This possesses a real challenge to any efforts to hold the perpetuators to account. For sexual harassment, remedial action lies in improved legal protection of the victim as an incentive to report.[121]

In summary however, some of the corporate abuses that have been documented include: Non-compliance with the Occupational Safety and Health Act, ('OSH') and in particular, non-commitment by corporations to allocate funds to address OSH issues.[122] Cases of delayed and/or deferred payment of wages have also been reported. Poor record keeping and worse still, non availability of records.[123] This facilitates labour breaches and can be an impediment to access to labour justice in case of dispute.

accessed at http://www.britannica.com/event/bhopal-disaster.

117 *Id.,*

118 See New Vision 'Minister Kabafunzaki arrested soliciting bribe'.

119 *Id.,*

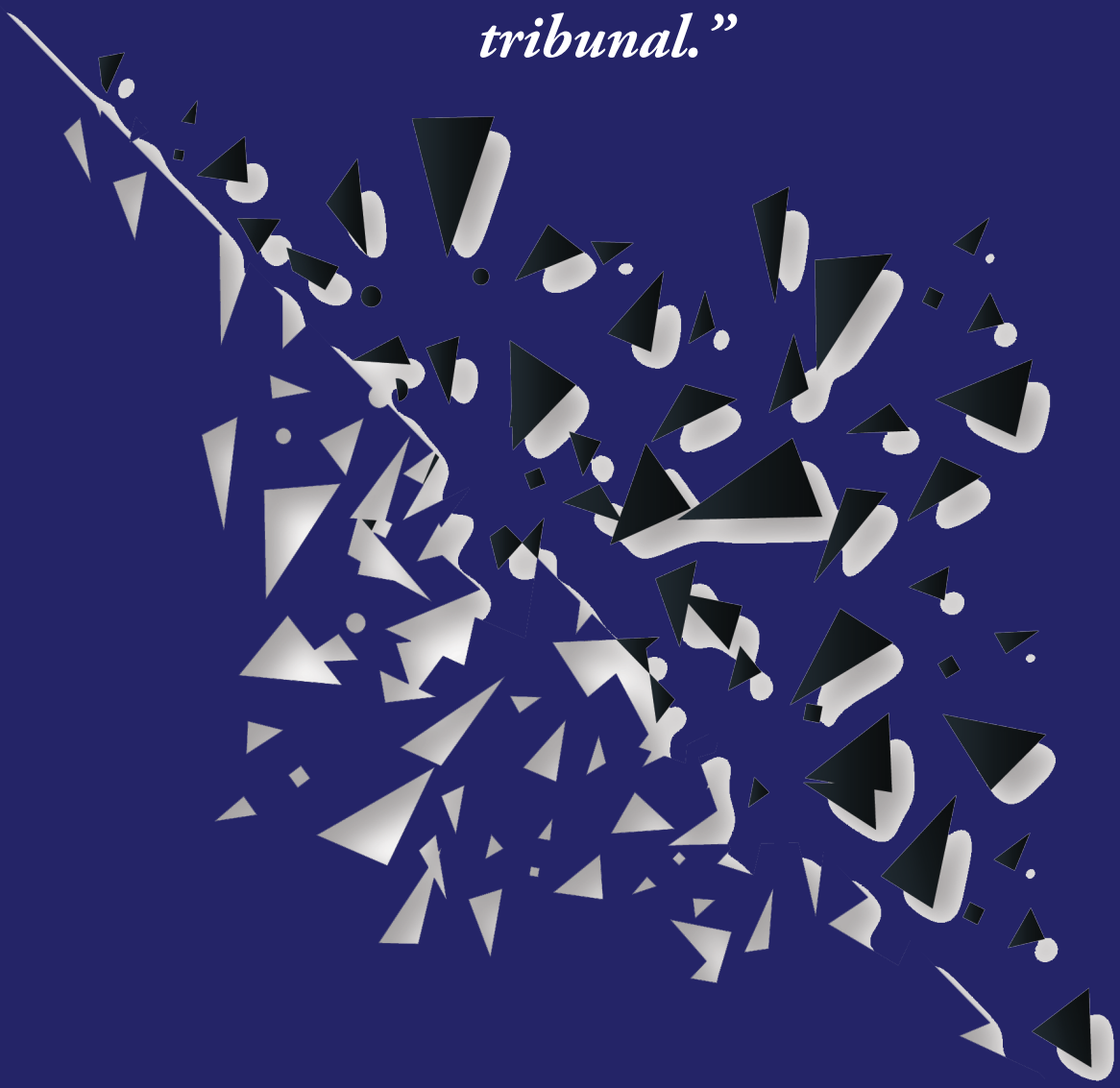
120 Source Interview: Member of Parliament 4.12.17

121 *Id.,*

122 See p 16 of the MoGL & SD Report, ibid.

123 Id.,

"The availability of an administrative remedy cannot fetter the right of a citizen to access to a court of law for a judicial remedy. A labour officer is neither a court nor a tribunal."



POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK IN UGANDA

A. Policies of Government

With regards to policies of the government relevant to this study, one has to refer to: (i) The National Employment Policy, (ii) the National Child Labour Policy, and (iii) the National Policy on HIV/AIDS and the World of Work. To a large extent, these have been incorporated into, and form part of the regulatory and institutional framework on employment matters. The gist of the Employment Policy is a commitment by Government to work towards the goal of decent and remunerative employment for all women and men seeking such work, in conditions of freedom, equity, security and human dignity. The National Employment Policy for Uganda provides a framework for achieving this goal.'[124] The Policy is also viewed by Government as the tool for interface between the economy and society in general and the lives of individual human beings in particular.[125] The Policy also calls for exceptional efforts and dedication from all stakeholders based on the principle for common purpose and aspirations for high productivity, competitiveness and renewed excellence. The Policy therefore demands for total commitment and shared vision. It is indeed a statement of confidence and trust in partnership that has been developed through social dialogue.[126]

The National Policy on HIV/AIDS and the World of Work[127] is yet another commitment by Government for an all inclusive labour force and to fight any form of violation of human rights at work particularly with respect to discrimination and stigmatisation of workers affected by HIV/AIDS.[128] Child Labour Policy on the other hand is government's policy statement on how it intends to combat the worst forms of child labour, economic exploitation and protection of children from hazardous work.[129] The Government recognises that any form of child labour denies them dignity, wellbeing, protection, and the rights to health and education.[130]

124 Accessed on 10/10/2017 from the Ministry Website http://gov.ug/about-uganda/government-policies/national-employment -policy
125 *Id.,*
126 *Id.,*
127 MoGLSD July 2007
128 See pp 8-10 of the Policy.
129 See the MoGLSD National Action Plan for the Elimination of the Worst Forms of Child Labour 2012/2013-2016-2017 pp 1-16.
130 See Note 68, supra.

As said, most of these policy statements have been incorporated into the legal and institutional framework. However, as with other legal instruments and policies, implementation is the problem. In fact, all the respondents during the interview agreed that Uganda's legal and institutional framework is largely responsive to, and in line with its international obligations on protection of human rights generally, and labour rights in particular. The challenge is in the resource envelope being inadequate and limited human resource. This coupled with the lack of political will, ultimately affect the monitoring and enforcement components in the sector.

B. Legal and Institutional Framework in Uganda

i. The Constitution

The Constitution of the Republic of Uganda, 1995 'herein the Constitution', is the grand norm and it contains specific provisions clearly intended to regulate labour but also to protect workers.[131]

Objective XIV of the National Objectives and Directive Principles of State Policy addresses social and economic matters. It is directed that the state shall pursue the social and economic objectives which fulfil the 'fundamental rights of all Ugandans to social justice and economic development and in particular, to ensure that all development efforts are directed at ensuring the maximum social and cultural well being of the people.[132] It further enjoins the State to ensure that Ugandans are guaranteed of equal rights and opportunities and access to work, pension and retirement benefits, among others.[133]

Article 40 specifically guarantees all persons satisfactory, safe and healthy working conditions. Article 25 provides for protection from slavery, servitude and forced labour while Article 33 provides protective measures for women. Article 34 protects children from any form of social and economic exploitation. Specifically, it provides that children shall not be employed or required to perform work that is likely to be hazardous or to interfere with their education or to be harmful to their health or physical, mental, spiritual, moral or social development.[134] Of course, as to whether

131 See also the Labour Annual Report for the MoGLSD (2016-2017) pp 7-8.
132 *Id.*,
133 *Id.,*
134 Article 34(4) of the Constitution.

Government has in place a robust mechanism to ensure respect for these rights-granting provisions is debatable. As can be seen from the Annual Report of Inspection Services of the Ministry of Gender Labour and Social Development (MoGLSD) 2016/2017, there are challenges around institutional capacities largely brought about budget constraints, which in itself leads to other challenges such as luck of personnel.

ii. The Employment Act, 2006

The Employment Act sets the minimum standards for decent and satisfactory working conditions pretty much the same way as the Constitution and international instruments, especially those of the ILO, as cited. The Act regulates both the private and public contracts of employment with the exception of service in the armed forces.[135]

In terms of protecting labour rights, the Act prohibits the use of forced or compulsory labour.[136] It also prohibits discrimination and obliges the responsible government Minister, labour officers and the Industrial Court to seek to promote equality of opportunity, with a view to eliminating any discrimination in employment.[137] The Act also prohibits hazardous child labour.[138] There are two important points to note with respect to this Act. Firstly, the Act introduced a provision which protects employees from transfer of contracts.[139] Under this provision, the consent of the employee is required in case of transfer of a contract of service from one employer to another.[140] This matter came up recently in the High Court in Misc. Application No. 475 of 2014: Livingstone Mukwaya and Anor. v Orange (U) Limited,[141] where former employees successfully stopped the transfer of majority shareholding to another entity before the head suit HCCS No. 321 of 2014 in which their employee issues were to be determined is heard and disposed off.

135 Section 5(2).
136 Section 5.
137 Section 6(1).
138 Section 32 of the Act
139 Section 28
140 Section 28(1)
141 Hon. Lady Justice Lydia Mugambe, J (as she then was). (unreported).

The learned judge cited Section 28 of the Employment Act on transfer of contracts. Section 29 of the Employment Regulations 2011 obligate the employer to consult the employee and obtain his or her consent at least 30 days before the employee is transferred from one employer to another.

The Employment Act also introduced a new phenomenon of sexual harassment. The Act enjoins every employer who employs more than twenty-five employees to have in place measures to prevent sexual harassment occurring at the work place.[142] The same provision is repeated in the Employment (Sexual Harassment) Regulations, 2012.[143] Under the Regulations, the employer who has more than twenty five employees 'shall adopt a written policy against sexual harassment…'[144] Moreover, the employer is obliged to provide a copy of the policy to each of the employees,[145] and also to have it displayed, and the policy forms part of the collective bargaining agreement.[146] There is also an obligation on the employer to set up a Sexual Harassment Committee ('SHC')[147] which has a clear mandate under the Regulations.[148] Under Regulation 19 thereof, there is a penalty for contravention of the Regulations and on conviction such persons is liable to a fine not exceeding six currency points. This translates to Uganda Shillings One Hundred and Twenty Thousand Only.

It is also important to note that under Regulation 17, the employees are protected from retaliation and discrimination. This notwithstanding, for this regulation to effectively work, there is need for a close monitoring of compliance by Government. Otherwise, the employer will still very much have the latitude to frustrate any internal investigations. This needs to be strengthened so that there are tangible and deterrent sanctions for sexual harassment. As it is, all workers, but particularly a female worker—due to gender dynamics and patriarchal undertones is left vulnerable and prone to sexual exploitation at the work place.[149] There should be inter departmental coordination with the Ministry of Internal Affairs in

142 Section 7(1) and (4).
143 Regulation 3.
144 *Id.,*
145 Regulation 6.
146 Regulation 7.
147 Regulation 10
148 Regulation 11.
149 This study is alive to a debate that it may be inaccurate to associate sexual harassment only to women. This is so because of the structure of our traditional African societies where 'men are not expected to report gender-related violence'.

this regard so that if private actors, and more so if a corporations is in violation, they are blacklisted and denied necessary operational licences or accreditation as a pre-requisite to doing business with Government of Uganda *('GoU')*.

a. Administration of the Act

For purposes of the administration of the Act, there is established, among others, the Labour Officers, and Commissioner. For the case of Labour Officers, they carry out inspections,[150] investigations, examinations, tests, or inquiry at any work place.[151] They can also take or remove for purposes of analysis, samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances used taken or removed for that purposes.[152] In the Annual Report of Inspection Services for the Ministry of Gender Labour and Social Development ('MoGLSD') 2017, the Ministry underscores the purpose of inspections and objectives as:

> [To] have a decent working environment through ensuring compliances with the labour legislation, harmony and peace, enforcement of the labour laws and bringing to the notice defects not covered by the labour legislations to authorities for information on policy formulation.[153]

This 2017 annual report by the MoGLSD must be commended. It is an effort at among others, to promote decent employment opportunities and labour productivity. It further promotes compliance of labour legislation and to protect workers/employers' rights in the world of work. The report also provides for the collection of labour related data for labour policy formulation, prevent accidents and occupational disease in the workplace, promote safety and health at work, and to identify and report to authorities defects in the workplace not covered by legislation for information and policy formulation.

150 Section 11(1)(a)
151 *Id.,* specifically see Section 11(1) (c)
152 Section 11(1) (c) (iv).
153 P8 of the Report.

b. Adjudication

Labour Officers also play an 'adjudication' role by way of mediation and arbitration.[154] The general comment on all the said officers is adequacy of their power, and also inadequacy of resources to carry out the tasks under the law. In terms of their number, the Labour Officers across the country total to 45 against the 122 Districts and 1 in the Kampala Capital City Authority ('KCCA').[155] At the Ministry, only 7 out of 17 established positions have been filled.[156] This is counter-productive on administration of labour justice in the country. Labour claimants in newly created districts with no established labour officers have had to resort to the 'mother' districts to resolve their labour claims/disputes.[157] This inevitably increases the costs of accessing justice especially relative to transport.

Secondly, the Labour Officers at the districts are appointed by the District Local Governments. There has been a concern whether they can issue any adverse orders to the district that recruited them.

By virtue of their appointment, their allegiance would naturally be with the Districts. They are also prone to political interference at the Districts level. All these related problems arise from the process of their recruitment and appointment and needs to be addressed to guarantee their security of tenure and make labour officers more effective. It has been recommended that the process of their appointment be revised and with a view to transferring them to the central government so as to streamline their operations and supervision with the line Ministry.[158]

It should be noted that under the Labour Disputes (Arbitration and Settlement) Act, read together with the Employment Act, the law appears to be that labour disputes must first be reported to a Labour Officer.[159] Unfortunately, the courts have given different interpretations to this

154 Section 93.
155 Source: Interview MoGLSD on 13.8.17.
156 *Id.,*
157 Interview: MoGLSD 17.08.17
158 *Id.,* 17.08.17.
159 Section 3 of the Act and Sections 12 (1) and 93 (1) of the Employment Act, 2006

Section of the law.[160] Sampled cases reflect variance in opinion and lack of consensus on the point by the courts.

In *World Wide Concern v. Kugonza,*[161] and *Hilda Musinguzi v Stanbic Bank (U) Limited,*[162] the courts were of the view that the Employment Act had taken away the jurisdiction of magistrates courts over labour matters and hence, one could not lodge a labour matter in a magistrate's court. The

first recourse, the courts there appear to say, was the Labour Officer. Both courts also agreed that the alternative was for one to lodge a labour complaint directly, in the High Court.[163]

In the later case of *Ozuu Brothers Enterprises v Ayikoru Milka,*[164] Justice Mubiru seems to have taken the view that a labour complaint as understood, could be filed with a magistrate's court as a court of first instance. This report is sympathetic to the arguments raised by Counsel for the Defendant in Hilda Musinguzi's case,[165] to the effect that:

> The Complaint to the Labour Officer under the Employment Act is an administrative remedy, which may be likened to a complaint to the IGG, or a complaint by a district employee to Public Service Commission under the Local Government Act. The availability of an administrative remedy cannot fetter the right of a citizen to access to a court of law for a judicial remedy. A labour officer is neither a court nor a tribunal.[166]

160 Uganda Broadcasting Corporation vs Kamukama High Court Miscellaneous Application No. 638 of 2014, See also Concern Worldwide v Mukasa Kugonza High Court Revision Application No. 1 of 2013 (Wolayo, J), and of Ozuu Brothers Enterprises v Ayikoru Milka, HCC Revision Case No. 02 of 2016; (Mubiru, J;)

161 *Id.,*

162 HCCS No. 124 of 2008

163 This study has revealed that up until 2015, the High Court, especially, the Civil Division at Kampala, could easily receive a labour complaint and hear it. However, unconfirmed reports revealed that there after, there was an administrative directive by the Office of the Principal Judge that all labour matters be referred to the Industrial Court.

164 *Id.,*

165 *Id.*, p 2.

166 HCCS No. 124 of 2008

The above argument was made with respect to the question whether a person could commence a labour complaint in the High Court. Indeed the court agreed, on the basis of Article 139(1) of the Constitution. Article 139 (1) grants the High Court original, unlimited jurisdictions over all matters civil or criminal. However, the unresolved question still remains with regard to subordinate courts such as the magistrates courts. Can one argue that it was the intention of parliament to make labour officers, courts of first instances when 'it took away their jurisdiction over labour matters' as it is reasoned in the case of Concern World Wide?

Moreover, even in the recent Constitutional Petition No. 33 of 2016,[167] no opportunity presented, since it was not one of the issues framed for the court, on the conflicting position by the High Court on the status of magistrates courts on labour disputes. The petition was concerned more with the terms and conditions of service of the members of the Industrial Court. The significant aspect of the petition though is that the Constitutional Court clarified that the Industrial Court is a court of judicature. This resolves the question of supervision, independence and funding to the court. It is hoped that with this clarification, and with necessary amendments, the industrial court will receive additional judges and necessary support in terms of resource allocation from the judiciary like any other court of judicature as envisaged in the Constitution.[168]

The status of the labour office in regard to its quasi-judicial function on the one hand, and the magistrates courts on the other hand, therefore remains controversial and could hamper administration of labour justice. Moreover, under both the Labour Disputes (Arbitration and Settlement) Act, and the Employment Act, the labour officer is limited in terms of remedies that they can offer to the litigants. For example, can the Labour Officer order, lawfully, a reinstatement of an employee? These need to be re-aligned to strengthen the labour dispute mechanism in Uganda so as to enhance its capacity to hold corporations in particular, to account, for their labour rights complicities.

167 Constitutional Petition No. 33 of 2016; Justice Asaph Ruhinda Ntengye and Anor. V AG (Unreported), dated 22nd December 2017.

168 See Article 129(1) of the Constitution.

For example, might the labour officer work efficiently, if the role of adjudication was taken off their backs and left only with the administration of the act such as inspections and licensing of work places?

Nonetheless, the practice is still that a Labour Officer is a 'court' of first instance in the labour dispute chain. This places a Labour Officer in Uganda as a key person in the administration of labour justice.

Some of the other concerns about Labour Officers outside of their appointments and tenure include;

- There is need to define the pecuniary jurisdiction of the labour officers for them to execute their mandate effectively. As it is, it appears that they can mediate and conciliate on any labour dispute. Whereas it is clear in the court system, the geographical and pecuniary jurisdictions of every judicial officers. The responsible Act clearly stipulates the geographical location and value of the subject matter of the dispute. This needs to be addressed urgently.[169]

- Related to this, the powers of Labour Officers under the Act are limited to simply mediating and conciliating disputes between parties to a labour dispute.[170] This is a set back because in the event that mediation fails, the dispute is referred to the Industrial Court which has only one circuit in Uganda located in Kampala. As such, the court is overwhelmed by the number of disputes it has to adjudicate and in that justice is also made inaccessible to some workers in remote areas.

- The Labour Disputes (Arbitration and Settlement) Act, together with the Employment Act, ably provide for the powers of the Labour Officers as regards settling of disputes without clearly stipulating their qualifications. This too, needs to be addressed by relevant policies and legal frameworks.[171] This is vital, as regards administration of justice, in ensuring that persons appointed as Labour Officers are not

169 See also Friedrich Ebert Stiftung "Baseline Survey on the Implementation of New Labour Laws in Uganda: A Case Study of Kampala, Jinja, Gulu and Mbarara Districts" executed by Uganda Labour Resource Centre (ULRC), May 2011

170 Section 4 and 24 of the Act and Section 93 (2) of the Employment Act (supra)

171 Section 4 of the Act and Sections 12 and 13 of the Employment Act, 2006

only fully qualified but also possess the requisite expertise to exercise their mandate under the Act. Clarifying the qualification issue would enhance their pecuniary jurisdiction to handle a wide range of labour disputes. The law should also be refined to specifically provide for orders which the labour officer can hand down to ensure consistency in decision making.

iii. The Labour Disputes (Arbitration and Settlement) Act 2006

This Act provides for and regulates dispute settlement. It specifically establishes the Industrial Court and the procedures for labour disputes resolutions. The Industrial Court is a court of equity. It does not, and by law, is not expected to apply technical rules of evidence. Although from an interview with a senior official of the court, the court has had to sometimes apply the Civil Procedure Rules for the reason that the Rules of Procedure of the Court are not elaborate enough to address all procedural issues which keep coming up.[172]

Secondly, the court's mandate does not extend to cover disputes arising from the Workers Compensation Act or the Occupational Safety and Health Act. These latter two fall under the magistrates courts.[173]

iv. The Labour Unions Act, 2006

This law deals with the establishment, registration and management of labour unions.[174] It provides for the core principles and rights at work majorly: the right to association and collective bargaining, establishment and operations of labour unions, and protection under the law for an employee or worker from victimisation or discrimination on account of their participation in industrial action.[175] There is no specific finding in the MoGLSD inspection report on how the corporate firms have respected and upheld the enjoyment of this right.[176]

172 Interview with Court.
173 See infra, for detailed discussion on the law, structure and establishment of the Industrial Court.
174 For detailed discussion on Trade Unions See 'Non-State Actors' infra.
175 *Id.,*
176 MoGLSD Report, Id.,

This notwithstanding, in the last few years, the country has experienced a number of strikes from different unions including the teacher's union, the Uganda Medical Association, the Public Prosecutors Association and the Makerere University Staff Association. Reinforcing the challenges of unionizing in Uganda, most of these sectors are fully financed by the Government and it was evident that the State and its machinery often threatened the striking employees to resume work. On various occasions Makerere University was closed by the President of Uganda whenever University Staff adamantly refused to call off the strike. When the Doctors strike was only, the President threatened to fire all of them and bring in Cuban doctors.

v. The Occupational Safety and Health Act, 2006

This law sets standards for safety and working conditions in work places with focus on industries, processing plants etc. The Act provides for inspections, approvals and certifications of work places. And as the title suggests, the Act is intended to regulate aspects of safety in potentially hazardous work places. Under the Act are set, various institutions for purposes of administration of the Act. These include: Inspectors, The Occupational Safety and Health Board, Advisory Panels, Safety Committees. These are intended to ensure safety in buildings, storage and transportation of potentially hazardous products, fire prevention, maintenance of machinery, plant and equipment.[177] The MoGLSD is mandated to carry out regular inspections of all work places to ensure compliance.

With regard to inspections, during the year of 2016/2017, MoGLSD was able to carry out a total of 487 labour inspections. Of these, 375 inspections were routine, 107 spot inspections while 5 were follow-up inspections.[178] The Report points out that most the routine inspections were carried out in the service industry (179), followed by processing (88) and manufacturing (58) respectively. The least number of inspections were carried out in the mining and quarrying industry (10).[179] The Report documents key findings including ignorance of the law and a number of workplaces being operated in direct contravention of the OSHA in critical areas such as safety and health of workers. Other notable findings in the

177 See Parts III, IV, V, VIII, XI, and XII of the Act.
178 MoGL & SD report, p 14.
179 *Id.*, bid, p14.

Report are: No commitment to OSHA as could be seen in inadequate funds allocation to fix OSHA issues and obstruction of entry to work places by the employer, among others.[180]

The Report also points out some challenges faced by inspectors such as; lack of laboratory facilities and portable equipment for field investigations, clinical, biological, physical and chemical aspects of occupational health and hygiene, and of course, as has already been pointed out, lack of adequate personnel.[181]

vi. The Workers Compensation Act, Cap 225

The Workers Compensation Act (WCA) provides and regulates situations when accidents happen at the work place. It covers accidents and injuries sustained out of and in the course of employment. The object of the Act is to provide compensation to all workers for injuries suffered and scheduled diseases incurred in the course of and out of employment.[182] The matters under this Act fall in the Magistrate's courts. During an interface with a senior official of the Industrial Court, it was noted that there is need to harmonise this, as is with the Occupational Safety and Health Act, so that the forum for dispute resolution is not scattered.[183] The study however established that the challenge to enforcement of workers compensation arises from non-reporting of the accidents by the employers.[184]

vii. The Persons with Disabilities Act, 2006

The general principles under this Act are progressive and commendable. It focuses on persons with disabilities with a clear object of removing all form of barriers to equal treatment of persons with disabilities at the workplace including according them access to socio-economic opportunities with dignity.[185] It can be argued that the Act very much fits in the parameters of the Convention on Persons with Disabilities in terms of text.[186] The major challenge that this study reveals is that employment is still very

180 *Id.,* p16,17, and 18.
181 *Id.,*
182 See Section 3 of the Act.
183 See Industrial Court, infra.
184 See Note, 157, Op.cit, p 19.
185 See Sections 3, 5,6, and most importantly, Part III of the Act on 'Employment of Persons with disabilities.
186 See for example Articles 4, 5, 16, 18, 20, and importantly, 27 of the Convention.

much considered a private contract which parties freely enter into. There is perhaps little that the State can do in real tangible terms for the full realisation of the objects of the Act. The employers determine who and when to employ. And with the liberalisation of the economy, where private businesses are increasingly becoming stronger than state institutions, the State is almost held hostage to its own laws and policies.[187]

In some cases, it has been a challenge to enforce government policies because the-would be policy implementers are also investors in critical sectors. Perhaps one such sector has been education where policy implementers also own and run private schools.[188]

In the education sector, the adoption of a neoliberal economy was based on economic reforms that proposed that government should divest itself from the delivery of social services and encourage the private sector to play a leading role. These economic reforms increased private sector involvement in the social service sectors albeit—amidst a weak state regulation and supervision as is within the education sector.

The weak regulation capacity stems from a number of factors like the lack of will by those charged with the responsibility to regulate and supervise the non-state actors. This is due to the fact that many key policy makers and implementers own private schools. And setting and implementing stronger policy and legal framework that seek to protect the public from exploitation appears to be unfavorable to the flourishing of their private schools and legislating themselves out of business. A case in point is the long persistent public outcry of many high ranking private schools in the country setting high school fees structures. However, not much beyond issuing of Circulars by the Ministry of Education has been done to put these none state actors to order. This could be as a result of many of these top private schools being owned by top government civil servants, members of parliament and ministers especially in the Ministry of Education and Sports that is charged with the responsibility of monitoring and supervising the education sector.

187 Interview MoLGSD 6.12.17
188 See Note 120, supra.

However, in terms of institutional capacity, there is evidence of steady progress. For example, the Equal Opportunities Commission is mandated to promote equal opportunities for marginalised groups, including persons with disabilities.[189] The same could be said of the jurisprudence in Uganda: *Legal Action for Persons with Disabilities v The Attorney General.*[190] The issue in that case against Kampala Capital City Authority ('KCCA') and Makerere University, ('MAK') was on grounds of lack of access to public buildings and facilities by persons with disabilities. The Applicants argued that this amounted to discrimination and was contrary to the relevant provisions of the Constitution, and the Persons with Disability Act, 2006 which required that public buildings be accessible to persons with disabilities to enable their full participation in society.

The Court observed that the two institutions had taken sufficient and reasonable steps within their means to make their buildings and facilities accessible. The court also held that KCCA and especially MAK had limited resources and could not fully make all buildings immediately accessible and that the current state of inaccessibility was attributable to buildings constructed prior to the period when issues of disability became a pertinent national agenda.[191]

One could argue that the decision was a win-win. Implementation of human rights issues will not be divorced from availability of funds. The implication of this decision is that disability needs will have to compete with other societal demands.

189 See Louis O Oyaro, in African Disability Rights Yearbook (2014) pp247-266 at p253.
190 Misc. Application No. 146 of 2011 (High Court of Uganda). See Note 168, Op.cit, p 254.
191 *Id.,*

c. Externalisation of Labour

i. General Observations

Externalisation of labour is not a new concept. It has always existed from time immemorial albeit for different reasons and under different circumstances. Earlier studies have categorised emigration in Uganda into three *'waves'*[192] namely the Amin era in the 70s, 1971-86 on account of political instability, and the third, and perhaps more connected to this report is globalisation's push and pull factors of labour mobility.[193] It has been projected that this pattern will increase in the East African region because of the regional integration in areas of the common market and free movement of goods and services.[194]

ii. Legal and Institutional Framework in Uganda

There is no doubt that externalisation of labour has been under both Constitutional and legal dimensions. It is to a large extent an issue of one's right to freedom of movement in and out of Uganda. Secondly, is one's Constitutional right to pursue economic good.[195] In as much as these are not entrenched rights, the state has a task, in case of their limitations, to justify any limitations within the true meaning of Article 43 of the Constitution which provides for allowable limitation on the enjoyment of human rights and freedoms.[196]

Article 29 read together with Article 23 of the 1995 Constitution guarantees the freedom of movement. Article 29 (2) provides:

192 See Mulumba, D. & Olema, WM, 'Policy Analysis Report: Mapping Migration in Uganda' Report developed under the African research and curriculum development project IMMIS-Africa.

193 See also: Orozco, M (2008) 'Remittance Transfers, its Marketplace and financial intermediation in Uganda: Preliminary Findings, lessons and Recommendations. Report commissioned by the Inter American Development Bank in cooperation with the African Development Bank.

194 International Organisation for Migration (IOM), (2003) Migration in Uganda: A Rapid Country Profile, p15.

195 Objective XIV of the Constitution of Uganda on 'Social and Economic Objectives'. See relatedly Article 29(2)(b), and (c) of the Constitution.

196 Constitution of Uganda.

'Every Ugandan shall have the right-

(a) To move freely throughout Uganda and to reside and settle in any part of Uganda;
(b) To enter, leave and return to, Uganda; and
(c) To a passport or other travel document. (emphasis added)

To a great extent, the Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations SI No. 62 of 2005, herein, 'ERUMWA', is a comprehensive regulatory framework. It is by far, a good balance between Ugandans right to freely move out and into the country on the one hand, but also, the government playing its role to protect its citizens abroad outside of its territory.

It is uncontroversial that the concept of migrant labour in the past was *adhoc* and private. Even labour law as a discipline in Uganda did not concern itself with migrant labour as such. This holds for Uganda's labour laws as well. It was not until about the 2000s, when the media started to highlight some of the precarious conditions under Uganda's migrant workers abroad were working, that human rights organisations began to re-focus.[197]

Similarly, government became more interested as pressure piled on it to regulate the sector. Perhaps, ERUMWA is a product of that pressure. Whatever the case, the procedures that have since been put in place, under the said regulatory framework, and inter-departmental measures especially between the MoGLSD, and the Ministry of Internal Affairs, coupled with private initiatives of labour recruitment firms to form loose coordination and monitoring linkages with government, is a credit to the MoGLSD and government. The licensing procedure, monitoring and recruitment has been provided for with clear parameters.

Moreover, for recruitment firms, the licences can now be revoked. It should be observed, to the credit of government, that internally, there are adequate regulatory checks, to ensure the safety of Ugandans abroad. What might be of a challenge is the capacity of the State to provide adequate and continued safety to its citizens outside of its territories.

197 Interview: NETPIL

A number of obstacles have been identified. One major one is the logistical challenges brought about by a lean resource envelope but also priorities of government keep varying. Secondly, the migrant workers abroad could be scattered all over the world including in jurisdictions where Uganda may not have consular services.

These challenges explain why the government, aware of its responsibility to give its people abroad consular services, may in the meantime only guarantee safety of its citizens in only countries for which they have in place consular services. The regulatory framework therefore helps government to establish where the migrant worker is going to, what they are going to do, under what terms and conditions. It is therefore possible, ones' right to freely move out, and into Uganda notwithstanding, for the government to deny travel out of Uganda for the safety of that citizen. Other reasons for refusal for a citizen to move out of Uganda were identified as security concerns if such a person has a criminal record, or is suspected to be running away from criminal responsibility, or for their own safety.[198] Also, if in the view of government, the monetary gain that the migrant Ugandan would benefit from the job abroad is not better than similar engagements if they had stayed back home. [199]

One can go as an individual or under a licensed company. One has to present a sample employment contract that has to be approved. Remuneration of not less than 1200 UAE Dira (Approx. UGX 8.5 Million) is what is approved.[200] There must be provision of leave, health insurance, repatriation in case of sickness or death. Interpol clearance must also be obtained.[201]

In 2005, government adopted the Guidelines for Recruitment of Ugandans Migration Workers Abroad. This was followed by the Guidelines on Recruitment and Placement of Uganda Migrant Workers Abroad, 2013. These will help streamline labour migration in terms of enforcement standards, respect for employee rights, processing of complaints, and most

198 Interview, Focal Person for Migrant Labour, MoGLSD
199 *Id.,*
200 *Id.,*
201 *Id.,*

importantly, provision of consular services. Through these Guidelines, Government is also able to fight significantly, human trafficking through licensing and monitoring of recruiting firms.[202]

Challenges include dealing with embassies such as the Embassy at Riyadh which is small compared to the huge country. There is now in place a paper based complaint mechanism and monitoring framework to check on Ugandans abroad. There is now an online system being developed to know where the Ugandan employees abroad are. It was not apparently clear, how long this system will take to be in place.

This study has revealed that regulation of externalisation of labour has been a delicate balance between respect of citizen's rights to freely move out of and return to Uganda on the one hand, and protection of its citizens by the state, on the other hand. What appears to be 'restrictive' interventions by the state has been made necessary because of reports of human trafficking, abuse and exploitation by employers abroad.[203] This is against the backdrop that Uganda is considered a source, route and destination of human trafficking.[204] A Hansard retrieved from Parliament on the issue of human trafficking contained the submission of the findings of a delegation sent to Malaysia to follow up the issue. The report highlighted some of the avenues of human trafficking in Uganda. This was through adverts for job opportunities, further studies and the relaxed immigration rules in countries like Malaysia. The report also noted that some of the major cities that host Ugandan trafficked girls include Dubai, Kuala Lumpur, Hong Kong, Bangkok and Huang Ju. Malaysia alone was host to over 600 Ugandan girls in their late teens and early 20s.[205]

202 Interview: Focal Person, Migration of Labour, MoGLSD.
203 Interview, Directorate of Labour, MoGLSD 17.08.17.
204 Source: Interview: EOC
205 Parliamentary report, Thursday March, 22, 2012.

"It is without a doubt that CSOs play a critical role in shaping the debate around accountability and enforcement of laid out policies and legal frameworks as far as they advance promotion, protection respect and broader realisation of human rights standards."

OTHER KEY STAKEHOLDERS CRITICAL IN ENHANCING CORPORATE ACCOUNTABILITY

a. Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs)

Non Governmental Organisations (NGOs) and Civil Society Organisations are considered the 'fifth estate' in the corporate governance structure. They have always played a critical role where the state has not acted or is dragging its feet. NGOs are 'quick to identify corporations which are open or complicit accessories to human rights abuse'.[206] They have also mobilised the affected communities in protests, lodged public interest law suits, and lobbied government to intervene. NGOs have also played a key role in the labour aspects of corporate codes.[207] At the minimum, NGOs have asked for inclusion of minimum ILO labour standards into these codes.[208]

It should also be noted that over the years, a global network of NGOs is steadily developing in the area of monitoring and auditing individual corporate codes in the global production chain including contributing in policy and governance of these codes.[209] On the same wavelength, are specialised for-profit global accounting firms. In the former are not-for profit, business-controlled international NGOs such as Worldwide Responsible Apparel Production, and Social Compliance Initiative created by corporations to provide monitoring, training, research, and other services to TNCs. The other category of NGOs are not-for-profit multi-stakeholder such as Social Accountability International and Ethical Trading Initiative created through negotiations among two or more types of stakeholders. This latter category 'provides monitoring, factory/brand/ firm accreditation, and other services, and have a degree of autonomy from TNCs. The study concerned its self with the latter category because of the relative autonomy they enjoy from TNCs.

206 hestack, Id., p 102,

207 See Jenkins R, (ed). "Corporate Responsibility. Labour Rights" (2002) Earthscan particularly Chapter Two "The Political Economy of Codes of Conduct" pp 13-29.

208 *Id.*, p15.

209 See Wells Op.cit, at p 52. See further Esbenshade, J. (2004) Monitoring Sweatshops. Temple University Press, Philadelphia, p 142. See also Gerefi, G et al & Memedovic, O. (2003) The Global Apparel Value Chain, United Nations Industrial Development Organisation, Vienna, pp see also Gerefi, G. et al. (2001) The NGO-Industrial Complex, Foreign Policy, pp 56-65.

However, though NGOs are presumed to be not-for-profit organisations, there are new developments which have brought in organisations with a strong market-orientation making it hard to draw a line between 'non-profit' and for-profit NGOs.[210] This casts doubt on their credibility in monitoring compliance of labour standards. Nevertheless, NGO involvement in monitoring of corporate codes is crucial because of the economic imbalance not only between states and corporations but also among monitors as well.

Of course NGOs interventions globally have suffered some setbacks and therefore affected their performance and deliverables in the areas of human rights. First, they have to be licensed. In most cases, depending on how the host country views the activities of a particular NGO, they are likely to encounter challenges in renewal of their license. These reprisals are more prevalent in less democratic states where the governments are intolerant to alternative view points, and are less transparent and accountable. Secondly, is the issue of funding. NGOs do not have funds of their own. They have to mobilise well wishers who are sympathetic to their causes. Inevitably, this brings about fluctuations in availability of funds forcing the NGOs to cut budgets and streamline operations.

The promulgation of the 2016 Non-Governmental Organisations Act was viewed from the CSO angle as an attempt by the government to further constrain the operations of the CSO and shrink spaces to demand for accountability. It is without a doubt that CSOs play a critical role in shaping the debate around accountability and enforcement of laid out policies and legal frameworks as far as they advance promotion, protection respect and broader realisation of human rights standards. In playing this role, CSOs working around specific areas in natural resource governance, trade and investment and land acquisition processes, have often conflicted—mainly with government to a point that CSOs and other human rights activists in these sectors have been branded anti-government and economic saboteurs.

210 See Stubs, P. (2003) International Non-State Actors and Social Development Policy, 3(3) Global Social Policy, pp 319-48. See further Wells Op cit, at p 53.

b. Trade Unions

Existing literature on the history and operations of the trade union movement in Uganda paints a rather dim picture of their impact in creating real operational space good enough to enable workers engage with the employers.[211] Barya argues that historically, the right to freedom of association and to collectively organise is a contested right.[212] The interpretation of this professorial statement is that perhaps, it is not one of those rights the state is happy to guarantee and enforce. Key concerns about trade unions in Uganda are majorly three: Firstly, lack of independence. Within the broader ILO context, independence of workers organisations is a principal aspect of Convention 87 on the Freedom of Association and Protection of the Right to Organise, for a common cause usually, to achieve better working conditions.[213] How independent these organisations are can be assessed on the enabling law. For example, the appointment of the Registrar under Section 13 of the Labour Unions Act who is charged with the registration of labour unions, is by the responsible Minister. This makes the appointment very political and registration or deregistration of a labour union could be informed by political considerations. Moreover, the Registrar may refuse or cancel a registration, at his primary discretion.[214]

Secondly, are instances of political interference (direct or indirect).[215] It has been argued that there is a thin line between a trade union or a workers organisation and a political party. This characteristic of workers' organisations and trade unions always invite state scrutiny directly or indirectly, through legislations, of their activities and operations. The first two concerns lead to the third one, the financial base of these workers'

211 Barya, Op. cit, CBR Working Paper No. 17

212 Id., See generally the lead judgment of Twinomujuni JA (as he then was) in Constitution al Petition No. 08 of 2004; Dr. Sam Lyomoki & 5 Ors. v The Attorney General pp 5-11.

213 See Convention 87

214 See Sections 19, and 20 of the Act. While the affected labour union that is aggrieved by the decision of the Registrar refusing, delaying or cancelling the registration of the labour union may have a remedy by way of appeal to the Industrial Court, the structure of the court as it is now, complicates the adju dication process. This has the possibility of taking more time than is necessary thereby undermining the government's commitment for respect and promotion of principles and rights at work including the right to freedom of association and the effective recognition of the right to collective bargaining. Moreover, under Section 22 of the Act, once the labour unions registration is cancelled, they cease to enjoy the rights and immunities granted under Section 24

215 See Barya, Op.cit.

organisations to support their activities. Due to these challenges, their capacity to mount pressure on business entities poses an even more complex problem. Both the state and business entities can, and have always exploited these challenges workers' organisations face in order to keep them in a position where they exist just well enough to exert some sort of pressure albeit manageable pressure. However, because of their structure—perhaps like any other such organisations, the focus is on the top leadership and not necessarily the membership. This is easy to deal with and in some cases, hijack and control. This maintains a disconnect between the workers and their leaders and therefore, to an extent, dis-empower the workers from achieving substantive worker's rights thereby leaving the state and the business entities to deal with a smaller group—the leaders. This is what we would call *'corporatizing'* workers organisation and trade unions.

The other challenge which trade unions face arises from the structure and operations of trade unions. The biggest tool that trade unions employ is use of their numbers. They exert pressure only when they act in combination including industrial action. There are associated down strips to this: Firstly, the workers may still require operation space within the premises of the employer in order to have impact. This leaves them at the mercy of the employer who can elect to close down the work place. The result is that the workers in such circumstances may be declared trespassers.

Secondly, there have been conflicting authorities about the legal status of workers who are on industrial action. Other authorities seem to suggest that a striking worker has effectively repudiated the contract of employment and therefore not entitled to pay.[216] The possibility of the employer not paying striking workers is effectively a tool for the employer. Once pay is withdrawn, it is likely it will weaken the resolve of the striking workers to carry on with the strike. The employer can also succeed in creating camps among the striking workers. Those who wish to continue with the strike and the others who may feel so threatened by the possibility of dismissal and want to resume work. Once this division is created, the strength of the strike is weakened.

216 Simmons v Hoover Ltd (1977)QB 284;

The beneficiary to this set of affairs is no doubt, the employer. Relatedly, striking workers also risk dismissal for 'repudiation' of the contract of employment. This specific areas need 're-alignment' so that workers striking in contemplation of an industrial dispute are protected in whole including against dismissal for 'repudiation of contract of employment.'[217]

Furthermore, under Section 46 of the Labour Unions Act, the applications of a labour union's funds are regulated. They may not use their funds for activities outside those specified in the law including not to pay for individual fines or penalty imposed by a court of law on any individual or officer, except where the fine or penalty has been imposed on the registered organisation itself.[218] This undoubtedly has a chilling effect on the individual member or officer and in the long run affect the vibrancy of the organisation at large, to advance its objects.

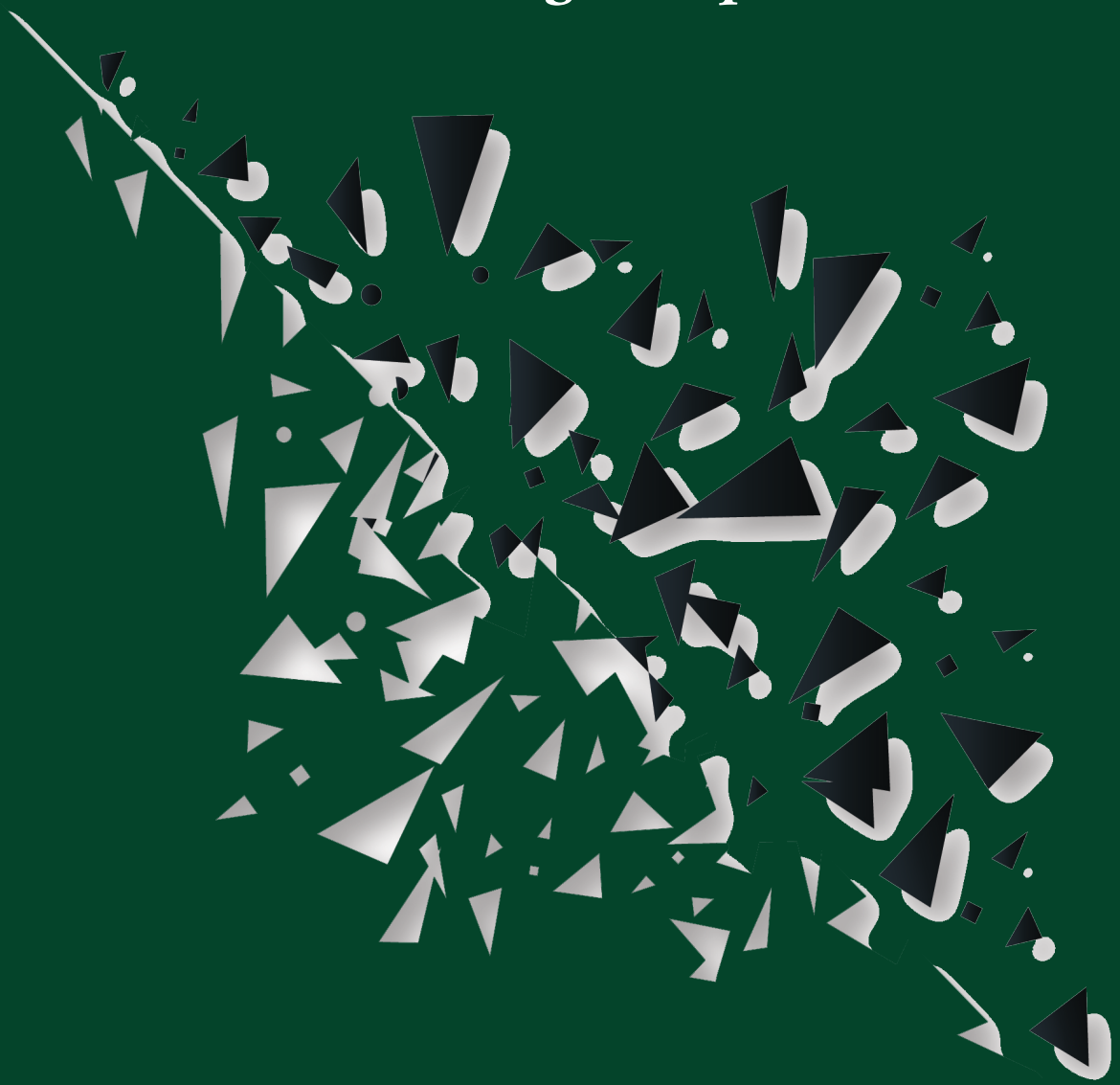
It ought also to be noted that over the years, worker's organisations have faced newer challenges largely from two fronts. The first one is sub-contracting of work otherwise 'outsourcing.' This has been made possible because of technology where the production seeks to cut the cost of labour and or to avoid scrutiny from state regulation for non-compliance with labour standards, always engage workers in a foreign territory and relatively cheap cost. These are difficult to monitor since they operate in foreign territory where trade unions and worker's organisations may not easily reach without legal and practical challenges. Secondly, is the problem of the informal sector. These are likely not to belong to any worker's organisations or trade unions owing many times, to their nature of terms and conditions of work. They do not have definitive terms and are usually short. This category is likely to be the most abused by business entities.

It has also been argued elsewhere that Trade unions have a poor record of international networks yet they should be the champions of workers rights advancement.[219]

217 Dimbleby & Sons Ltd. v National Union of Journalists (1984)1 All ER 751
218 Section 46(2).
219 See Harry op cit, at p 276.

This would inform and build international consensus on responses to labour rights abuses so as to narrow the operation's space for corporations who may wish to transfer their human rights complicities to areas where the workers are less vigilant. This notwithstanding the fact that they have interests in labour standard enforcement.

"The UHRC Human Rights and Business Country Guide provides country-specific guidance to assist business entities respect human rights and contribute to sustainable development. The Country Guide emphasizes the importance of "companies to manage their potential human rights impacts."



SUMMARY, FINDINGS AND CONCLUSIONS

a. Summary of Findings

The problem corporations pose for their host countries in terms of how they should be regulated is not unique to Uganda. Corporations anywhere poses similar traits everywhere: they have in their possession huge capital, and which is quite tempting, (in some cases irresistible), depending on the host's economic standing; they bring with them undisputable investment and employment opportunities; and technology advancement. They also broaden the tax base directly and indirectly. These are necessary evils attractive to any economy. The big question is usually how to take benefit from corporate activities without compromising the enjoyment of economic social and cultural rights. Coupled with the fact that there has been no consensus even at the global level on what model best suits regulation of corporations, host countries have had to build capacities based on obtaining circumstances at home balancing out the needs and interests of all the stakeholders. State reactions therefore have been informed largely by home situations.

b. Key Findings

i. Casualisation of labour

This study has revealed that there has been pockets of casualisation of labour in Uganda's labour market. This is where a labourer works for a long time as a casual worker without any formal contract.[220] A casual labourer is largely at the mercy of the employer. Besides his wages, which by practice are paid weekly, and in some cases, daily, a causal labourer has no definite contract that spells out their terms and conditions of contract. A casual labourer also cannot receive other social security benefits and protection. While it may be difficult to ensure social protection and social security for casual labourers generally, because there is no end to being a casual labourer, it becomes the point of abuse by the employers especially the corporations who are engaged in extractive industry. Policy makers should look into the issue of casual labour and streamline its operations so as to bring to effect the Employment Regulations 2011 which prohibits for casual labourers beyond a period of four months.[221]

220 Under the Employment Act, 2006, a 'contact of service' is defined to mean and include an oral contract. See also Section 25 and 26 of the Act.

221 See Objective 14 of the National Objectives and Directive Principles of State Policy of Uganda's

Beyond this period, such labourer ceases to be a casual labourer and is therefore entitled to the protections of an employee under the Employment Act.

ii. The Industrial Court

Generally, the Industrial Court has been commended for its non-adherence to technical rules of evidence. This makes the court user friendly for court users who may want to represent themselves. However, this has not come without problems. A number of concerns keep featuring each time a discussion around its operations comes up.

The discussion below relays some of the recent concerns that have been partly been resolved in Constitution Petition No.33 of 2016.

1. Its composition

Currently, under the law, the court's composition comprises the Chief Judge who is the administrative Head of the court, a Judge, and three other members. By the time of this report, the court still had only the two pioneer judges. The import of this is that the court can only afford one coram. Interview with one of the staff revealed that the court operates sessions upcountry to take their services nearer to the people. When this happens, the other parts of the country including the Kampala area where the court is situate, have no business. This ought to be looked into as a matter of urgency so that the services of the court are spread across the country as near as possible, amidst a thin resource envelope. Decision making by the Court is effected by the panel reaching a unanimous decision—with the Chief Judge deciding the case where the court cannot reach a common decision.[222] However, most of the disputes referred to the Industrial Court are law related which the independent member and two representatives are usually not well versed with, leaving the ultimate decision making to the judges.[223]

Constitution Constitution on General Social and Economic Objectives. But see also Regulation 39 of the Employment Regulations, 2011.

222 Section 13 of the Act.

223 *Id.,*

And as already observed, the Act empowers the Chief Judge to make the final decision where the Court fails to reach a common decision.[224]

2. Security of Tenure of the Judges

Until the decision of the Constitutional Court in Constitutional Petition No. 33 of 2016, the judges of the Industrial Court had been appointed on a five year contract.[225]

The background to the Petition was the two pioneer Judges of the Industrial Court filed the Constitution Constitutional petition contesting the constitutionality of Section 10 of the Act. Their complaint was that the impugned Section is so far as it placed them under contract was inconsistent with, and in contravention of Articles 2, 21(1) & (2), 40(1)(b), 129(1)(a) and 144(1), (2), and (3) of the Constitution and therefore null and void. They further complained that Section 10(3) of the Act was discriminatory in regard to tenure of office, pensions, and other benefits enjoyed by other Judges which was contrary to Articles 2, 21(1) & (2), 40(1)(b) and 144(1) of the Constitution. The court did not make specific findings on this second complaint as it was never canvassed at hearing.[226]

The Constitutional Court has now clarified that Judges of the industrial court are judges of the Courts of judicature, and as such are in permanent and pension service.[227] Section 10(3) of the Act, was also found to be inconsistent with Article 2 of the Constitution and therefore declared null and void.[228] These pronouncements by the Constitutional Court settle the question of the status of the judges of the Industrial Court in line with the Constitutional interpretation and meaning of the office of Judge. This further brings the Industrial Court Judges at the same level with equivalent judges in the region. For example, the Labour Institutions Act of

224 Section 13 of the Act
225 Section 10(3) of the Act. The judgment of the court came when this report was in very advanced stage. Nonetheless, this entire Section of the Report had to be revisited because of the importance of the court pronouncements some of which were on issues of the court which had been in the public domain for a while.
226 See pp 19 and 20 of the judgment.
227 *Id.,* p19
228 *Id.*, p 19.

Tanzania[229] places the equivalent of the Industrial Court as a Division of the High Court of Tanzania. There is little doubt that the new dimension brought about the Constitutional court strengthens the security of tenure of the officers of the industrial court. Moreover, the Industrial Court has also, by that decision, been placed under the Judiciary. This may mean improvement in the resource envelope and staff deployment at the court. The same can be said of Kenya. Under their Employment and Labour Relations Court Act, Cap 234, the Principal Judge and the other judges to the court are appointed by the Judicial Service Commission in line with Articles 165,166,167, and 168 of the Kenya's Constitution and they serve until retirement or until removed under the Constitution.[230] Similarly, their remuneration is charged on the consolidated Fund.[231]

It should however be noted that the Petition was more about the security of tenure of the members of the court. It did not address the significant issue of the courts jurisdiction. One could argue that we missed a golden opportunity to have a pronouncement by a higher court on the matter. Hopefully, there will be another petition or better still, an amendment. Of course as to whether the Constitutional Court can grant jurisdiction is another matter. This appears to be a mandate of parliament in which case, the best remedy might be an amendment as opposed to a court action.

4. Nature of Disputes and the Jurisdiction of the Court

There had been concerns that the Act is not clear as to whether the Industrial Court has the powers of the High Court or is simply a tribunal, in exercising its functions.[232] The Industrial Court only handles references and appeals but is not a court of first instance under the Act. There are some labour disputes which are of a high value in terms of subject matter such that they ought be handled by a judicial officer to save time since in most cases, chances of mediation before a Labour Officer being successful are extremely low.

229 Section 50 of the Labour Institutions Act 2004, Act No. 7.
230 See Sections 4,5,6, 7, and 8 of the Act.
231 Section 8.
232 Derrick Kiyonga "Bigirimana Warns on Workers' Safety" All Africa Global Media, April 25, 2016 accessed at allafrica.com/stories/20164250710.html

However, these concerns too have been clarified by the Court in Constitutional Petition No. 33 of 2016.[233]

The court found that the Industrial Court is one of the courts of judicature as per Article 129 of the Constitution. However, the Court was emphatic that the Industrial Court was a subordinate court established by Parliament of Uganda under Article 129 of the Constitution.[234] It further noted that, though not a High Court, the Constitutional Court found that the Industrial Court had concurrent jurisdiction with the High Court.[235]

Furthermore, while the Act does not make provision for interlocutory reliefs such as temporary injunctions and interim orders being sought pending determination of a labour dispute by the Industrial Court,[236] it ought to be noted that under Section 16(1) of the Act which the court noted, 'An award or decision of the Industrial Court shall be enforceable in the same way as a decision in a civil matter in the High Court.'[237]

However, execution of some court orders is unclear under the Act. For example there are no specific provisions on orders of reinstatement of employees and the procedure for execution of the same.[238] One therefore has to rely on the general powers of the courts embodied in provisions such as Section 98 of the Civil Procedure Act, or 33 of the Judicature Act or better still, Article 126(2)(e) of the Constitution.

As regards the status of the Industrial Court, it is true that the Constitution of Uganda provides for the unlimited original jurisdiction of the High Court in all civil matters.[239] However, judicial precedent has made it clear that conferment of jurisdiction on to the Industrial Court does not affect the original jurisdiction of the High Court.[240]

233 *Id.*,
234 *Id.*, p13
235 *Id.,*
236 Derrick Kiyonga, supra.
237 Petition No. 33 of 2016, p 13.
238 *Id.,*
239 Article 139 (1) of the Constitution of the Republic of Uganda, 1995
240 Justice Musota Stephen in Uganda Broadcasting Corporation vs Kamukama HCMA 638 of 2014.

The Labour Officers and the Industrial Court were established for easy access to justice and proximity to the public and resort should be had to them before the High Court to avoid unnecessary expenses.[241]

a. Recommendations for the Court

Therefore, it is recommended that a pecuniary limit is set for certain disputes, of a subject matter of a high value, to be adjudicated by the Industrial Court as a court of first instance. This is mainly because chances of a positive outcome from mediation are low and as such, they should be handled by judicial officers as of first instance to prevent undue delay in resolution of disputes.

Secondly, provision can be made for court based mediation before determination of labour disputes. This can be done through application of the Judicature (Mediation) Rules 2013 to the Industrial Court. All courts are bound by these Rules to refer every civil action for mediation before proceeding for trial.[242] As such, not all labour disputes will have to be reported to the Labour Officer as of first instance for purposes of mediation.

Thirdly, the report recommends that each panel should be presided over by a single judge as opposed to two so that two different panels can sit at the same time to adjudicate on different labour disputes. This will go a long way in cutting on the backlog at the Industrial Court faces currently and promoting speedy trials.

Fourth, it is recommended that disputes that are law related without the aspect of unions, a single judge of the court is a sufficient coram to handle and adjudicate on such dispute. The other panellists, besides the judges, should form part of the court when handling matters of unions. This will promote speedy hearings and faster decision making by the Court.

241 *Id.,*
242 Rule 4 of the Judicature (Mediation) Rules, 2013

Fifth, the Labour Disputes (Arbitration and Settlement) Act should also provide clearly for interlocutory reliefs which parties to a dispute can pursue pending the determination of labour disputes.

Sixth, the different legislations on employment matters should be harmonised and consolidated with the view of enhancing the jurisdiction of the Industrial Court to cover all aspects of employment including those arising from the Workers Compensation Act, the Occupational Safety and Health Act, and the Labour Unions Act.[243] This is important because some labour cases have cross cutting aspects from the different laws thus the court should be able to handle and adjudicate such matters to their completion.

Lastly, the Role of the Registrar of the Court requires clarification especially the issue of security of tenure. This is because of the role the occupant of that office plays in the overall administration of the court and to complete the adjudication process.[244]

iii. Lack of Minimum Wage

There is a Bill in Parliament entitled 'The Minimum Wages Bill No. 36 of 2015' at Committee level. The Bill seeks among others to provide for the determination of a minimum wage based on the different sectors of the economy, repeal and reform the law relating to the establishment of a minimum wages board, regulate the remuneration and conditions of employment of employees and to make provision for other related matters.' The introduction of this Bill in the House has been praised as a positive for government and if passed into law could be a reference tool even for assessment of award of damages in labour disputes.[245]

The Bill if passed into law is critical and a timely move especially for sectors within the informal employment structure that are largely scattered, poorly regulated and most employees therein experiencing deplorable working

243 Source interview: Industrial Court. 5.10.17. At the time of this Report, there is a petition, whose hearing has been concluded, and waits judgment by the Constitution Constitutional court on the tenure and security of judges of the Industrial Court.
244 Interview: Industrial Court 5.10.17
245 *Id.*,

conditions for little pay nearing to modern day slavery. The current policy and legal framework on minimum wage is outdated and offers no redress to the high levels of employee exploitation by employers and no protective labour framework especially as it relates to remunerations. It is critical that the proposed 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 lack of minimum wage has contributed to poor working conditions as the employer has no starting point to bargain.[246]

As noted above, key to this discussion around the minimum wage is the informal employment sector. It 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.[247] Therefore, the Bill should largely focus on establishing a strong standard setting and regulatory framework to ensure social protection for poor Ugandans struggling to make ends meet while working in the ever rising and vibrant private sector.

iv. Labour Officers

The administrative set up of a district is such that every district must have a District Labour Officer ('DLO'). Two issues are critical in regards to DLO: Firstly, their appointment is by the relevant district organ in this case, the District Service Commissions ('DSC'). These among others posses a supervisory challenge with the mother ministry which in this case is MoGLSD. The DLO's first allegiance will always be the district leadership. And yet, by their role, they are supposed to be independent especially while mediating and conciliating over labour disputes within the district. Moreover, this study revealed that, the public service came up with district establishment structure which provides that the districts can choose a structure for themselves.

246 NETPIL(Interview) 10.08.17

247 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.

Some have chosen a structure with no labor office in total disregard of the law which provides for DLOs at every district. This should be looked into to ensure harmonization.[248]

Secondly, is the capacity of the DLO's in terms of both their numbers and facilitation. Under the Employment Act, labour officers administer the Act by way of inspections, meetings, issuing reports but at the same time, they play an adjudication role. However, there is a challenge in their number and

facilities to match the number of 458,000 registered workplaces currently in Uganda.[249] By the time of this study, it was reported that at the Ministry, there were only 10 Labour Officers ('LO's) and 37 specialised inspectors.

v. Equal Opportunities Commission

The Equal Opportunities Commission 'EOC' is established under Article 32 (3) of the Constitution of Uganda and the Equal Opportunities Act. The EOC is mandated to eliminate discrimination and inequalities against any individual or group of persons on the ground of sex, age, race, colour, ethnic origin, tribe, birth, creed or religion, health status, social or economic standing, political opinion or disability among others.[250] The commission is also tasked to take affirmative action in favor of groups marginalised on the basis of gender, age, disability.[251] Its mandate is wide and extends to private businesses and enterprises.[252] Subject to subsection (3) the Commission has powers to hear and determine complaints by any person against any action, practice, plan and policy programme among others by any organ or body including business organizations which amounts to discrimination, marginalization or undermines equal opportunities.[253]

248 Source: Interview: Ministry of Gender, Labour and Social Development. See also Human Rights and Business Country Guide Uganda of Uganda Human Rights Commission (UHRC) Report p 23.
249 COBE Report 2013.
250 The Equal Opportunities Commission Act, 2007, Long title.
251 *Id.*,
252 Section 14 sets out the functions and powers of the Commission to include: monitoring, evaluation and to ensuring that policies, laws, plans, programs, activities, practices, traditions, cultures, usages and customs. The commission's mandate also extends to covering aspects of equal opportunities and affirmative action in favour of groups marginalised on the basis of sex, race, colour, ethnic origin, tribe, creed, religion, social or economic standing, political opinion, disability, gender, age, or any other reason created by history, tradition or custom.
253 Section 14 (4).

The Act further provides that if satisfied that there has been any form of marginalization or discrimination, the Commission may rectify, settle or remedy any act.[254] This may include ordering payment of compensation, or any other legal remedy or redress. However, any person or authority aggrieved by a settlement, recommendation or an order of the Commission has the right to appeal to the High Court within 30 days.[255]

If well facilitated the EOC is a complement to traditional state institutions on labour rights and enforcement—especially for the various corporateabuses within the informal private sector that in some instances amount to modern day slavery.

vi. Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) is a Constitutional body established under Article 51 of the 1995 Constitution of the Republic of Uganda. Article 52 confers to the UHRC a mandate to among others "investigate at its own initiative or on a complaint made by any person or group of persons against the violation of any human rights and establish a continuing programme of research, education and information to enhance respect for human rights" by the state and its agencies and all people including business enterprises. Article 53 grants the UHRC powers if satisfied that a violation was committed, to order among others legal remedy or redress against the human rights violation.

The UHRC has conducted research around labour rights—especially worker's rights, looking at the enjoyment of rights of factory workers in Uganda.[256] In 2016, the UHRC published the Human Rights and Business Country Guide which provides country-specific guidance to assist business entities respect human rights and contribute to sustainable development. The Country Guide emphasizes the importance of "companies to manage their potential human rights impacts."[257] Specifically, the Country Guide

254 Section 14 (3).
255 Section 29.
256 UHRC, Workers Rights, Op.cit., 105
257 Uganda Human Rights Commission and Danish Institute on Human Rights, Human Rights and Business Country Guide Uganda (2016). See Also UHRC "Access to Remedy for Corporate Abuses," available at https://nhri.ohchr.org/EN/Themes/BusinessHR/DocumentsPage/Uganda_AccessToRemedy_ENG.pdf.

provides "a systematic overview of the human rights issues that companies should be particularly aware of [and further] . provides guidance for companies on how to ensure respect for human rights in their operations or in collaboration with suppliers and other business partners."[258]

The UHRC if well utilized through its mandate and functions to inquire to, monitor, regulate and enforce respect for human rights, can strengthen broader protective measures for all people especially workers within the informal sector, respect for human rights by non-state actors including business enterprises and also access to remedy for corporate abuses to enhance corporate accountability.

258 *Id.,*

"The areas of weaknesses that have tended to undermine government efforts at building its capacity to regulate corporations has been largely on account of budget constraints to facilitate personnel recruitment and training and facilitation of the officers to do their work and less of lack of policy or regulatory frameworks."

CONCLUSION

Conclusion

In terms of policy, and regulations, as well as institutional frameworks, and as a country, Uganda has made remarkable progress. It is apparent from the Constitutional framework; there is real commitment for social justice in Uganda. These broader Constitutional provisions and policies have been reduced into regulatory frameworks which can be seen in the Employment Act, the Labour Unions Act, the Workers Compensation Act, the Occupational Safety and Health Act and by and large, the Labour Disputes (Arbitration and Settlement) Act 2006. The areas of weaknesses that have tended to undermine government efforts at building its capacity to regulate corporations has been largely on account of budget constraints to facilitate personnel recruitment and training and facilitation of the officers to do their work and less of lack of policy or regulatory frameworks.

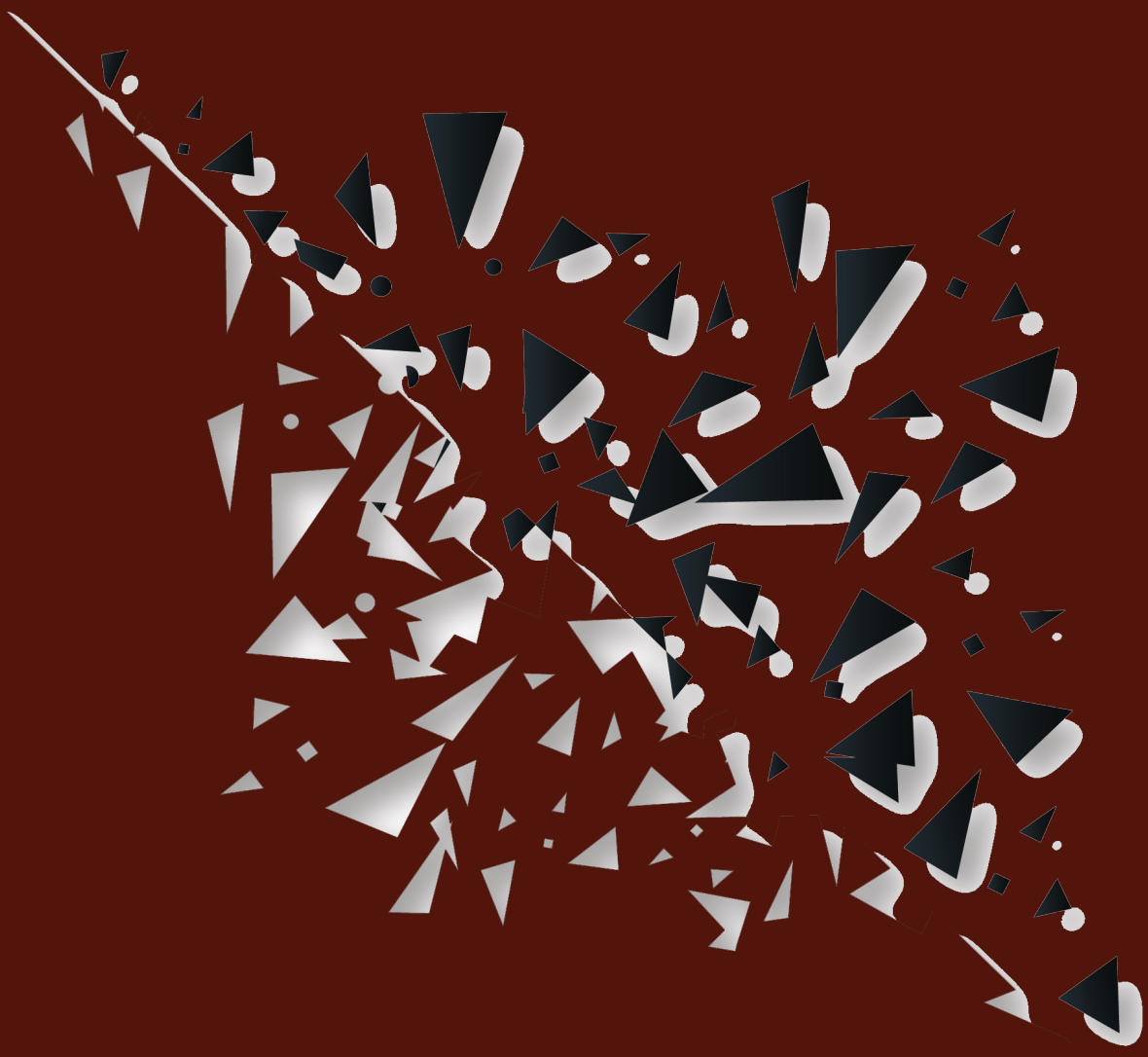
Interviews also revealed some cases of ambitious regulatory and institutional frameworks. There was general consensus among all persons interviewed that to a greater extent, the Labour Disputes (Arbitration and Settlement) Act had some 'ambitious' provisions which needed to be re-aligned to make it more realistic and effective. For example, the composition of the Industrial Court under that Act has been criticised as 'exotic.' Under the Act, the coram of the court is two judges and three other members. The court currently has only two judges. The import of this is that, they can only constitute one coram. A leaner coram of the court would not only be more effective, but would also, in the interim, address logistical challenges we face as a country and would to optimum utilisation of available resources and institutions. This study found out that there is in the offing, pending comprehensive proposals to amend the law to cater for some of these concerns, to make the court more effective.

This study has also established that regulation of corporations must first start with the state. All other efforts and /or initiatives are only complementary to fill in the gaps in the state regulatory and institutional frameworks.

It was also quite an obvious observation that at the district level, labour officers face a number of challenges in executing their role. First, they are appointed by the District Service Commissions. In hierarchy therefore, they are subordinate officers to most of the District Senior Officers. This poses a problem in supervising of such officers and would undermine the function of labour officers—in as far as enforcement of their mandate. Secondly, they are not directly supervised by the center and yet they fall under the MoGLSD. It was proposed that labour officer's recruitment and supervision be re-centralised given their adjudicatory role in the administration of labour justice.

It can also be conclusively said that regulation of corporate firms will always remain a 'work in progress.' Similarly, it requires a combination of efforts to make them accountable and responsive to the interests of the societies in which they operate. A weakness of one strategy, can be strengthened by another. This will also call for an informed society, a vibrant civil society, and a strong labour movement characterised by an alert work force, and strong and independent labour unions with a good international network. The result ultimately is no doubt, a web of stakeholder networks for a common cause-social justice at work.

"Overall, urgent regulatory and institutional reforms within the labour rights sector are required to address the endemic capacity lapses."



RECOMMENDATIONS AND WAYFORWARD

a. Recommendations

1. The starting point should be in raising awareness in the public and potential violators of their labour rights and duties. Self-preservation is most important. People will not comply with what they do not understand. Initially the violators were not paid attention to because they were the low income earners. Our minds are still feudal characterized by the master-servant relationship. How you relate to a situation is informed by your values. More premium is placed on the civil political rights at the expense of the social economic rights.

2. Regulation of casual work requires strengthening to ensure that the limit within which a worker can be a casual labourer of 4 months is observed. This can begin with strategic sectors which could be hazardous by their nature such as the manufacturing industry and natural resource exploitation. It is recommended that there should be punitive measures for non-compliance. This provision of law on time period of casual work should be popularised countrywide to ensure that labourers are aware of their right to automatically enjoy the benefits of an employee under the Employment Act after four months of continuous casual employment.

3. The MoGLSD should conduct more random inspections especially in manufacturing and processing plants to ensure that corporations comply with and meet the minimum standards set in the employment legislations. This will strengthen the respect and protections of human rights provided for under OSHA.

4. Recruitment, deployment and supervision of labour offices at the districts should be centralised.

5. The ministry of public service should harmonise the district staff structure to create uniformity and consistency in implementation of government programs.

6. Government should put in place a substantive law to regulate Uganda's migrant workers abroad.

7. Recruitment agencies should be made to take responsibility for all Uganda migrant workers abroad in countries where Uganda has no consular services with an additional undertaking to provide regular reports about the state of being of such persons.

8. Budget provision should be made for regular trainings of labour officers on matters of adjudication to bring them to speed with modern adjudication strategies and skills for quick and efficient disposal of labour disputes.

9. In line with the General Comment No. 24, the government as the lead duty bearer to protect, respect and fulfil the enjoyment of economic, social and cultural rights should put in place mechanisms to ensure proper impact assessment of all development projects. These should strictly be done, scrutinized, and where necessary, regulatory framework put in place to mitigate any labour rights issues associated with such projects prior to execution of contracts with contractors. This would balance out promotion of development and respect of peoples' rights.

10. Workers need to be informed about their rights especially with the issue of contract because that is where the basis of the claim arises. During the interview at MoGLSD, it was established that although the Ministry through the Directorate of Labour is mandated to sensitize people, this is not usually done because of the endemic problem of human resource.[259] The finding in this study is that there are 458,000 registered workplaces according to COBE 2013. On the other side, there are about 10 labour officers and 37 specialized inspectors, who also do community development work and all this is in about 80 districts. There is need for more recruitment of more labour officers and inspectors.[260]

259 Interview, Directorate of Labour MoGLSD.
260 *Id.,*

11. Labour officers need to be equipped with the necessary tools to fulfil their legal mandate. They need to understand industrial relations, conflict management and labour laws especially what should they require when hearing a matter. It is not enough to just know the law. This capacity building should be done on a continuous basis to keep them abreast them with labour developments and practices.

12. The function of Labour Officers is decentralized which is another issue. Their first loyalty is to the Chief Administrative Officer so the Labour Commissioner within the MoGLSD has limited powers in the monitoring and disciplining of labour officers wherever there is issue with their operations. There is need to have the labour administration, control and appointment centralized so as to be able to monitor and supervise them effectively.

13. Overall, urgent regulatory and institutional reforms within the labour rights sector are required to address the endemic capacity lapses that have been identified. Labour disputes should be given the same attention as other disputes in line with government policy on employment. Requisite recruitment should be undertaken in phases to fill up the existing positions in the MoGLSD. Fortunately, Constitutional Petition No. 33 of 2016 has since clarified that the Industrial Court is a court of Judicature. It is hoped that the system gaps that had been created by that structural blurredness will soon be addressed.

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About UCCA

The Uganda Consortium on Corporate Accountability (UCCA) is a Civil SocietyConsortium 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).

Currently, the UCCA has a founding membership of four organizations specializing in different areas of rights protection, including the Initiative for Social and Economic Rights (ISER), the Public Interest Law Clinic at Makerere University Law School (PILAC), Legal Brains Trust (LBT) and the Center for Health Human Rights and Development (CEHURD).

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