



THE HIDDEN SIDE OF CHINESE INVESTMENTS IN UGANDA

A COMMENTARY

1. Introduction

This commentary seeks to analyze the labour/employment relations and standards, resulting into the violation and abuse of labour rights in Chinese Companies, as captured in a documentary, the property of the Uganda Consortium of Corporate Accountability, dubbed ***“The Hidden Side of Chinese Investments in Uganda.”*** The documentary explores lived experiences from a number of stakeholders including, former and current employees of Chinese Companies, specifically China Construction Communication Company (CCCC) and China Great Steel Company. These narratives highlight a number of prevailing labour rights concerns faced by the people and challenges in accessing justice or any form of operational redress. The documentary also shares interviews conducted with other relevant stakeholders including the National Organization of Trade Unions, Department of Occupational Safety and Health at the Ministry of Gender Labour and Social Development and Media practitioners that have covered the subject matter. An effort to obtain a comment from the Chinese companies was futile.

I. Context

According to Uganda Revenue Authority figures, China is Uganda’s second largest trade partner with volumes above \$890million in 2017. There are about 200 Chinese firms in Uganda engaged in various sectors including infrastructural development, natural resource exploitation, manufacturing and production, communication, hospitality and international trade among others. In recent years, the Chinese government has funded large infrastructure projects and encouraged Chinese firms to invest in Uganda, as evidenced by some of the signature infrastructure projects partly financed and constructed by China like the 51 kilometer Kampala-Entebbe Expressway, the 183MW Isimba Hydropower Station and the 600MW Karuma Hydropower. The dynamics around the financing and recouping are a matter of different angle of discussion. Nevertheless, the door for Chinese Investments in Uganda has been widely opened and encouraged by the Government and President of Uganda as an avenue that will facilitate rapid growth of the country’s economy through provision of job opportunities, increase in GDP and GNP, and as a source of increased revenue collection. It has also been highlighted that the modalities of attracting large-scale Chinese investments have not often enlisted adherence to human rights based approaches to investment and human capital development as a critical area of foreign direct investment. This has often resulted in prioritization of Chinese investors with no specific undertakings regarding human rights compliance and other regulatory frameworks regarding social and environmental impact of investment projects.

As such, there are increased cases of human rights abuses and violations reported with in numerous Chinese investments in Uganda. similarly, cases of social and environmental degradation remain of major concern and in dire need of addressing. One key area that requires immediate attention is the issue of labour rights. During investigations for the documentary, the team spoke to former and employees of some Chinese companies—among other relevant stakeholders who shed light on some of these issues and challenges in addressing them.

Below is a brief analysis of the highlighted labour rights infringements, common within some of the Chinese investments in Uganda including China Construction Communication Company and Great Steels Company as projected by the documentary.

II. Critical Issues

a. The nature of Employment/ Labour Relations

One of the major issues highlighted in the discussions was the glaring gaps in their employment relations. The case studies noted that despite most companies having workers that handle daily operations of different sectors, most of these workers had no formal contracts cementing the employer-employee relations. Many workers struggle to prove employment in these companies—an issue that always arises in cases of disagreements. There is no evidence of a working relationship between the two.

Similarly, language remains a huge problem within this working relationship, an issue which both Mr. Usher Wilson Owere of the National Organisation of Trade Unions and Mr. David Atwooki Mugisha from the Ministry of Gender Labour and Social Development reaffirm as a huge barrier in the work space which is only mitigated by the use of interpreters. However, in the absence of interpreters, communication between the employers and employees is impossible. The issue of language barrier poses a big challenge and hinders communication between employers and employees which affects and undermines fundamental rights and freedoms including freedom of expression with their views to their employers and demanding for respect for their rights and demand for accountability. This, coupled with the existent power dynamics between the employers and the employees, strains further the important avenue of communication within the work structures.

b. Casualization of labour Vs. Contract of Employment

Generally, formal employment relations in Uganda are regulated by various legislative frameworks including the employment Act which lays down the elements of a valid contract of employment among others. In most situations, the absence of a valid contract of employment lays no ground for an employment relationship—which is the fulcrum upon which enforcement of other rights of the employee rotate. As per **Section 3 of the Employment Act**, the rights and responsibilities laid out in the Employment Act of Uganda only apply to employees who by definition are people that have entered into a contract of service, oral or written in agreement for remuneration.

Where no formal contract is entered between the employer and employee, it drastically affects the nature of employment, even where the terms and conditions for the employee's offer of service are stipulated. So in the absence of written or oral contracts, many employers renege on their responsibilities towards their workers as provided in the labour laws and specifically the Employment Act. Most employers maintain them as casual employees as stipulated in the employment regulations—a status that offers limited responsibilities and social and protective covers. That notwithstanding, **Regulation 39(1) and (2) of Employment Regulations SI 61 of 2011** provide that a person shall not be employed as a casual employee for a period exceeding four months, a provision that most employers infringe on.

The issue of casualization of labour beyond the stipulated 4 months is rampant in the country—even beyond within the Chinese investments—a focus of this documentary. Silvanos Rwekiza a former employee with a Chinese company points out that casualization of labour is the order of the day and

that in most cases wages are determined according to how desperate the employee is or appears to be. He notes that there have been situations where some people earn as low as UGX 4000 (less than 2 dollars) a week. The varying power dynamics between the employers and workers greatly affects the bargaining power of workers around wages and better working conditions.

On another note, discussions with different employees point to challenges around unionization of the workers. It is reported that Chinese employers have no interest in ensuring an organized work force in compliance with established labour standards in Uganda. This is contrary with **Section 3 of the Labour Unions Act 2006** which gives employees the right to organize themselves in any labour for purposes of assisting in the running of the labour union, bargaining collectively through a representative of their own choosing and engaging in other lawful activities for the purposes of collective bargaining or any other mutual aid practice. This is further exacerbated by the weak institutional capacity and enforced measures which are largely focused on protecting the investors rather than regulating their operations and enforcing standards and respect for human rights among others.

According to one of the workers at Great Steels Company, who the researchers spoke to, noted that many of their colleagues have no evidence of employment, save for a company reflector jacket, a situation that complicated the process of being compensated when he sustained an injury at the workplace that left him without fingers, a thing that also hindered his attempts to access justice for the harm suffered.

Furthermore, it was reported that most Chinese employers prefer to use casual labours for long periods of time exceeding four months, which affects the employees as they never attain some rights only guaranteed for employees. Ajuna Joseph, a former employee at Great Steels Company says he worked for 7 years without a contract of service or an appointment letter. It is claimed that this may be a way of cutting costs in order to maximize profits, as this employer-employee relationship does not offer social and economic protective cover as broadly stipulated within the labour legal regime.

It is the absence of contracts of service that has been the cause of the infringement on all the other rights of the employees.

c. Occupational Safety and Health

The Occupational Safety and Health Act places an obligation on employers to ensure that their employees are provided with protective gear to protect them from the harm or injury that may be sustained from exposure to harmful and hazardous substances and heavy machinery in the course of their work.

However, as noticed with most Chinese employers, there is a glaring neglect around occupational safety and health. Some workers spoken to, most companies neglect their responsibility of providing their workers with basic protective gear as they work, despite their engagement in very dangerous and hazard work which entails activities like operating of heavy machines and smelting. According to Omoido, a former worker at Great Steels Chinese Company who was burnt and sustained an injury while smelting, notes that at the company, they were only provided with gumboots but no overalls. Silvanos Rwekiza says they always dealt in scrap which sometimes contained materials like machine

guns, bombs, and shock absorbers. He speaks of a particular day where a grenade was found in the scrap and the employees took it upon themselves to call a bomb squad to detonate it. On another day, an employee was hit by an object that exploded during smelting and having no sufficient protective gear, it injured his head and he died. The neglect of this responsibility by employers has a ripple effect on the employees as it not only affects the comfort of their work but also endangers their lives and could result into the loss of lives, therefore denying them the right to life.

d. The right to compensation

The issue of compensation is directly linked to the nature of employment. As noted above, many workers find themselves in a form of employment which is casual and ultimately affects any form of redress and compensation in case of injury or harm arising in the course of work. **Section 3 of the Workers Compensation Act 2000** provides that;

If personal injury by accident arises out of and in the course of employment, the injured worker's employer shall be liable to pay compensation in accordance with the Act provided the injury results into personal incapacity or incapacitates the worker for three consecutive days and more and inhibits him from earning full wages at the work at which he or she was employed.

Section 4 of the Act further provides that where the deceased worker leaves any family member dependent on his or her earnings, the amount of compensation shall be a sum equal to be a sum equal to six times his or her monthly earnings, and where the deceased leaves behind no dependents, the employer shall pay the expenses of the medical aid provided and burial expenses of the deceased.

Despite these legal provisions, coupled with increasing cases of casualization of labour, many Chinese employers have shunned the provisions in the Workers Compensation Act, albeit in a bid to escape liability for the injury faced by their workers. There are also cases where injured workers struggle to prove employment as they mainly maintained in a casual manner paid daily or weekly. A former worker of Greet Steels China Company shared his experience when his hand was injured by a roller and was eventually cut off. He noted that even after the injury, no help was received from his employers and was only transported to hospital by the scrap car on sight. His medical bills were not adequately paid for and he only received compensation of UGX 2,000,000, but only after involving a lawyer—who also took half of the money he had received as compensation fee. He also later found out that with that meagre compensation, he had been made to sign forms whose content he did not understand but later found out that they stated that he had been compensated in full.

Similarly, another former employee revealed that when he sustained injury, he was only casually and often given sums of UGX 50000 and sometimes UGX 10000 to cater for his bills. The workers also shared a situation where a colleague, died at the hands of an explosive while he was smelting at the work site and no compensation was given to his family and neither were his burial expenses catered for.

Many, employees argue that this kind of inhumane behavior from the Chinese employees shows a total disregard for the lives of many of their workers. It is intimated that to many of these employers,

their worker is only as important as their maximum potential to provide labour to them and becomes useless once any factor affects that potentiality.

e. Unfair Termination

According to current and former employers, in Chinese companies, there is no job security as one can lose their job anytime without sufficient notice. Since no employment contracts are signed with clear terms and conditions, duties and responsibilities and duration of employment, many workers find themselves at the mercy of the employer. There are many cases of instant terminations without any form of due process and due to the nature of work, many terminated employees struggle to seek redress. The former employees in the documentary intimate that some of them were terminated for missing work for two or three days because of sickness and others for pursuing their compensation after an injury. No notice periods are given to them prior to termination as is required by the Employment Act. When terminated, the security is notified and they are not even allowed to get into the work premises to initiate any redress measure or even pick up their properties. Akello Gorreti, a former employee at CCCC shared her experience, where she was terminated after getting pregnant at the hands of another Chinese employee. She was terminated after being deemed incompetent to continue with work, a thing contrary to **Section 75(a) of the Employment Act**.

f. Underpayment (Low Wages) and Social Security

The right to just and favourable working conditions is at the heart of the labour rights framework and is provided for in **Article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR)** to which Uganda is a signatory. It is of critical importance because of its necessity for one's satisfactory performance at work. Particularly, the right to just and favourable conditions of work is anchored around fair remuneration and wages. The employees in these companies earn as low as UGX 4000 shillings, an amount that offers no motivation to do satisfactory work, is not equivalent to the tasks they undertake to do, and does not resonate with the standard of living, considering the current economy.

Coupled with this is that increased cases of casualized labour impedes access to economic and social protection as envisaged within the National Social Security Fund (NSSF). The importance of social security as defined by the **2015 NSSF Policy** is to address risks and vulnerabilities that expose individuals to income insecurity and social deprivation, leading to undignified lives. However, this is provided for by the law, is a prerequisite of the formal employment sector and doesn't extend to casualized labour and some informal sector workers.

As such, the exploitative nature of workers in Chinese companies coupled with no mechanisms to ensure social security by the employers affects workers social and economic protection. Similarly, low wages not only have an implication on the employees in the performance of their duties but also affects their livelihood as they cannot afford resources and services for their wellbeing which in severe instances may result into the denial of the right to life.

g. Right to Leave and Weekly Rest

The purpose of leave has been stated by the Industrial Court in *Mbiika Vs. Centenary Bank*¹ as to make employees rejuvenate and work better. This is an indispensable purpose which every employer has to take into consideration and has been recognized even by the Public Service Standing Orders as serving a purpose of diversion, recreation, relaxation and recuperation with a view of restoration or improvement of an officer's efficiency, effectiveness and output. Beyond the need for recuperation or refreshment for the purpose of improvement of efficiency at work, different types of leave serve different kinds of purposes which are necessary for one for purposes of their health, wellbeing and performance of other necessary duties in life, a thing that employers need to take cognizance of. The Employment Act provides for four kinds of leave which include annual leave, sick leave, maternity leave and paternity leave. It also provides for rest days and states that an employee shall not work for more than six consecutive days. The Act in **Section 54** provides for 21 days of annual leave for employees who have worked for a continuous period of six months which must be applied for by the employee and where it is not granted, employees should be paid in lieu of leave. A female employee as a consequence of pregnancy is entitled to sixty days of maternity leave with full wages. An employee who has been in continuous service for one month is entitled to sick pay. A male employee who after the delivery or miscarriage of a child by his wife is entitled to four days of paternity leave with full wages.

This notwithstanding, former employees of Great Steel Chinese Company and Chinese Construction Communication Company the researchers talked to all noted that they worked every single day for all the seven days of the week. One employee, Silvanos explained that he missed three days of work because he was sick and on return, he found no job despite not being granted sick leave. Akello Goretti, when she got pregnant was denied maternity leave, and yet informed by her boss that she was unfit to perform her duties. She got no annual leave and when she requested to be allowed to go home to solve some problems, her prolonged stay of two weeks amounted to loss of her job.

h. Freedom from non-discrimination at the work place

Uganda is signatory to a number of instruments which spell out the right to non-discrimination, some of which include; the **ICESCR (Article 2)**, the **ICCPR (Article 2)**, the **CEDAW (Article 1)** among others. **General Comment No. 18 of the CESCR**² on the right to work enjoins state parties to put in place a comprehensive system of protective measures to combat gender discrimination in the work place, and ensure equal opportunity and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value. The **ILO Convention**³ **on Discrimination (Employment and Occupation)** requires that there is equality of opportunity or treatment in employment without discrimination on the basis of race, sex, colour, religion, political opinion, social origin or other status. The phrase "other status" includes all other grounds that may arise and give room for discrimination.

¹ Labour Dispute Claim No. 023 of 2014 [2018]

² Para 13.

³ No. 11

Domestically, Article 21 of the constitution reiterates the ILO Convention No. 11 on Discrimination (Employment and Occupation) and Section 1 of the Equal Opportunities Commission provides for the obligation to eradicate non-discrimination in any act, omission, law, rule or policy that results into unequal treatment of persons in employment.

The case of Akello Gorreti, who after getting pregnant was stopped from working and thereafter fired, shows the critical challenges women still face in the work place. Pregnancy is a natural function that is expected of female adults. The fact that one can be terminated or dismissed because of being pregnant creates a line of discrimination as a result of her sex considering males are not capable of becoming pregnant.

Dicta Assimwe, a journalist of the East African Newspaper, while commenting on the issue of discrimination at work places points out the case of a one Annet Namuyomba & Another who sued Chinese Construction Communication Company for discrimination on grounds of their HIV status. This is contrary to Section 6 of the Employment Act which makes it the responsibility of all parties, including business actors, to promote equality of employment with a view of eliminating discrimination in employment on various grounds including HIV status. **Section 32 of the HIV& AIDS Prevention and Control Act 2004** makes it unlawful to deny or terminate a person's employment on grounds of their actual, perceived or suspected HIV status.

Employers and the government need to understand that the import of the principle of non-discrimination with regard to the right to work is that the state has a mandate to protect the right to work as guaranteed under the different pieces of legislations and employers have the duty to uphold the respect of this right. These duties and obligations are also recognized in the UN Guiding Principles on Business and Human Rights.

The need for non-discrimination in work is because there is a strong link between non-discrimination and social stability especially in terms of economic diversity.⁴ Discrimination at work directly or indirectly affects the wages or remuneration of an employee thus exposing them to vulnerabilities.

III. Conclusion

The former Chinese employees in the documentary agree on the need for the situation to change. The duty to enforce human rights primarily lies with the government, through the Ministry of Gender, Labour and Social Development and the Labour Offices. This duty also extends to other agencies including the Uganda Investment Authority, Uganda Human Rights Commission, the Equal Opportunities Commission and the Industrial Court among others. With a rich legal and policy framework, and various institutional mechanisms in place, one wonders why the government and its various agencies is not acting on the numerous injustices in Chinese companies despite having knowledge on the occurrences faced. The media remains awash with numerous accounts of abuses and violation of human rights of many workers within the investment cycle especially Chinese investments. One of the workers places the blame on the people sent to carry out inspections as he seems to suggest that inspections are carried for formality. Despite the need to boost and promote

⁴ UCCA, September 2018, Business and Human Rights in Uganda: A resource Handbook on the Policy and Legal Framework on Business and Human Rights in Uganda

the growth of the economy, the government needs to prioritize human rights in the carrying out of investments and business. It is only through these strategies that human capital development will be ensured as a means to fully realize sustainable development. We should all work towards ensuring that investments work for the people.

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UCCA SECRETARIAT

Initiative for Social and Economic Rights (ISER)

Plot 60 Valley Drive, Ministers' Village, Ntinda

P.O.Box 73646, Kampala - Uganda

Telephone: +256414581041

Website:www.ucca-uganda.org