CIVIL SOCIETY VIEWS AND RECOMMENDATIONS ON THE EMPLOYMENT (AMENDMENT) (NO. 2) BILL, 2022.

Defect on clause 1:

Whereas key among the principle amendments is to provide for recruitment agencies; however the Bill does not define a recruitment agency to provide clarity.

Recommendation:

Amendment of section 2 of the Principal Act of 2006 by inserting the definition of the ' recruitment agency'. The commit may adopt,

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

Defect on clause 2:

Whereas we welcome the amendment of Section 7 of the current Employment Act to trying to expand the scope of responsibility to the employers regardless of the number of employees, expansion of the scope of responsibility of the employer does not necessarily address the current challenges that are faced around issues of sexual harassment in the world of work. The identified challenges include limited reporting of the cases of sexual harassment due to the legal reporting structure that require the affected employee to first report the incidence to the work place structures before reporting to the labour officer; there is sexual harassment at pre-recruitment stage which the current law does not legislate upon.

Overall, there is need for further legislation on this issue. First we note that overtime, besides sexual harassment/violence, there are other forms of violence that are taking place at the work place that equally need to be legislated upon.

Globally, gender equality, the resolution was adopted by the International Labour Conference at its 98th Session (2009) - calling for the prohibition of GBV in the workplace, and for policies, programmes, and legislation to be implemented to prevent it.

The ILO convention is concerned that, violence and harassment in the world of work should be addressed as part of a continuum of unacceptable behaviors and practices (ILO, 2016a). In Uganda, the government has ratified several international and regional instruments that promote gender equality, support prevention and response to GBV.

The 1995 Constitution is the parent legislative framework which underlines gender equality within its Chapter 4, on protection and promotion of fundamental human rights and freedoms. The constitution is enhanced with workplace-specific legislation and policies – the Employment Act of 2006, the Workers Compensation Act and the Attendant Regulations, Uganda Gender Policy 2016, as well as the National Action Plan on Elimination of Gender

Based Violence (GBV) in Uganda 2016. However, rarely do these policy frameworks strictly regulate physical forms of violence and harassment.

The ILO Convention No. 190 on the elimination of violence and harassment in the world of work (Uganda Signed the Convention and is in the process of ratification) and its accompanying Recommendation No. 206 make it clear that everyone has the right to a world of work - free from violence and harassment including gender-based violence. It gives recognition to GBV prevention.

Recommendation: We recommend for general provisions on harassment and violence in the world of work to be included in this Bill to take into account the changing working environment. The Committee may consider adopting the clauses in the Private Member's Bill Employment Amendment Bill 2022 which had attempted to make provisions on the GBV clauses by inserting clause 7A.

We further recommend for further amendments on section 7 to provide for the protection of seekers against sexual harassment.

Defect on clause 3:

Amendment of section 13 of principal Act. Section 13 of the principal Act is amended in subsection (1) (a), by repealing the words "arbitration, adjudication. It is our considered opinion that this will adversely affect the dispensation of labour Justice in the country. This amendment will also render some of the provisions in the current Employment Act and in the Amendment itself irrelevant and create contradictions. Sections such as Section 7(2), Section 93, Section 78 of the Current Employment Act 2006 become irrelevant and also the proposed amendment clauses Amendment of section 70 of principal Act. The decisions of the labour officer will become non-binding in fact, the labour officer will not in effect of this Amendment be making any decision that is enforceable by the Industrial Court and yet the Industrial Court is only a court of reference and appeal. This is because conciliation is a voluntary mode of dispute resolution and the outcomes are voluntary and non- binding.

Recommedation:

We propose that the section remains as it is in the current Employment Act and only amend by aligning the current practice which was set by the Industrial court ruling in the case of **Civil Appeal 008/2015 SURE TELECOM VS BRAIN AZEMCHAP** the industrial Court held that; "We form the opinion that under section 13(i)(a) the labour officer has power to choose either of the four methods of resolving the complaint before him. Whereas he or she could abandon the method of adjudication and engage the parties in arbitration or conciliation, once he or she has done this, it would be improper to return to adjudication once either of the two fails. In the same way, once the labour officer has engaged the parties in either arbitration or conciliation, it is improper for him or her to at the same time engage them in adjudication".

We also propose that the Bill is further amended to ensure that the persons appointed as labour officers by the district service commission have the qualification to dispense the arbitration and adjudication mandate of the labour office at least by providing a minimum qualification in Law. This amendment will subsequently guide the Public Service in setting up the qualification for this position within the public service structure.

Defect for clause 4:

Repeal of section 37 of principal Act. Section 37 of the principal Act is repealed. We noticed that whereas, the section was repealed, the provisions were reproduced under amendment Part IVA without any much changes thereby leaving the employment of migrant workers in Uganda still inadequately regulated and thus continued violation of migrant workers rights in Uganda.

Further still, the wording of clause 39A only focus on the recruitment for external market and thus the amendment ignores the internal recruitments for the local market. The amendment in this part has not taken into the current labour market trends such as recruitment on behalf of another employer, managing workers of another employer which creates a triangle employment relationship as opposed to conventional employment relationship of two. There is also outsourcing of labour among others trends that the section needs to be alive too.

There is little government responsibility in the protection of Ugandan Migrant workers abroad in this amendment and thus the current challenges faced in the externalization of labour program will continue.

Recommendation:

We propose that the committee considers adopting the provisions/ clauses in the private member's Bill Employment Amendment Bill 2022 on this particular issues which has provided comprehensive protective provisions on the employment migrant workers in Uganda.

We propose that section 39 generally should separate external recruitment and internal recruitment for more clarity.

We also propose clear responsibilities of the government for its citizens in this amendment. It would be an opportunity for the Minister to have the power to appoint officials to be directly responsible for support and enforcement of the rights of workers in the countries of destination.

Defect on clause 6 introduces an amendment to section 39 (1) of the Act on repatriation. The amendment is intended to limit the obligation of an employer to repatriate an employee to only an employee who works more than a hundred kilometres from his or her place of recruitment. This amendment has not taken into consideration other vulnerable workers such domestic workers, casual workers among others.

Recommendation:

We propose a subsection under this clause as an exception to the general provision for certain categories of workers that are more vulnerable and perhaps their migration from one place to another is actually hinged on the employers location, for the employer to repatriate them irrespective of the distance.

Defect on section 9E of clause 6:

Recruitment only on issuance of job order (1) A recruitment agency shall not recruit any employee without a job order issued by the Commissioner responsible for employment services.

Recommendation:

The Commission does not issue a job order but rather the Commissioner approves that job order.

Defect on clause 8:

Amendment of section 55 of principal Act. Section 55 of the principal Act is amended in subsection (1) by substituting for paragraph (b) the following— "(b) if, at the expiry of the sixth month, the sickness of the employee continues, the employer is entitled to dismiss the employee upon complying with all the terms of contract of service up to the time of dismissal from employment."

Still on the same section, there's also an ambiguity under clause section 1, its not clear on whether one has to continue paying the person a full wage for the six months before termination.

Recommendation:

We propose the word dismissal from employment to be changed to termination from employment.

We propose to maintain the current position of 2 months,with full pay for the first month after which the employer and the employee shall negotiate on new terms with or without pay, or to terminate the contract.

Defect on clause 9:

Insertion of new section 57A in principal Act. The principal Act is amended by inserting immediately after section "57A. Establishment of breastfeeding and child care facilities. The amendment is welcome but has left some ambiguities which need to be clarified by further amendment. For instance, where the facilities are provided, the time for using them is not mentioned and whether this period should be counted as working hours to be remunerated.

Recommendations:

We propose the following to be adopted in this section;

a) An employer shall, accord the female breast feeding employee a daily thirty minute breastfeeding break in every two hours of continuous work, or a reduction in the contractual hours of daily work to enable the female employee breast feed her child.

b) The breaks or reduction in daily hours of work referred to in subsection (a) shall be considered as part of the female breast feeding employee's ordinary working time and shall be remunerated accordingly.

Defect on clause 10:

Insertion of new section 65A in principal Act. The principal Act is amended by inserting immediately after section 65 the following— "65A. Dismissal from employment.(b) redundancy of the employee(c) disobeying lawful orders or instructions. These two subsections are very ambiguous.

Disobeying lawful orders or instructions makes one very prone to abuse by employers because everything will become lawful and whoever gives it does not matter. Redundancy of an employee is ambiguous because dismissal from employment is as a result of an inability on the side of the employee. You can't be redundant if you've been given work.

Recommendations:

We propose Dismissal from employment.(b) redundancy of the employee(c) disobeying lawful orders or instructions to be deleted because they are subjective.

Defect on clause 16:

Replacement of section 71 of principal Act. For section 71 of the principal Act, there is substituted the following—(2) An employee whose services are under a probationary contract shall not lodge a complaint under this section.This provision violates the right to be heard, which is a fundamental human right.

This amendment contravenes the provisions of the Constitution under Article 28. The right to be heard is a fundamental right and it is nonderogabe. Every worker in an employment relationship should have a right to a fair hearing.

Recommendation:

The Amendment clause should be deleted from the Bill.