FREEDOM OF ASSOCIATION AND UGANDA'S NEW LABOUR LAWS:

A Critical Analysis of the State of Workers' Organisational Rights

John-Jean Barya

ISBN 9970-511-03-2

HURIPEC Working Paper No.4

April, 2007

TABLE OF CONTENTS

SUMMARY OF THE REPORT

This paper provides an updated analysis of the state of labour rights in Uganda today. Of particular concern is the extent to which the right of workers to freely organize i.e. (the freedom of association) is recognized, protected, enjoyed and enforced in light of the newly enacted labour laws of 2006. The study relied on both secondary and primary data, particularly relevant official documents, as well as interviews with key government bureaucrats, trade union officials, and employers. The study looks at the political, constitutional and legal framework in which the right to organize is located, as well as the implications of the neoliberal economic policy framework adopted by the Government of Uganda on the recognition, implementation and realization of the right. It also discusses the politics of making the new labour laws and assesses the current and likely obstacles to their implementation. The paper makes the following key observations:

- **Although initially reluctant and resistant to the enactment of new legislation on labour, a combination of factors forced the government of Uganda to adopt new laws in 2006;**

- **Most significantly, the impetus for the change in the laws came from external pressure, rather than from any renewed commitment on the part of the government to the plight of the working class, and**

- **Notwithstanding the manner in which they came to be enacted, Uganda's new labour laws greatly improve the organizational and substantive rights of workers in the country.**

Although the working paper recognizes the considerable achievement made by the mere fact of the enactment of new laws in the area of workers' rights which have for a long time remained stagnant, it also identifies several challenges to the implementation of these laws. Among the most critical are the following:

- **The attitude of government, which continues to be hostile towards the expansion and enforcement of the rights of workers;**

- **The phenonomenon of unemployment that is a considerable burden, particularly on the youth;**

- **The casualisation of labour, which has meant that a vast majority of the labour pool are employed as casual labourers, without contracts, subject to summary dismissal and not able to benefit from any of the normal conditions of employment, and rights guaranteed by law, and**

- **Despite lipservice support for the idea that workers are free to organize, most employers have simply refused to recognize unions.**

LIST OF ABBREVIATIONS

AFL – CIO	American Federation of Labour – Congress of Industrial Organisations
AGOA	African Growth and Opportunity Act
ATM	African Textile Mills Limited
CBR	Centre for Basic Research
CHOGM	Commonwealth Heads of Government Meeting
COFTU	Central Organisation of Free Trade Unions
EATUC	East African Trade Union Council
FES	Friedrich Ebert Stiftung
FUE	Federation of Uganda Employers
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICFTU	International Confederation of Free Trade Unions
ICFTU–AFRO	International Confederation of Free Trade Unions African Regional Organisation
ILO	International Labour Organisation
ILR	International Labour Review
IMF	International Monetary Fund
ITG & LWF	International Textile, Garment and Leather Workers Federation
ITS	International Trade Secretariat
JLOS	Justice, Law and Order Sector
MOFPED	Ministry of Finance, Planning & Economic Development
NEPAD	New Partnership for Africa's Development
NGO	Non Governmental Organisation
NOTU	National Organisation of Trade Unions
NRM	National Resistance Movement
NYTIL	Nyanza Textile Industries Limited
OATUU	Organisation of African Trade Union Unity
PEAP	Poverty Eradication Action Plan
PRSPs	Poverty Reduction Strategy Papers
PSF	Private Sector Foundation
SAPs	Structural Adjustment Programmes
UDHR	Universal Declaration of Human Rights
UGAWU	Uganda Government and Allied Workers' Union
UGIL	United Garments Industry Limited
UHRC	Uganda Human Rights Commission
UMA	Uganda Manufacturers' Association
UMWU	Uganda Medical Workers' Union
UN	United Nations
UNATU	Uganda National Teachers' Union
UNDP	United Nations Development Programme
UNMU	Uganda Nurses and Midwives' Union
UPC	Uganda Peoples Congress

UPEU	Uganda Public Employees Union
UTGL& AWU	Uganda Textile, Garment, Leather and Allied Workers Union

I. INTRODUCTION

If one considers the struggles that workers had to wage in the West—especially Europe—and later in the Americas and the colonies, in order to secure the freedom of association or the right to organise, it becomes clear that it has been a highly contested right. However, the provision for the right in national laws, i.e. Constitutions and other legislation is one thing, while the realisation of the right in practice is quite another. Against the backdrop of this well-known fact, this working paper presents and critiques both the theory and the practice of the right to freedom of association for Ugandan workers. In particular, it examines the policy and legal framework in which the right to freedom of association is expected to be enjoyed. It also examines the newly-enacted labour laws, particularly as they affect the right to organise. Enacted in April 2006, these new laws are the Labour Unions Act,[1] the Employment Act,[2] the Labour Disputes (Arbitration and Settlement) Act[3] and the Occupational Safety and Health Act.[4] Of particular focus of attention will be the major changes in labour rights that have been engendered by the passing of these new laws, with a critical focus on the right of workers to organize. Although Freedom of Association is a quintessential civic right and is usually called in aid of civic and political organizations, for workers it is a core social and economic right, because it greatly affects their ability to earn a living, with all its attendant consequences.

It is important to underscore the point that the right to organize has been problematic for Ugandan workers for a long time. Under the UPC (Milton Obote) regime in the 1960s, the major problem for workers was the desire by the state to control, subjugate and incorporate them and the trade unions under party (UPC) and state structures within the framework of the Move to the Left Strategy (from 1968 to 1971). During the Amin period the main problem was repression, while under the UPC (Obote II) regime that followed from 1980 to 1985, state sponsored divisions and the repression of sections of the labour movement held sway.[5] The state simply refused to enforce the law or chose to selectively apply it.

After the NRM captured power there was an initial and brief period of trade union freedom and antonomy followed by attempts (reminiscent of the Obote I regime) to control and incorporate workers and their organizations into the NRM state structures.[6] These attempts failed. However, with the introduction of Structural Adjustment Programmes (SAPs), privatization and the retrenchment of public service and public enterprise workers and the full-scale introduction of neoliberal economic policies from the early 1990s onwards, a clear contradiction

---

[1] Act No. 7 of 2006.
[2] Act No. 6 of 2006.
[3] Act No. 8 of 2006.
[4] Act No. 9 of 2006.
[5] See Barya, 1990.
[6] See Barya, 2001.

arose between workers rights and government policies. While in 1993 a trade union law [7] was passed to expand the space and scope of unionization and the 1995 Constitution clearly provided for workers' freedom of association, several laws continued to curtail this freedom; many employers breached the law and trade unions struggled to enforce the existing rights and to reform and improve the existing law to, inter alia, enhance and buttress this freedom of association. In light of this historical experience, and given the passing of the new laws in 2006—in particular the Labour Unions Act—to what extent has workers freedom of association been enhanced? What are the problems of enforcement of the law that may arise? Finally, what can workers and trade unions do in order to ensure that these rights which have now been provided for and enshrined in the law, are actually enjoyed?.

This Working Paper has several objectives. In the first instance, it is to provide a comprehensive and updated summary of the state of labour rights in Uganda today. Related to this is the analysis of the relationship between existing government economic policy as reflected in various government policy initiatives and programs particularly the Poverty Eradication Action Plan (PEAP) and the enjoyment of labour rights, specifically the right to organize, and also to assess the extent to which workers' freedom of association or the right to organise is recognised, promoted, enjoyed and enforced especially in light of the new laws. Given that the issue of economic policy and the status of worker's rights are related to the phenomenon of globalization, the paper will also assess the role of international actors[8] as well as the local tripartite partners[9] in the creation, promotion and enforcement of the right to organise or otherwise. Finally, an assessment will be made of International Labour Organization (ILO) Conventions 87 and 97 (which represent the basic international standards on the right to organize) and the extent to which these standards are embedded in the new law. The paper will be capped with several proposals for the more effective realisation, promotion, protection and enforcement of the right to organize in Uganda. It is important to note as a basic fact that labour rights are both organizational and substantive. The study does not deal with the entire spectrum of labour rights, as this is a very broad area. Rather, the main focus of the study is organizational rights.

The paper is divided into 5 sections, the first of which is this Introduction. Section two constitutes the literature review, the research questions raised and the methodological issues considered in the study. The third section sets out the broad political context in which labour rights are situated, with a particular consideration of the neoliberal government economic policy framework as well as the constitutional and legal framework for the creation and realisation of labour rights generally and the right to organise in particular. The section also makes a broad statement of labour rights in general against which backdrop the

[7] The Trade Union Laws (Miscellaneous Amendments) Statute 10/1993.
[8] These include ILO, foreign trade unions and foreign governments.
[9] The tripartite partners are the employers, workers and the state.

right to organise must be analysed and understood. The gist of the paper is Section Four, which first discusses the politics of making the new labour laws. It analyses the right of workers to organise in Uganda, the conceptualisation of the right, and its practical application. Thereafter, it looks at the specific aspects of the right, namely; the right to form a union, the right to join a union, the right to union recognition, the right to bargain collectively, the right to strike (i.e. the collective withdrawal of labour) and the right to run a union autonomously without state or employer interference/or obstruction. The problems of enforcement of this law—some of which have already surfaced, and those likely to arise—are also analysed. The section also elaborates on the differences and convergences between the private and public (government) sectors in the way the right is treated. The section also deals with the problem of casual labour in so far as it is a major reflection of problems associated with trying to enforce the right to organise and other labour rights. This is because *casualisation* constitutes one of the major impediments to realising workers' right to organize. Related to this is their ability to enjoy other labour rights. Finally, the section also deals with the role of tripartite partners and foreign forces[10] in the creation and promotion or in the obstruction of the right to organise and in the realization of labour rights generally. Section 5, which brings the paper to a close, draws conclusions and makes proposals and recommendations for the more effective realisation, promotion, enforcement and enjoyment of the right to organisation among other labour rights.

II. LITERATURE REVIEW, RESEARCH QUESTIONS AND SOME METHODOLOGICAL ISSUES

2.1 The Literature on Workers' Associational Rights

The issue of workers' freedom of association generally and the right to organise has received only limited attention in Ugandan labour law and industrial relations literature, although internationally this is a much written about subject. However no detailed analysis of the right has taken place particularly in light of the new labour laws. Barya's Ph.D thesis analysed the development of labour law and trade unions from the colonial period upto 1987.[11] He was broadly concerned with the role of law in the development of trade unions in Uganda over that period. The conclusions of the study are still relevant in so far as they described the ideological and political role of the law in circumscribing rights of workers both organizational and substantive. A broader sweep of the existing labour law was made by the same author a year later.[12] The paper concluded with proposals for the amendment of all the labour laws including aspects concerning the right to organise. Most of the proposals made have now been incorpoated into the new (2006) labour laws. Subsquently an analysis was made of the expansion of

[10] That is the ILO and foreign trade unions and governments.

[11] Barya, 1990, 0p.cit.

[12] Barya, 1991.

organizational space brought about by the 1993 trade union law[13] and of the provisions in Uganda's 1995 Constitution relating to the rights of labour noting, among other things, that while the 1995 Constitution generously opened workers' organisational (or what we called 'associational') space, the 1993 law itself made some reasonable openings only within the context of the regime's corporatist political agenda.[14] The new laws have further expanded the associational space and are much more in conformity with the provisions of the 1995 Constitution and ILO standards on freedom of association.

A number of other works by the author were concerned with specific or broader issues of concern to workers but not freedom of association. For instance one compared the policy impact of NOTU (National Organisation of Trade Unions) and UMA (Uganda Manufacturers' Association) (2002), another with different aspects of the termination of employment contracts in different African jurisdictions (2004) or the general relationship between trade unions and policies in Uganda particularly since 1986.

Other writers have black letter law expose of the law relating to trade unions. For instance, Angeret basically analysed the Common Law position and the Trade Unions Decree without much reference to the operation of the law in practice.[15] In a later study, he dealt with the technical aspects related to rights and limitations on the termination of the contract of employment and records some cases in this respect.[16]

The author has also considered the relationship between rights, generally and government economic policy, particularly in relation to health and education but did not deal with the relationship to workers freedom of association. On his part, Juma Okuku assessed the involvement of trade unions in the political and economic reforms under the National Resistance Movement (NRM) government, the interface with civil society and NGOs, the impact of globalization and neoliberalism on the labour movement generally and the implications for the democratic process.[17] He noted the debilitating effects of structural adjustment policies and neoliberalism on Ugandan society and the labour movement in particular.[18] However Okuku was not specifically concerned with rights or organisation as such but observes that SAPs in general 'have brought (in)… the formula of casual labourers' and that 'most employers in Uganda today would wish to have only casual labourers where no written contracts are given.'[19]

---

[13] See The Trade Union Laws (Miscellaneous Amendments) Statute 10/1993.
[14] Barya, 2001.
[15] Angeret, 1998.
[16] Angeret, 1998a.
[17] Okuku, 2005.
[18] Id., at 47.
[19] Id., at 44.

On the other hand, a number of unpublished theses have dealt with issues of labour in general, albeit with minimal focus less on organisational rights. For instance J. Muwawu[20] 1999 was specifically concerned with the broad rights of workers in the process of privatisation while Asuman Kiyingi focused on the limitations of the existing social security law in Uganda.[21] Some of the most prolific writers on labour have been researchers at Uganda's Centre for Basic Research (CBR) especially in the period 1989 - 2000. The studies have covered, inter alia, conditions of labour of specific types of workers such as those on commercial diary forms in Kabale Mulindwa Rutanga 1989[22] or migrant labour on coffee shambas in Masaka[23] S. Rutabaijuka 1989 or fisher labourers on Lakes Kyoga and Victoria[24] or specific struggles related to attempts to improve terms and conditions of services as in the former UGIL,[25] MULCO [26] or NYTIL[27]. One particular CBR study was interesting for its survey of health and safety conditions in four industries in Uganda.[28] Overall, however, these works were generally concerned with the microcosmic aspects of workers' conditions, unrelated to the questions of organization and the labour movement, or they dealt with specific historical incidents and struggles as part of what the authors saw as social movements in the general struggle for democracy.

The only other writer that attempted to deal with questions of rights of organization for workers has been Ralph Gonsalves whose work is now rather dated.[29] Nevertheless, this thesis provides one of the more detailed macro analyses of the development of trade unions, their political role and the hurdles created by the law to workers struggles in the colonial period and over the first decade of independence. The thesis raises questions related to the use of law by the state to control and subjugate or incorporate trade unions within the state structures particularly under the UPC/Obote I regime.

The literature related to or affecting workers' freedom of association in Uganda is not simply Uganda-specific. Because labour law and labour rights are historically and in certain respects currently derived or derivable from international sources, reference to relevant workers international work and standards is also pertinent. The major relevant sources are ILO standards that are applied or are applicable in Uganda. Therefore, a study on workers' freedom of association in any country that is signatory to the ILO Constitution and Conventions requires an assessment

[20] Muwawu, 1999.
[21] Kiyingi, 1995.
[22] See Rutanga, 1989.
[23] Rutabajuka, 1989.
[24] Asowa-Okwe, 1989.
[25] Ahikire, 1991.
[26] Rubanga, 1992.
[27] Okuku, 1995.
[28] Carasco, 1993. A number of the CBR studies were eventually edited as a book entitled *Uganda, Studies in Labour,* See, Mamdani, 1996.
[29] Gonsalves, 1974.

of the extent to which ILO standards are embedded in our laws in general and, in this particular case, the right to associate or organise specifically. The law itself, more certainly the new labour laws and the Labour Unions Act are inspired by ILO standards and input. Literature on ILO standards and its relevance to developing countries is enormous. It is of relevance to Uganda in so far, as in the present case, it deals with the issue of freedom of association for workers.

The ILO has been at the subject of workers' freedom of association for several years. More recent relevant works date from 1992 for instance, ILO's *Freedom of Association and Collective Bargaining, General Survey,* which is a basic treatise on freedom of association and collective bargaining.[30] The book looks at freedom of association for workers and trade union rights as part and parcel of traditional constitutional civil liberties and is basically an expose of Convention 87[31] and Convention 98.[32] The book explains the meaning and practice of the right to establish organizations, the right to organise and manage them freely, the right to strike, the right to collective bargaining and the need for protection against acts of anti-union discrimination and for the promotion of collective bargaining. The same themes are covered in a Special Issue of the *International Labour Review* by various writers.[33] For instance, Nicolas Valticos argues that international labour standards and human rights are universal and although progress had been made on these issues in the last half century, one can foresee another difficult period as a result of the advent of as yet unbridled globalisation and economic liberalism. He argues that human rights and social protection could be extensively eroded.[34] Valticos is of the view that "to confront this threat to social justice and to human rights adapted forms of standard–setting and a "regulation" in place of today's extreme deregulation are evidently in order."[35] Otherwise the ILO has also produced publications that present cases and texts clearly illustrating and interpreting different aspects of freedom of association for workers.[36] These analytical and interpretative publications are of great assistance in assessing our own new labour laws and the Labour Unions Act in particular in so far as the Act (as the other new ones) drew inspiration from the provisions of ILO Conventions.[37]

Literature from elsewhere in Africa shows that in Southern Africa for instance "the conditions under which trade unions operate vary significantly. In some countries, workers enjoy basic labour and organizational rights whereas in others they are exposed to suppression and intimidation by employers and the state, the former including Zimbabwe and the latter South Africa".[38] In addition, it is also clear that in most African countries "far too many workers in the small

---

[30] ILO, 1994.
[31] Freedom of Association and Protection of the Right to Organise Convention, 1948
[32] Right to Organise and Collective Bargaining Convention 1949.
[33] See ILR, 137, No.2, 1998.
[34] Valticos, at 145.
[35] Id.
[36] See for instance ILO, 1996.
[37] On this issue, see also Barya, 2001a.
[38] Muneku, et al, at 25.

business sector are currently not unionized" yet they "present an enormous potential for membership growth" and the poor conditions of employment in large parts of the informal sector "can only be improved through a combination of protective legislation and unionization" while a further challenge for the unions is to pay more attention to the needs of women workers and young workers.[39] The impact of globalization on trade unions and labour rights has been extensively commented on. For instance, Ramasamy has identified four major challenges responsible for the negative impact of globalization on the labour movement in general and trade unions in particular. First is the challenge arising out of the "reorganization" of production and the development of new management strategies of capitalism" which include "Toyotism, JIT, flexible production and employment of contract labour (that) have negatively impacted the independence and autonomy of the labour movement."[40]

Secondly the internationalization of capital has led to the fragmentation of the labour movement due to the rise ofthe informal sector, the creation of a flexible labour force, the sub-contracting of employment and the use of female labour which have all "introduced serious divisions within the labour movement." Thirdly, although the state has succumbed to the dictates of the deregulation of markets and thus withdrawing certain welfare provisions to labour, it has remained an active partner on the side of global capital. It has not been weakened; instead, its coercive attributes have been strengthened.[41] Therefore, the state is"still a force in trying to tame and discipline the labour movement."[42] Finally, globalization has undermined public sector employment due to the reduction of public expenditure, deregulation and the removal of the welfare related functions. The loss of jobs has led to a reduction in union membership. In the case of Uganda however, although privatization and retrenchment of the public service employees reduced the numbers of workers, unionisaiton in the public service increased due to changes in the law.[43] This is because between 1968 and 1993, all public service employees, except group employees, were prohibited from joining trade unions.[44] It is only in 1993 that a new law allowed unionization in the public service.

Related to globalization, is the whole question of neoliberal economic policies, first introduced by World Bank and IMF in the 1980s and 1990s with a devastating effect on workers and their livelihoods. Today, many governments adopt similar policies and describe them as their "own" invention and according to Muneku and others for instance "Namibia, South Africa and the New Partnership for Africa's Development (NEPAD) are typical examples in this regard."[45] They also argue

[39] Id.
[40] Ramasamy, 2005, at 20.
[41] Barya, 2005.
[42] Ramasany, op.cit., at 21.
[43] Barya, 2001.
[44] See The Public Service (Negotiating Machinery) Act (Amendment) Act 1968, Act 24/1968, S.1 (a – b) also the Public Service Act 18/1969, S.27.
[45] Muneku, et al., 25.

that governments have ignored alternative proposals to these policies by the labour movement as in Zimbabwe and South Africa, preferring to listen to thebusiness lobby and the IMF/World Bank "advisors." Indeed, in the case of Uganda, the PEAP is claimed to be Uganda's own policy framework "prepared through a consultative process involving central and local government, parliament, donors and civil society."[46] And yet, the PEAP reproduces standard IMF/World Bank economic recovery/poverty eradication prescriptions.

Most writers see the way forward for labour as taking up a more overt political role. For instance, H.R. Schillinger, argues that though weak and undermined by an ongoing "informalisation" of African economies on the one hand and the consequences of neoliberal globalization on the other, unions,

> *…remain a political force to be reckoned with, as they continue to be one of the very few societal organizations in Africa with a sizeable constituency, countrywidestructures and the potential for mobilizing members on social or political matters.*[47]

On their part, some scholars on Southern African labour movements have concluded that due to the antagonism from both capital and the state "unions will have to develop strategic alliances with other progressive organizations to create the necessary groundswell to force governments into a change of policy,"[48] while Ramasamy tentatively suggests , that exploring social movement unionism specifically in alliance with the new global social movements as a "new feature of global anti-hegenomic solidarity against globalisation" may be of great assistance to workers and the trade unions.[49]

2.2 Research Questions and a Note on Methods

Against the background of the preceding review, it is necessary to point out that Kenya and Tanzania have also been involved in the reform of their labour laws. An analysis of the changes that have been made in the three countries and their likely impact, collectively on workers' freedom of association especially within the East African Community context is however a subject for another study. An analysis of the changes brought about by the new labour laws and the Labour Unions Act in particular will however go a long way in mapping out the constitutional and legal basis for workers struggles in Uganda. But the challenges of neoliberalism and globalization as elsewhere in Africa remain.This paper therefore also assesses the extent to which the new Labour Unions Act adopts standards on freedom of association more directly embedded in Conventions 87 and 98.

---

[46] MOFPED, 2004, xv.
[47] Schillinger, 2005, 1.
[48] Muneku, et al., 25.
[49] Ramasamy, 31.

Consequently, this Working Paper set out to answer several questions. In the first instance, it seeks to understand the current general state of labour rights in Uganda, particularly in light of the new labour laws. It then asks, what is the existing government economic policy in relation to the enjoyment of labour rights, and specifically on the right to organize? Of particular concern is an examination of the extent to which the right for workers to organise is available, protected and respected in Uganda, and what problems and challenges workers face today regarding the enjoyment of this right. Finally, the paper examines the extent to which the phenomenon of casualisation of labour has affected workers' right to organize. In conclusion, it offers several pointers on what is necessary to be done for the more effective enjoyment and enforcement of the right to organise.

The study relied on several sources. Aside from the secondary sources that have been perused and used, the study also relied on government publications related to economic policy and labour rights, UHRC publications and trade union and employers' federation reports and documents. Interviews were conducted with a number of relevant people including officials of trade unions, the Federation of Uganda Employers, the Ministry of Gender, Labour and Social Development officials and several labour–related NGO personnel.

III. POLITICAL CONTEXT, UGANDA'S ECONOMIC POLICIES AND THE LAW

One cannot appreciate the nature and extent of labour rights in Uganda generally and the right to organise in particular without a clear understanding of the broad political and economic policy framework in which these rights are located. The link between these areas is often subtle, but periodically emerges to the surface in bold relief. It is necessary to explore these links before delving into an analysis of the specific right under examination.

3.1 Political Context and Uganda's Economic Policies

From 1986 when the NRM came to power, Uganda was ruled under a so–called 'no-party' arrangement. President Yoweri Museveni's government did not recognize the legitimacy of political pluralism, and therefore attempted to create a corporate regime including most social interest groups akin to the management of the one-party state in Tanzania under Nyerere.[50] While initially the NRM espoused a leftwing-cum-socialist ideology, by 1989 the regime had move considerably to the right and came to whole-heartedly support SAPs and economic liberalization generally.[51] The politics of the regime therefore came to revolve around not only the enforcement of SAPs and the privatization of the economy it also meant the general denial of social and economic rights. Therefore an illiberal political system now oversaw a liberalized economy with virtually no protections for the poor and the vulnerable. Thus while general civil and political rights continued to be proclaimed by the 1995 Constitution (save for the right of

[50] Barya 2001, at 1 – 12.

[51] See Museveni, 1992, at 175 and Barya 2000, 6-8.

political parties to operate until 2005), in reality, social and economic rights continued to be denied to the majority by the economic policies put in place.

Uganda has pursued neoliberal economic policies since 1987, beginning with the continuation of the Structural Adjustment Policies (SAPs) originating from the UPC/Obote II regime. Therefore, neoliberal policies stand on an ideological faith in so-called free market forces and a very minimal role for the state. Here, the rights and freedoms of markets and individuals stand opposed to collective initiatives and/or state regulation. SAPs entailed cuts in public expenditure, the dismantling of price controls, the so-called rationalization of the public sector through privatisation, lay offs (retrenchment), wage cuts and enterprise closures and the opening up of the economy to foreign (mainly Western) forces. All these measures were demanded by the IMF, World Bank and Western governments in return for support to the economy through loans, grants and eventually so-called debt relief. At the end of the day they represent the interests of Western business and multinational corporations.

The unsatisfactory results of the above policies, by government's own admission led to the adoption of other World Bank/IMF demanded approaches particularly the Poverty Reduction Strategy Papers (PRSPs), which in Uganda is called the PEAP (Poverty Eradication Action Plan). The first PEAP was developed in 1997, revised in 2000 and the current one was published in 2004.[52] In its own words, the PEAP became necessary because "inspite of the stabilization and structural adjustment measures undertaken by government since 1987 and their diligent implementation with an average annual growth rate of 6.5% and low inflation this commendable economic performance has not been sufficiently broad based to address the problems of mass poverty and poor human development indicators."[53] However the proposals in the PEAP for eradicating poverty are so narrowly conceived and limited by the overreaching neoliberal economic philosophy that underlies the policy framework.[54]

Neoliberal policies are in the main driven by Western capitalist interests in search of markets and investment opportunities globally. The basic ideology behind neoliberalism is that market forces (i.e. multinational companies and financial institutions) should be given total freedom, state intervention should be eliminated, and trade unionism curtailed. Conceptually therefore, it is important to see whether what is proposed and promised by the PEAP can actually advance human rights and the right to organize. Workers' rights primarily include the right to employment in the first place, the right to organize and several related rights such as: the right to a healthy and safe working environment, weekly and annual rest (leave), reasonable working hours, maternity leave, the right to the collective withdrawal of labour (right to strike), compensation for injuries, sickness or death, the right to fair determination of industrial/labour disputes

[52] See MOFPED, 2004.

[53] Id., at 1.

[54] We deal with this issue fairly extensively elsewhere, Barya, 2005

and the right to protection on leaving employment including social security and pension rights.[55]

As far as workers are concerned, the PEAP notes that employment in agriculture is the most dominant. Being a peasant society in Uganda "self-employment within agriculture remains the largest single income source" although its share has fallen over time.[56] The average share of wages in income, that is of workers compared to other class categories, remains quite small, at about $12^0/_0$.[57]

The PEAP makes a number of important admissions that in turn affect the status of labour rights in Uganda. First of all, wage employment has not been growing very fast and inequality among wages has been increasing.[58] Secondly, a substantial proportion of employment is in the public sector, and employment opportunities for secondary and tertiary graduates are more concentrated in the public sector in Uganda than is the case with other African countries. And yet, "…the acceleration of private investment during the period 2000 to 2003 does not yet appear to have led to major increases in the share of wage employment in household activities."[59] Thirdly, the proportion of households headed by workers fell between 2000 and 2003 and wage inequality also "increased markedly."[60] Finally, while open unemployment is fairly rare except in urban areas and among the most highly educated and women, underemployment[61] is widespread, affecting $65^0/_0$ of all adults, while visible underemployment[62] is $15^0/_0$ and is higher among men than women.[63]

It is important to point out that the PEAP only looks at the macroeconomic parameters for economic growth "to reduce poverty." It does not talk of the need for a skilled and empowered workforce, or of living and working in fair conditions with a capacity to bargain for these conditions. The environment for wage employment in Uganda is therefore very negative and the economic policies in place are not increasing employment. As such, unemployment and underemployment are part and parcel of the massive poverty levels in the country.[64] The more pertinent question for our purposes in is how does PEAP then treat human rights and the rights of workers, at least those few in employment?

---

[55] See Barya, 1991 for an extensive expose of these rights in Uganda in the 1990s.
[56] MOFPED, 2004, at 22 – 23.
[57] Id., at 24.
[58] Appleton and Ssewanyana, 2003 in MOFPED, 2004: 24.
[59] MOFPED, at 24.
[60] Id.
[61] That is working on economic activities less than 40 hours a week.
[62] That is working on economic activities less than 40 hours a week despite being available for work.
[63] MOFPED, op.cit.
[64] See also Barya and Rutabajuuka, 2002 where the study established that the two most important problems for the people of Uganda were poverty and unemployment.

The PEAP has no clear concept of human rights and their relationship with development or what the PEAP calls poverty eradication. PEAP conceives human rights as a sectoral concern of the Uganda Human Rights Commission (UHRC) and the Justice Law and Order Sector (JLOS). PEAP however notes that human rights violations are still a daunting problem in the country. Human rights are also viewed as part and parcel of the good governance approach that has numerously been criticized for being managerial, technocratic and apolitical.[65] Equally workers' rights are not specifically dealt with in the PEAP. There is a simplistic and superficial concern with employment, unemployment and underemploymentlevels.[66] We can now turn to the issue of this situation and how it compares with the constitutional and legal provisions and the relationship between them.

3.2 The Constitutional and Legal Framework – Labour Rights and

3.2.1 Freedom of Association

Workers' rights are generally secured in Uganda's 1995 Constitution. Article 29 provides for "freedom of association which shall include freedom to form and join associations or unions, including trade unions … and other civic organizations" (Article 29(i)(e)). This right is further emphasized in detail in Article 40. Article 40(3) provides that "every worker has a right to

a) form or join a trade union of his or her choice for the promotion and protection of his or her economic and social interests;

b) collective bargaining and representation; and

c) withdraw his or her labour according to law."

Three rights are emphasized here: forming a union, joining it for collective bargaining and representation and the right to strike.[67] This is what basically constitutes the right to freedom of association for workers.

In addition the Constitution lays ground for other (substantive) rights. First, employers of women workers must accord them protection "during pregnancy and after birth in accordance with the law." Secondly, parliament is enjoined to enact laws:

a) to provide for the right of persons to work under satisfactory, safe and healthy conditions;

[65] See Barya, 2001, Barya, 2005: 26 - 28 and Olukoshi, 2003: 37.
[66] MOFPED 2004, at 21 to 26.
[67] This is the right to withdraw labour collectively.

b) to ensure equal payment for equal work without discrimination; and

c) to ensure that every worker is accorded rest and reasonable working hours and period of holidays with pay, as well as remuneration for public holidays."[68]

Before April 2006, there were labour laws dealing with health and safety (e.g., the Factories Act, Cap 220) terms and conditions of work including maternity leave, working hours and holidays (the Employment Act, Cap 219) and for forming and joining trade unions (the Trade Unions Act, Cap 223). However, in April 2006 four new labour laws were passed by Parliament and have made important and significant changes in the area of freedom of association for workers and labour rights generally and buttressed those referred to specifically in the Constitution as stipulated above.

3.2.2 Labour Rights Generally

Apart from the right to organize, labour rights may be put into the following categories.

a) Rights in the contract of employment;

b) Rights to health, safety and compensation arising from work-related injury, disease or death, and

c) Rights on termination of the contract of employment: terminal benefits, social security benefits and pension rights.

Under the new labour laws we would like to point out the following salient rights.

A. Rights Under the Employment Act

The new Employment Act creates new rights and retains or modifies some of the existing ones. The new rights include: protection from forced labour (Section 5), protection from discrimination in employment due to "race, colour, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or preventing an employee from obtaining any benefit under a contract of service" (Section 6(3)) and protection from sexual harassment by the employer (Section 7). Other significant rights include regulation of working hours (Section 53) annual leave and holidays (Section 54) and paternity leave of 4 working days (Section 57). Others are the right to written particulars of the contract (Section 59), the right to a fair hearing before dismissal (Section

[68] Article 40(1).

69), the right to reinstatement and/or compensation in cases of unfair dismissal (Section 71) and remedies of compensation and additional compensation in cases of unfair termination (Sections 77 & 78), and severance pay (Sections, 87 to 89). Most of these rights represent a significant advance in the rights of workers since the Employment Decree, 1975, the last statute dealing with workers' substantive rights.

B. Rights to Safety, Health and Workers' Compesation

Under the Common Law, workers were entitled to work under safe premises, a safe system of work, safe appliances, implements and plant. This was seen as an employer's duty of care to the employee which included taking reasonable precautions for the workman's safety.[69] However, the Common Law position has long been buttressed and expanded by legislation particularly the Factories Act and the Workers' Compensation Act. The Workers Compensation Act[70] was passed in 2000 replacing the earlier Act of 1964. The Occupational Safety and Health Act[71] replaces the old Factories Act.[72]

The new Occupational Safety and Health Act applies health and safety requirements to every "workplace" or "working environment" (S.2, Act 9/2006), it applies to both private and public (government) employers. It imposes duties on employers, manufacturers, suppliers and transporters to exercise due care and ensure safety at workplaces, and for articles, chemicals, etc. manufactured, supplied or transported.[73] General health and welfare provisions are made including sound construction, space, ventilation, cleanliness, lighting, water, sanitary conveniences and first aid facilities (Part VIII) but there are also specific provisions regarding fire preparedness (Part X); the safety of machinery, plant and equipment (Part XI); hazardous materials (Part XII), precautions in handling chemicals (Part XIII) and others. On the other hand, the Workers' Compensation Act applies to all workers and employers except the army.[74] Employers must provide compensation for injuries sustained, sickness or disease contracted or death suffered in the course and as a result of employment. Different levels of compensation exist and provision is made for special and general damages.

---

[69] See *Juma Asile* vs. *NYTIL* [1975]HCB 292; See also Barya 1991: 56 - 60.
[70] Act No. 8 of 2000, later Cap 225.
[71] Act No. 9 of 2006.
[72] Cap 220.
[73] Part V, Act No. 9 of 2006.
[74] Section 2, Cap 225.

C. Rights on Termination of Employment

Rights at the point of termination of the employment contract or on dismissal are essentially a question of the contract itself. However, certain rights are also a creature of statute. As a matter of contract, until the new Employment Act (6/2006), employment law provided no terminal benefits at all, a reflection of the Common Law position. All that one was entitled to was notice or pay in lieu of notice.[75] In the private sector therefore benefits were only available if provided in one's individual contract, collective agreements (for unionized workers) and social security fund benefits (NSSF) for those who were members of the NSSF. It is only employees in the traditional public service (central and local governments) that have been entitled to gratuity and/or pension.[76]

The NSSF law and the Pensions Act have not been affected by the new laws, and still remain in force. However, the new Employment Act provides for some limited benefits/rights. These include: notice or pay in lieu of notice (Section 58) reinstatement in case of unfair dismissal or compensation thereof (Section 71(5)), compensatory orders (basic and additional) for unfair termination, (Sections. 77 and 78), repatriation (Section 39), severance allowance (Sections 87 to 92) and proper procedures in case of lay-offs and redundancies (Section 81).

The new labour laws have therefore considerably expanded workers' rights in Uganda. What remains to be seen is whether these rights will be realized in practice and whether the majority of workers will be able to access them. There are of course, various obstacles to the realization and/or enforcement of these rights. It is thus necessary to focus on the nature of the right of workers to organize and the obstacles and challenges existing in practice.

IV. WORKERS' RIGHT TO ORGANISE

4.1 Constitutional Guarantees

Workers right to organize is one of the fundamental freedoms guaranteed by the Constitution and espoused by ILO in Conventions 87 (Freedom of Association and Protection of the Right to Organise Convention 1948) and 98 (Right to organize and Collective Bargaining Convention 1949). Both Conventions have been ratified by Uganda. Convention 98 was ratified in 1963 while Convention 87 was ratified only recently in 2005. As already pointed out, the Constitution of Uganda guarantees workers' freedom of association among other labour rights.[77] This right may be summarized as including: the right to **form** a union, the right to **join** a union of one's choice for purposes of promoting and protecting "his or her economic and social interests" on the one hand and on the other for purposes of

[75] See Employment Act, Cap 219 S. 25.

[76] See Pensions Act, Cap 286.

[77] Section 3.2.1 above.

"collective bargaining and representation;"[78] the right to union **recognition** by the employer so that collective bargaining can take place; the right to **strike** (the collective withdrawal of labour) as a means of promoting and protecting workers' economic and social interests and finally the right to run unions **without interference** by the state or employers. These rights have been extensively debated and elaborated.

4.2 International Conventions

The ILO has since the 1950s to date interpreted the various aspects of freedom of association for workers. These interpretations must be read in tandem with more universal human rights instruments adopted by the United Nations (UN) after World War II. ILO Convention 87 was adopted in 1948 and a few months later in the same year, the Universal Declaration of Human Rights (UDHR) was also adopted by the UN. Article 23(1) of the Universal Declaration recognises that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment" among other rights of workers, while Article 23(4) specifically recognises that "everyone has the right to form and to join trade unions for the protection of his interests." This is in fact a more specific elaboration of the general right of freedom of "peaceful assembly and association" in Article 20(1) of the Universal Declaration. These provisions are directly reflected in Article 29(1)(e) of Uganda's 1995 Constitution.

In 1966, the International Covenant on Economic, Social and Cultural Rights (ICESCR) elaborated this right in Article 8 thereof as follows:

> "1. The states Parties to the present Covenant undertake to ensure:
>
> (a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interests. No restriction may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
>
> (b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade union organisations;
>
> (c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public

[78] Article 40(3).

order or for the protection of the rights and freedoms of others;

(d) the right to strike, provided that it is exercised in conformity with the laws of the country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the state.

3. Nothing in this article shall authorise the States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organise to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice the guarantees provided for inthat Convention."

On comparing the provisions of the ICESCR with those of Convention 87 one notes several differences. The ICESCR provision introduces restrictions that might considerably reduce the extent of protection provided by the Convention, via the limitations or restrictions allowed on the exercise of the rights by "members of the armed forces, of the police or of the administration of the state," the latter referring to civil servants. Secondly, the Covenant also introduces limitations, "… necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others." However, the protections afforded by Convention 87 are saved by clause 3 of Article 8 of the ICESCR as the state must not "… take legislative measures which would prejudice, or apply the law in such a manner as to prejudice the guarantees provided for in that Convention."[79] Thirdly, unlike Convention 87, the Covenant **expressly** recognises the right to strike though subject to being "in conformity with the laws of a particular country."

The development of the jurisprudence on freedom of association for workers has however almost exclusively been the work of the ILO and its supervisory bodies. This has been mainly through the interpretation of Conventions 87 and 98, which were of much inspiration to the new Labour Unions Act 2006 in Uganda. Although only ratified in 2005, it is correct to say that Convention 87 provided inspiration because it was taken into account in the labour law review process that took place between 1989 and 2002.[80]

It is generally agreed that a genuinely free and independent trade union movement can only develop where fundamental human rights are respected.[81] In general, the ILO supervisory bodies particularly the Committee on Freedom of Association and the Committee on Experts have insisted that trade unions can only freely

[79] See also Valticos, N & Von Potobsky, G 1995:105.
[80] See Barya, 2001a.
[81] ILO 1996 Digest par. 35.

operate where they are guaranteed personal security including freedom from torture, disappearance, arbitrary arrest and detention, death and exile.[82] This protection also includes the right to freedom of opinion and expression, freedom of assembly and protection of trade union premises and property.[83]

Otherwise Convention 87 specifically guarantees the following rights:

A. *Establishment of Organizations without Previous Authorization*

Article 2 of the Convention lays down the right of workers (and employers) to establish their organisations, *interalia*, "without previous authorisation". This is intended to curb the exercise of discretionary powers to grant or reject a registration. In addition, the right to appeal against refusal to register should be provided.[84]

B. The Right to Establish and join Organisations of their own Choosing

The provision under Article 2 that workers (and employers) "shall have the right to establish and... to join organizations of their own choosing" is one of the most important aspects of ILO's concept of freedom of association. Thus,requirements of minimum numbers particularly above 20 to form a trade union are incompatible with this freedom. The imposition of trade union unit ormonopoly, requirements that all workers pay contributions to a single national trade union or disallowing minority unions also violate the freedom.[85] The use of a "closed–shop"[86] A *closed shop* refers to any workplace whose employees are required to be union members usually of a specific union as a precondition for employment as opposed to an *open shop* which does not is left to regulation by national laws and practices. The closed shop however should not be imposed by law but should be "the result of free negotiation between workers' organizations and employers."[87]

C. Autonomous Administration and Activities of Organizations

Article 3 of Convention 87 guarantees the autonomous and free functioning of workers' and employers' organizations by recognising four basic rights, *viz.*:

- to draw up their constitutions and rules;
- to elect their representatives in full freedom,
- to organise their administration and activities and,
- to formulate their programmes.

---

[82] See ILO, 1994: paras 28 - 33.

[83] Id: paras 34 - 40; also Swepston, 1998: 177 - 181.

[84] ILO, 1996 Digest, para 244.

[85] Swepston, 1998: 182 - 183 impose union membership or prefer union members in hiring.

[86] A *closed shop* refers to any workplace whose employees are required to be union members usually of a specific union as a precondition for employment as opposed to an *open shop* which does notimpose union membership or prefer union members in hiring.

[87] ILO 1994: pars 100 - 103.

This provision implies the free elections of union or workers' leaders without control or interference by government; and access of trade union leaders to workplaces. [88] It also means that unions should be free to administer and use their funds for trade union and other lawful purposes subject to lawful supervision such as requirements for audited accounts or submission of periodic financial reports.[89] It is also understood that trade unions have a legitimate political role and may therefore be engaged in political activities because in furthering and defending the interests of workers under Article 10 of the Convention trade union activities cannot be restricted to solely occupational workplace matters. Government economic policy is bound to have an impact on workers for instance SAPs, budgetary austerity programmes, price and wage restrictions, bilateral or multilateral trade agreements, delocalisation of enterprises, etc. Thus though improvement of working conditions vide collective agreements is a major feature of trade union action, to the ILO the development of the trade union movement and the increasing recognition of its role as a social partner in its own right mean that workers' organisations must be able to voice their opinions on political issues in the broad sense of the term and, in particular, to express their views publicly on a government's economic and social policy.[90]

D. The Right to Recognition and Collective Bargaining.

Collective bargaining is one of the major functions of trade unions. However, a trade union cannot bargain without being recognised for the purpose by the employer. Where there are more than one trades union the most representative of them can be recognised provided this does "… not result in the most representative organisations being granted privileges which go beyond priority in representation for purposes of collective bargaining, consultation by governments or the appointment of delegates to international bodies."[91]

Recognition in some cases is voluntary as a result of agreements or practice. However, where under certain conditions a system of compulsory recognition exists, the ILO is of the view that this should be based on objective and pre-established criteria so as to avoid opportunity for partiality and abuse. Where legislation provides that a trade union must receive the support of 50% of the members of a bargaining unit to be recognised as a bargaining agent, there is a problem where a majority union fails to secure the 50% majority and is denied the possibility of bargaining. The ILO is of the view that in such a system "…if no union covers more than 50% of the workers, collective bargaining rights should be granted to all unions in this unit, at least on behalf of their own members".[92]

---

[88] See also Workers' Representatives Recommendation No. 143/197 for instance.
[89] See Swepston, 1998: 184 - 186.
[90] ILO, 1994: para. 131.
[91] ILO, 1994 para. 239.
[92] Id., para. 241.

E. Right to Collective Bargaining in the Public Service

Article 9(1) of Convention 87 provides that "the extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations." On the other hand, Article 6 of Convention 98 provides that the Convention "… does not deal with the position of public servants engaged in the administration of the state, nor shall it be construed as prejudicing their rights or status in any way." The right to organise is therefore available to all public servants but the **extent** and **manner** of exercising it are left to national laws. The only exception is for the army and police. Convention 98 excludes from its preview "public servants engaged in the administration of the state…." However, the ILO has still interpreted these provisions to mean that in the public and semi-public sector,

> *intervention by the authorities is compatible with the Convention so far as it leaves a significant role to collective bargaining. Measures which unilaterally fix conditions of employment should be of an exceptional nature, be limited in time and include safeguards for the workers who are the most affected.*[93]

F. The Right to Strike

The right to strike is expressly recognised by the ICESCR and other regional human rights charters but not by any ILO Convention. However, through interpretation, both the Committee of Experts and the Freedom of Association Committee have concurred that the right to strike is an intrinsic collorary of the right of association protected by Convention 87. Both workers and their organisations enjoy the right to strike.[94]

In short according to ILO the right to strike,

> *is an intrinsic collorary of the right of association protected by Convention No.87. This right is however not absolute and may be restricted in exceptional circumstances or even prohibited for certain categories of workers, in particular certain public servants or for essential services in the strict sense of the term, on condition that compensatory guarantees are provided for. A negotiated minimum service might be established… where a total prohibition of the strike action cannot be justified. Provisions which for instance require the parties to exhaust mediation or conciliation procedures or workers' organizations to observe certain procedural rules before launching a strike are admissible, provided that they do not make the exercise of the right to strike impossible or very difficult in*

[93] ILO, 1994: para. 265.

[94] See ILO, 1994: paras 136 – 179 and Swepston, 1998. 186 - 190.

> *practice… Since maintaining the employment relationship is a normal consequence of recognition of the right to strike, its exercise should not result in workers being dismissed or discriminated against.*[95]

The right to strike is very important for workers because it is a collorary to collective organization and bargaining which are meant to redress the historical imbalance between the weak individual worker and the strong employer.

G. No Dissolution and Suspension of Organizations by Administrative Authority

Article 4 of Convention 87 provides that workers (and employers) organizations shall not be liable to be dissolved or suspended by administrative authority and this also applies to federations and confederations (Article 6). The dissolution or suspension of trade union organizations constitute extreme forms of interference by the authorities in the activities of organizations and should therefore be accompanied by all the necessary guarantees. It is therefore important that government and the unions should cooperate so that different trade unions are able to carry out their activities in full independence and on an equal footing.

H. Right to Establish Federations and Confederations and to Affiliate Internationally

Article 5 of Convention 87 provides that any "organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers". This right is important becausein order to defend the interests of their members more effectively workers'and employers' organizations should have the right,

> *to form federations and confederations of their own choosing, which should themselves enjoy the various rights accorded to first-level organizations, in particular as regards their freedom of operation, activities and programmes. International solidarity of workers and employers also requires that their national federations and confederations be able to group together and to act freely at the national level.*[96]

The above provisions as elaborated and interpreted by ILO supervisory organs constitute the gist of internationally recognised rights of workers to associate and protect their social and economic interests. To what extent did they inspire Uganda's Labour Unions Act 2006 and to some extent the Labour Disputes (Arbitration and Settlement) Act 2006? To what extent have these Acts advanced

[95] ILO 1994: para 179.

[96] ILO 1994: para. 198.

workers' freedom of association in general, and more specifically the right to organize?

4.3 The Labour Unions Act 2006 and the Labour Disputes (Arbitration and Settlement) Act 2006

4.3.1 Origin and Politics Behind the New Labour Laws

The new Labour Unions Act and the relevant parts of the Labour Disputes (Arbitration and Settlement) Act have generally conformed to the provisions and philosophy behind ILO Conventions 87 and 98. The struggle to pass these laws took place mainly between 1988 and 2006, a period of over 18 years! Demands for the reform and modernization of labour laws in order to make them conform with ratified and core ILO Conventions have been on the agenda of workers with some support of the Federation of Uganda Employers (FUE) since the early 1980s. However, the calls were made much more in earnest when the NRM came to power. Eventually, in June 1988, the government requested the ILO for technical assistance to update and revise its labour legislation.[97] The ILO appointed Dr. Brian Napier of the University of London as an expert to assist in this task. A tripartite Labour Law Review Committee was set up to work with Dr. Napier. A Technical Memorandum proposing the necessary reform was made in 1992, but it was never acted upon and simply gathered dust in the Ministry of Labour.

Instead, an alternative labour law review process was put in place. The forces of neoliberalism in government led by President Museveni, and supported by the Ministry of Finance (MOFPED) and the World Bank/IMF teamed up and sponsored another study, this time a consultancy carried out by US and Ugandan law firms as part of the Commercial Laws Reform Project sponsored by World Bank. These firms, Reid & Priest of the United States and Bwengye, Tibesigwa & Co. Advocates of Uganda made recommendations on several laws, including labour laws, based on the American labour relations regime. However, their recommendations were rejected by the Ministry responsible for labour as being 'unrealistic and irrelevant.'[98]

A few years later under trade union insistence and the pressure of the ILO, another consultancy was undertaken by two Ugandan consultants[99] supported by the ILO and the UNDP, with the participation of and in close consultation with the tripartite partners. Their report was presented to the Ministry of Gender, Labour and Social Development in March 2001.[100]

---

[97] See ILO, 1992: Technical Memorandum to the Government of Uganda Mission to Advise on the Reform of Ugandan Labour Law in Relation to Trade Unions and the Resolution of Trade Disputes: 1.

[98] Interview with Dr. D. Ogaram, Labour Commissioner, August 2000 Constitutional Affairs.

[99] The author, Barya and B. Mutebi of First Parliamentary Counsel, Ministry of Justice and Constitutional Affairs.

[100] See Barya to Director of Labour, MOGLSD – Technical Memorandum on Labour Laws in Uganda, 30 March 2001.

The new proposals sought to overhaul the old law, give meaningful and unrestricted rights and freedom of association to workers, have a better and more efficient labour dispute settlement process, expand safety and health rights at work, and above all create new labour rights in the employment relationship[101] A number of meetings were held with government officials and a seminar with ILO support, was also held for MPs on the Sessional Committee on Social Services to sensitize them on the importance of the Bills.[102] Although all the MPs were very supportive of the Bills, the Ministry of Finance and the President continued to vehemently oppose them as "anti investors." The President even wrote to the Prime Minister opposing the Bills as being "populist" and "anti-development."[103]

On the advice of UMA and the Private Sector Foundation (PSF), the President, argued that the Workers Compensation Act (passed in 2000) "has profound implications for both Government and private sector, including a requirement to pay very high insurance premiums to compensate workers with an amount of sixty times their monthly earnings, even if the injury was due to the negligence of the employee." He wanted this law reviewed "in the spirit of our endeavour to create a competitive economy." Opposing the four draft Bills the President stated his case as follows:

> *I am told that these Bills have significant cost implications for the economy. The Employment Bill for example mandates increased paid leave, significantly improved maternity provisions, complex and expensive overtime arrangements. I am informed that the increase (in) paid leave provisions alone could cost employers over (U) Shs. 20 billion per annum. You need to know that such populist and unrealistic labour laws are a death sentence to the economy. Incidentally this is one of the problems of Argentina's economy.* [104]

It should be stressed that not only was the President misinformed in many respects, the logic of his argument was in conformity with the demands of an unregulated market economy. This was in total disregard of not only the provisions of Uganda's 1995 Constitution, but also of the relevant UN and ILO Conventions that we have already highlighted in this study.

The major difference between the workers and the Ministry of Gender, Labour and Social Development on the one hand and employers (although not all of them), and the Ministry of Finance and President Museveni on the other, revolved around the need for minimum standards and the desire by employers to remove

---

[101] Id, in this regard four draft bills were made on trade unions, employment, labour disputes and safety and health.

[102] The author was facilitator at this Seminar, ILO – SLAREA: Parliamentarians Retreat on Strengthening Labour Relations in East Africa, 27 – 28 September, 2001, Hotel Triangle Annex, Jinja.

[103] See Y.K. Museveni to A. Nsibambi, dated 11th March, 2002.

[104] Id.

these standards. For instance, employers wanted to have the right to agree with workers "to waive or vary prescribed conditions of employment" and the removal of penalties even where the employer has failed to comply with the prescribed standards![105] Regarding the rights of organization specifically, employers and MOFPED wanted the following:

a) the right to strike should be removed because, "for competitiveness in the global market cheap labour is our advantage and Uganda should maintain this. The right to strike gives workers a tool for raising wages… The law should therefore not give this right so as to protect the investor".[106]

b) The employers and MOFPED were of the view that unions should not be immune from civil liability for damages resulting from breaches of contracts of employment during lawful industrial action.[107]

c) The employers and MOFPED opposed an automatic right to union recognition by employers but argued that "unions should only be recognized by agreement between themselves and employers and only upon such terms as are mutually agreed."[108]

d) The employers and MOFPED even proposed that the Industrial Court should be scrapped because it had been ineffective in the past and an unnecessary expenditure. Instead, they proposed a tripartite Arbitration Board to settle labour disputes.[109]

On every occasion available however, union leaders complained and deplored the non-enactment of the new labour laws. Not only were they ignored by government, instead Government employed some foreigners in the Ministry of Finance under the Deregulation Project to undo what the tripartite Labour Laws Review Committee and other processes had done between 1989 and 2001.[110] For instance, in 2003, the Chairman-General of NOTU summarized the situation in the following way:

> *we are disappointed by the way the labour laws review process is being handled. There is a project in the Ministry of Finance called the Deregulation Project which is coming up with proposals that throw labour laws back to the Stone Age. Worse still at most meetings this project is represented by foreigners who do not know our culture and habits… it appears they have usurped*

[105] See Ogaram, 2003, at 3 to 4.
[106] Id., at 7.
[107] Id.
[108] Id.
[109] Id.
[110] The author was engaged in tripartite deliberations involving these "consultants".

> *the powers of these relevant organs. We wish to state that the discussion on (labour) laws for Uganda should be done by Ugandans who know what is good for us.*[111]

Inspite of strong pleas and support by the trade unions, Members of Parliament and the Ministry of Gender, Labour and Social Development and considerable concurrence by the employers as represented in FUE, the laws were never passed between March 2001 (when the technical memorandum and draft bills were submitted) and April 2006. How the four laws came to be passed in a record one week is one of the most interesting episodes in modern day neocolonialism.

It has become abundantly clear that the bills were passed due to US pressure on the Ugandan government courtesy of the US African Growth and Opportunity Act (AGOA). The AGOA had been taken advantage of by the Ugandan Government which supported some Sri Lankans to set up the Apparel Tri-Star Ltd, a private company in Kampala employing more than 2000 female workers in the textile factory. The Uganda Textiles, Garments, Leather and Allied Workers' Union (UTGL&AWU) had mobilized over 90% of the work force at Tristar by June 2003 to join the union. The company refused to recognize the union, claiming that the union should certify that it was representative of at least 51% of the workers at Tristar. This could not be done as the company refused to supply the list of itsworkers for the Labour Commissioner to verify the union claims. Instead, with constant pressure and agitation by workers for union recognition and bargaining rights, the company dismissed all the workers and re-engaged them the following day except 93 that were permanently dismissed. A complaint was filed with the ILO and the ILO Committee on Freedom of Association gave a damning report and requested, *interalia,* that government takes steps to amend the Trade Unions Act to bring it "unto conformity with Freedom of Association principles."[112]

The textile union, UTGL & AWU, continued its international campaign for union recognition and enlisted the support of the AFL–CIO and the ITGLWF. These unions took up the matter with the US government. In particular, the AFL–CIO urged the US government to expel Uganda from AGOA for not respecting trade union rights. This jolted the Ugandan government into prevailing upon Tristar to sign a recognition agreement with UTGL & AWU in 2005. As a matter of fact, the agreement has so far not been implemented as no collective bargaining is taking place to date.

In the meantime, the Uganda Government led by the Deputy Attorney General collected the Chairman–General, NOTU, the Labour Commissioner at MOGLSD and the Chairman FUE and took them to the U.S Congress to negotiate the stay

---

[111] See D. Nkojjo, Chairman – General, NOTU May Day Speech 2003:4 The foreigners talked about were a South African white man and an Australian white woman, in some of the meetings the author attended.

[112] See ILO: Complaint Against the Government of Uganda presented by the International Textile,Garment and Leather Workers' Federation (ITGLWF), Case No. 2378, Complaint dated 25 June and 29 August 2004.

of Uganda in AGOA vide the Tristar company.[113] During that December, 2005? meeting, the American Government gave the Uganda Government an ultimatum up to March 2006 to pass all the pending labour laws, otherwise Uganda would be struck off AGOA. Faced with this credible threat, government mobilized Parliament even in the heat of presidential and parliamentary election campaigns before the 23 February vote to scrutinize the bills. Following the elections, and in a record time of one week in April 2006, all four bills were tabled, debated and passed with only minor amendments! In light of the circumstances in which these laws were passed it remains to be seen how the government (or the stronger faction of it) which as a matter of fact does not believe in these positive labour laws will ensure their implementation and enforcement, particularly since they were coerced into passing them.[114] As an interesting side-note, the office of theUnited States Trade Representative has now dismissed the AFL-CIO petition, stating that "Uganda has made considerable progress over the last year (sic!) in improving its protection of labour rights."[115]

4.3.2 The Major Rights Introduced

It is necessary to wind-up this analysis with a consideration of the major developments and implications—in terms of freedom of association and the right to organize—introduced by the Labour Unions Act 2006 and the Labour Disputes (Arbitration and Settlement) Act 2006.

A. The right to organise

Section 3 of the Labour Unions Act provides that employees shall have a right to organize themselves in any labour union and may:-

a) assist in the running of the labour union;

b) bargain collectively through a representative of their own choosing

c) engage in any other lawful activities for the purpose of collective bargaining or any other mutual aid practice; and

d) withdraw their labour and take industrial action.

This section guarantees the basic right to organize and the right to strike.

---

[113] Interviews with L.O. Ongaba, Secretary – General, NOTU, June 2006 and Dr. D. Ogaram, Labour Commissioner, 12 July, 2006; See also, Government of Uganda: Answer to the Petition to Remove Uganda from the list of Beneficiary Developing Countries under the Generalised System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA) by A. Mwesigye, Minister of State for Justice and Constitutional Affairs, 30 November, 2005.

[114] The four laws all came into force on 7 August, 2006 vide four separate commencement Statutory Instruments, Nos. 33,34,35 and 36/2006.

[115] Conan Busingye, 'US Dismisses Uganda AGOA Case,' *New Vision*, January 30, 2007 at 5.

B. No employer interference or discrimination

Section 4 of the Act provides for protection against employers from interfering with union organization. Under this section, an employer shall not,

a) interfere with, restrain or coerce an employee in the exercise of his or her rights under the Act;

b) interfere with the formation of a labour union or with the administration of a registered organization;

c) discriminate in regard to hire, tenure or any terms or conditions of employment in order to discourage membership in a labour union;

d) discharge an employee on account of his or her lawful involvement or proposed lawful involvement in the activities of a labour union, including his or her participation in a lawful industrial action or strike, and

e) prevent or otherwise hinder a labour union official from having access to his or her employee or employees' representatives or otherwise omit to accord any labour union official facilities to enable him or her

to discharge their responsibilities promptly and efficiently.

Contravening the above provisions is an offence on the part of the employer (S.5). It should be noted that the above provisions existed in the old law (S.54 of the Trade Unions Act, Cap 223) but two additional rights are introduced.

(i) the right to be involved in lawful industrial action without hindrance and,

(ii) the right of access of union officials to employees or their representatives (shop stewards) in a workplace.

C. Voluntary establishment and joining of unions

Unlike the Trade Unions Act (Cap 223) which provided only for industrial unions and where unions could be refused registration because existing ones were deemed sufficiently representative,[116] where a union had to have at least 1000 members[117] and where time limits were provided for registering unions[118] the formation and registration of unions requires no previous authorization or approval by the Registrar. The requirements for registration are formal and there are even no minimum numbers required before registration. The formal requirements are:-

[116] See Section 8(1)(d), Cap 223.
[117] Section 6(3), Cap 223.
[118] Section 6(1) & (4) Cap 223.

a) name, address, office and postal address of the union;
b) the titles, names, ages, addresses and occupations of its officers; and
c) a revenue stamp of the prescribed amount (S.15, Act 7/2006).

Equally, cancellation of a union is only available for legitimate reasons (S.20) but the refusal, delay or cancellation of registration may be appealed against to the Industrial Court (S.21). Thus dissolution, suspension or cancellation of union registration is no longer at the whim of the Registrar of Trade Unions.

D. Autonomous Administration of Unions and their Activities

The unions are free to elect their leaders, hold annual general meetings, obtain funds without Ministerial approval and generally autonomously run their affairs.The only powers retained by the Registrar are to approve a list of auditors to be used by unions,[119] power to inspect books of accounts or to call for detailed accounts[120] and to interdict officers for misappropriation or mismanagement of funds or persistent failure to comply with directions properly given by the Registrar.[121] Howevr, the exercise of these powers is reviewable by the Industrial Court. The Minister no longer has substantive powers over unions, except the making of regulations and amending schedules under Sections 58 and 59 of the Act. In short, the autonomous administration of unions and their activities has been guaranteed.

E. Union Recognition and Collective Bargaining

The most important obstacle to the enjoyment of the right to organize by workers in Uganda has been the refusal by employers to recognize unions for the purposes of collective bargaining. This has been a problem in both the private and public sectors. Prior to the liberalization of the economy, union recognition within the major enterprises in the economy which were publicly owned, was never a major problem. All major enterprises such as those involved in produce marketing, textiles, banking, transportation, beverage production, cooperatives, telecommunications, railways and electricity bodies had thousands of members, recognized unions and bargained collectively with them. Privatization of these enterprises has brought about the problem of non–recognition by the new private employers. The most notorious areas have been: the new (South African) electricity companies, the textile industry, telecommunications (MTN and Celtel), hotels, the building industry and most new and upcoming enterprises.[122] For instance, although following the US pressure due to AGOA many textile companies have signed recognition agreements, they have not entered negotiations to reach collective agreements.

More ironically, although government eased the law in 1993 to allow more categories of workers especially in government to join trade unions, since 1993

[119] Section 48(2).
[120] Sections 51 to 53.
[121] Section 23.
[122] On this point, see Barya 2001.

government has not signed recognition agreements with any of the public sector unions, namely, Uganda Government and Allied Workers' Union (UGAWU), Uganda Medical Workers' Union (UMWU), Uganda Public Employees Union (UPEU), Uganda National Teachers' Union (UNATU) and Uganda Nurses and Midwives Union (UNMU). Incidentally, some local governments and the central government have provided check-off arrangements [123] to the unions without signing recognition agreements with them! The major outstanding challenge is for government to implement and the unions to ensure that the several provisions in the new Labour Unions Act are actually implemented. Among them are the following,

> ...
> *S.24(1)(d):*
>
> > *every employer shall be bound to recognize, for purposes of collective bargaining, and in relation to all matters affecting the relationship between the employer and his or her employees, any registered labour union to which any of his or her employees have previously subscribed their membership where the employees fall within the scope of membership of the labour union.*

In other words, there are no minimum numbers for purposes of compulsory recognition as under the old law where 51% membership (or the majority) was required. The new Act further provides that "every employer is bound, "…to recognize any registered organization and the registered organization representing the employees in question and shall bargain in good faith."[124]

F. The Right to strike

The right to strike is guaranteed under S.3(d) of the Trade Unions Act (7/2006) and the Labour Disputes (Arbitration and Settlement) Act.[125] Generally it is now lawful to take part in a strike or to act "in contemplation or furtherance of an industrial action in connection with a labour dispute."[126] Picketing for the purposes of industrial action and a strike,[127] within certain limits can take place in essential services without a certificate of the Minister as under the old law.[128]

G. The right to Federate and Affiliate

The monopoly of NOTU as the only national centre to which all unions had to affiliate has been removed. Affiliation to NOTU or COFTU or any other federation is now voluntary.[129] Unions are now also free "…to affiliate to national and

---

[123] "Check – off" arrangements are agreements between a union and an employer to periodically (usually monthly) deduct a fixed sum of money from a union member as his/her periodic (monthly) subscription to the union with the consent of that member. See for instance S.I No. 71/1974, the Trade Unions (Check-Off) Regulations 1974 as amended by S.I No. 63/1975, S.I No. 7/1978 and S.I No. 10/1980.

[124] Labour Unions Act, Section 24(2).

[125] See, sections 28 to 32.

[126] Section 30.

[127] Section 31.

[128] Sections 33 and 34.

[129] See, Sections 1 and 9.

international federations of labour unions."[130] During the Cold War, most African unions including Ugandan ones were allowed to affiliate only to their International Trade Secretariats (ITSs) and national centres could only affiliate to Organization of African Trade Union Unity (OATUU)[131] Currently and now legally as a result of the new law, unions and national federations can affiliate to any other international federation. NOTU is currently affiliated to the East African Trade Union Confederation (EATUC), International Confederation of Free Trade Unions (ICFTU), OATUU and ICFTU-AFRO.

4.3.3 Problems of Enforcement

The new labour laws have been passed after more than 20 years of struggle. However, a number of hurdles and challenges exist which must be dealt with before their enforcement can be assured.[132] The first and foremost hinderance to the realization of these rights are the government economic policies and the attitude of government to labour rights in general. Government position as represented by the President and the Ministry of Finance still view these new enactments as "populist laws" that are a hindrance to investment and economic growth, which are the key interests of its neoliberal policies. Workers rights are therefore seen as a fetter to the achievement of this objective. The Ministry of Finance will therefore most likely continue to starve the Ministry responsible for labour of the resources necessary for the enforcement of these laws. They will not adequately fund the Ministry and they will likewise stave the Industrial Court which is now the only court empowered to enforce labour laws. Therefore, a concerted struggle by trade unions, sympathetic forces in parliament, civil society and foreign union federations and trade secretariats will be necessary in order to ensure enforcement.

Secondly, the decentralized labour functions are a problem not only because of the lack of funding for labour officers at local district levels but also due to a lack of labour officers in many districts. Above all, Labour Officers are employees of Districts and will find it difficult to enforce these laws against their employers (the local governments) and politically – connected employers under their jurisdiction. Thirdly, non-recognition of unions is one of the major problems facing workers under the NRM regime and its neoliberal economic policies. As we have seen, most privatisated enterprises have refused to recognize trade unions and have hitherto either blatantly refused recognition or claimed there was no 51% unionization to warrant compulsory recognition. These have included textile companies, including Tri-Star and Picfare (the former NYTIL), hotels, the new telecommunication companies, Mukwano Industries, construction companies and others. Interestingly to date, the government has itself not recognized any public service sector union such as UMWU, UGAWU, UNMU, UNATU or any other

[130] Section 9(2)(h).
[131] See Barya 1990.
[132] Interview with Labour Officer, Kampala District and Labour Commissioner, December 2006.

since 1993 when the law allowed public service employees to unionise [133] A concerted effort will therefore be required if union recognition is to be achieved in both the public and private sectors.

Finally and most significantly, the phenomenon of unemployment continues to be the biggest threat to unionization generally and to union recognition in particular. According to government statistics, both unemployment and underemployment are major problems in Uganda's economy, with open unemployment affecting 3.2% of the labour force while underemployment affects 65% of all adults in Uganda,[134] although unemployment seems to be clearly understated and may be disguised under the head of underemployment. With such unemployment and underemployment, employers have an upper hand in the employment relationship. Those employed wish to retain their jobs at any cost and therefore employers resisting unions face a weak labour force that is under pressure from the unemployed and underemployed.

4.3.3 The Phenomenon of Casualisation

Neoliberalism has exacerbated the twin problems of the non-recognition of unions by the new private employers (so-called investors) and the casualisation of labour. Apart from the problems identified above, casualisation is probably only next to unemployment in its seriousness. The new Employment Act 2006 defines casual labour or a casual employee as "a person who works on a daily or hourly basis where payment of wages is due at the completion of each day's work."[135] Theoretically, this is supposed to be labour that is employed irregularly, from time to time as and when work is available. Legally, the casual worker's contract is a daily contract. But from the point of view of the employer this is cheap labour, labour without any rights apart from the payment of wages at the end of the day. Casual labour can be hired and fired at will. One writer[136] has observed three major incidents of casualisation: there are no written contracts or appointment letters, there is an increase in working hours and there is also the denial of the right to join trade unions.

Casualisation usually sets in with privatisation. In many textile industries after divestiture such as African Textile Mills Ltd. (ATM), Mbale or Southern Range Ltd (former NYTIL) in Jinja, the majority of workers are casuals with no written contracts. The purpose of casualisation is "to deny them (workers) their benefits ranging from gratuity, pension to forming or joining trade unions. The motive is to cut wage costs".[137]

---

[133] Information from Registrar of Trade Unions, December 2006 and L.O. Ongaba, S – General, NOTU, December 2006.
[134] See MOFPED 2004, 24, 240.
[135] Section 2, Act 6/2006.
[136] Okuku, op. cit, 42- 44.
[137] Wambede, 2000: 20 in Okuku c.2005: 42.

In most cases, workers labour well beyond the mandatory maximum 48 hours to as many as 60 hours a week and beyond.[138] And the new management in both ATM and Southern Range,

> *discourage the formation of trade unions by gradually laying off workers including trade union leaders and at the same time recruiting new employees who are indirectly advised against trade union organization… 6% of the respondents in ATM and 11% of the respondents from NYTIL (Southern Range) were unionized compared to …94% ATM respondents and 89% of therespondents from NYTIL who were non-unionised. The privatization process gave the new management opportunity to deny labour any platform for organization, negotiation and struggle for better remuneration, working and living conditions and general welfare.*[139]

Casualisation has been rampant in hotels, the construction industry, many manufacturing industries and most workplaces of the so-called new investors following liberalization. Most of the so-called new investors give no written contracts and engage workers on "permanent" casual terms. This has happened even in big enterprises such as Uganda Railways Corporation and at the Nile Hotel International. Here, even when appointment letters are given, they simply state the daily rate of pay and nothing more.

In short, the two major immediate problems facing Ugandan workers and trade unions even after the passing of the new labour laws are non-recognition of unions following unemployment, and the casualisation of labour. These two problems are but two sides of the same coin: government logic that labour standards should be regulated by the market rather than law. The Constitution provides for workers freedom of association and the relevant legislation further concretizes this freedom. However, the overreaching neoliberal economic policies of government (here read the President, the Ministry of Finance, the World Bank and IMF) directly disregard and positively undermine constitutional and legal rights. Herein therefore lies the challenge to the status of trade unions and of Ugandan workers at large.

[138] Id 43.

[139] Okuku, 2005: 43 – 44.

V. CONCLUSIONS AND RECOMMENDATIONS

This paper has dealt with the rights of workers in the new labour laws with a particular focus on the right of workers to organize. A number of conclusions may be made from the above analysis. In the first instance, apart from a few areas, the new labour laws greatly improve the organizational and substantive rights of Uganda's workers. The challenge facing workers, trade unionists, liberal employers and the Ministry responsible for labour, is to put in place strategies for implementation and enforcement particularly at the local level since all labour matters have now been decentralized. Secondly, this calls for the appointment of Labour Officers in all districts in sufficient numbers and for theirtraining in their new roles, since they now have judicial and quasi-judicial functions in the implementation of the new labour laws particularly the Employment Act. Thirdly, there is a clear disjuncture between the constitutional and labour rights on the one hand and the market forces behind the neoliberal economic policies that favour deregulation and minimal or no rights for workers, on the other. Forces in government favourable to the new laws must press for their implementation since economic policy or any policy for that matter cannot supersede constitutional and legal provisions and rights. This will include the need to appropriately strengthen, fund and staff the Industrial Court. In addition, trade unions and liberal employers should act in concert in order to ensure that the deregulation of labour does not become the norm but rather that labour standards are upheld since an efficient, well-remunerated and protected labour force is likely to yield better results in production than is a disenchanted, rightless and casualised labour force.

It is also important to underscore the point that favourable international forces such as the ILO, could be called upon to assist in the implementation of the new labour laws. It is indeed critical that workers and trade unions do not look at their situation and struggles as a purely or essentially a national question. Neoliberal policies emanate from capitalist interests in the West and manifest themselves at the national level. Workers' and trade union struggles need to clearly and strategically move beyond the national level to the regional, African and global levels. Forces and organizations sympathetic to labour at all these levels should be identified and alliances made with them in a bid to counter the debilitating effects of neoliberal economic policies. Experiences of some Southern African countries, especially South Africa could be enlisted in this enterprise.

It is also important to note fourthly that the new Labour Unions Act enacts the major tenets and principles of freedom of association in the ICESR and ILO Conventions 87 and 98, including the right to form and join a trade union, the right to run the union and its activities, the right to strike as well as the right to recognition and collective bargaining. The biggest challenges facing Ugandan workers today are the twin problems of non-recognition and the casualisation of labour. Non-recognition exists in both the private and, amazingly, also in the public sector. Since the new laws make recognition easier, trade union leaders need to acquaint themselves with this law and to take full advantage of it since

recognition can now more easily be enforced by the Industrial Court. However, before resorting to court action the trade unions, FUE and the ministry responsible for labour should encourage and persuade employers to see the advantages of unionisation and urge the voluntary recognition of trade unions.

Fifthly a lesson should be specifically learnt from the struggles for recognition by UTGL & AWU in the different textile companies, particularly Tristar. The struggles for union recognition in the textile industry, the use of ILO organs, and international trade union solidarity (ILGTWU and AFL-CIO) showed that a sustained and well-organised cultivation of strategic alliances with stronger but sympathetic foreign forces can yield results. Such strategies should be sought out and utilized. For instance, currently the Hotels Union is trying to use the forthcoming CHOGM to compel hotels that have refused to recognize the union to do so lest they are denied official CHOGM patronage and business.[140]' The German social-democratic foundation, Friedrich Ebert Stiftung (FES) also takes the view that hotels that do not recognize unions should not be given FES–sponsored business.

Sixth, there is a great need to confront the problem of casualisation. Although the Employment Act recognizes the existence of casual labour, its utilisation should be much more regulated, by Statutory Instrument, to ensure that this status is not used to deny many workers rights embedded in the new laws. Trade Unions should also find ways of recruiting so-called casual labour—especially the "permanent" or long serving type—so that the latter are given protection. Nothing in the law prohibits the unionisation of casual labour. Seventh, specifically with regard to the non-recognition of public sector trade unions by local and central governments, we propose that the public sector unions need to act in concert and to give government an ultimatum. Otherwise, they should go to court to enforce recognition denied since the mid–1990s.

Finally, it is clear that a mixture of tactics and strategies is necessary if the implementation of the new organisational and substantive rights is to be achieved. These include: lobbying sympathetic forces in government and Parliament, enlisting the support of international trade union federations and the ILO, seeking alliances at regional and continental levels, mobilizing and recruiting union members (now that there is less threat to these activities) and making use of the intervention of the Industrial Court. It should be emphasized that the creation, protection and concrete realization of socioeconomic and political rights is essentially a political question. Unions need to debate and agree on concrete political strategies at the national, regional and continental levels in order to deal with the challenges they face in alliance with political and civil society forces sympathetic to the cause of labour. Without such a strategy by labour and its leadership, labour rights will continue to exist in the Constitution and the new labour laws but will hardly be implemented and their provisions enjoyed by workers.

---

[140] Interview with S. Mugole, S-General, Uganda Hotels, Food, Tourism and Allied Workers Union, 23 January 2007.

BIBLIOGRAPHY

Angeret, Stephen, (1998), Trade Union Law in Uganda (self published).

_____ (1998a), Principles and Cases on the Termination of the Contract of Employment (self published).

Ahikire, Josephine (1991), Workers' Struggles, the Labour Process and the Question of Control: the Case of UGIL, *CBR Working Paper No.16.*

Asowa–Okwe (1989), Capital and Conditions of Fisher – Labourers of Lakes Kyoga and Victoria Canoe Fisheries, *CBR Working Paper No.3.*

Appleton, S. & Ssewanyana, S. (2003), Preliminary Explanations for the Worsening Poverty 1999 – 2003, Information Paper for UBOS/MFPED.

Barya, B. John-Jean (1990), Law, State and Working Class Organisation in Uganda, Ph.D, University of Warwick.

_____ (1991), Workers and the Law in Uganda, CBR Working Paper No. 17.

_____ (2000), The making of Uganda's 1995 Constitution: Achieving Consensus by law? *CBR Working Paper No.57.*

_____ (2001), Trade Unions and the Struggle for Associational Space in Uganda: The 1993 Trade Union Law and Article 40 of the Constitution, *CBR Working PaperNo.63.*

_____ (2001a) Technical Memorandum on Labour Laws in Uganda, for the Ministry of Gender, Labour and Social Development, ILO and UNDP, 30 March

_____ (2002) Foreign Political Aid, Democratisation and Civil Society in Uganda: A Study of NOTU and UMA,1990 – 2001, Unpublished *CBR Working Paper.*

_____ (2005), Citizens' Socio – Economic Rights and the PEAP: An Assessment, *CBR Occasional Paper No. 6.*

_____ (2006), Trade Unions, Liberalisation and Politics in Uganda, 1986 to 2006, A Paper Presented at the International Sociological Association (ISA)held in Durban, S. Africa between 23 – 29 July.

_____Barya B. J-J & , Rutabajuuka S.P. (2002), Monitoring Progress Towards Democratic Governance in the Uganda, Country Report, CBR/UNECA.

Gonsalves, R. (1974), The Politics of Trade Unions and Industrial Relations in Uganda 1950 – 1971, Ph.D, Manchester University.

Government of Uganda (2005), Answer to the Petition to Remove Uganda from the List of Beneficiary Developing Countries under the Generalised System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA), 30 November.

International Labour Office, (1992), Technical Memorandum to the government of Uganda – Mission to Advise on the Reform of Ugandan Labour Law in relation to trade unions and the resolution of trade disputes, ILO, Geneva.

_____, (1994), Freedom of Association and Collective Bargaining, General Survey, ILO, Geneva.

_____, (1996), Freedom of Association – Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO, 4th, (Revised) Edition, ILO, Geneva.

Kiyingi, Asuman, (1995), Limitations of Social Security Law: The case of the Aged in Uganda, LL.M Thesis, Makerere University.

Mamdani, Mahmood, (1996), Uganda – Studies in Labour, Codesria, Dakar.

MOFPED, (2001), The Poverty Eradication Action Plan, MOFPED.

_____, (2004), The Poverty Eradication Action Plan 2004/5 to 2007/8, MOFPED.

Muneku,A., Baah, A.Y., Kanyenze, G., Chirimpurihwa, National Labour and Economic Development Institute (NALEDI), (2004), Workers' Rights and the challenges Facing Trade Unions in Six African Countries, http://www.eldis.ids.ac.uk/static/DOC 17665.htm.

Murindwa–Rutanga (1989), Conditions of Labour on Commercial Dairy Farms in Kabale District, *CBR Working Paper No. 1*.

Museveni, Y. (1992), What is Africa's Problem? *Fountain*, Kampala.

Muwawu, J. (1999), The Impact of Privatisation on Labour Rights in Uganda, LL.M, Dissertation, Makerere University.

Ogaram, D. (2003), "Labour Law Review", A paper presented at the Consultation and Awareness Workshop for Leaders of Trade Unions, Regency Hotel Mbarara, 27th April, 2003.

Olukoshi, A., (2003), Governing the African Development Process: The Challenges of the New Partnership for Africa's Development", M-B (Eds) the Challenge of the New Partnership for Africa's Development (NEPAD), University of Copenhagen, North/South Research Area.

Okuku, J., (1995), Workers' Conditions and Struggles at Nyanza Textiles Industries, Jinja 1970 – 1990, *CBR Working Paper No. 47.*

_____, ('c'. 2005), Trade Unions and Democratic Transition in Uganda, Draft Paper under the Project "Trade Unions in Transition in Southern Africa: Prospects for Alliance Building and Policy Impact", University of Witwatersrand.

Ramasamay, P., (2005), "Labour and Globalisation: Towards a New Internationalism?" *Labour, Capital & Society*, Vol. 38, Nos. 1 & 2.

Rutanga E, (1992), Workers' Control: The Struggle to take over MULCO Textile Factory in Uganda, *CBR Working Paper No. 19.*

Rutabajuuka, S.P. (1989), The Conditions of Migrant Labour in Masaka District 1900- 1962, the Case of Coffee Shamba Labourers, *CBR Working Paper No. 7.*

Schillinger (2005), "Trade Unions in Africa: Weak but feared," FES Occasional Papers: International Development Cooperation. http://library.fes.de/pdf-files/iez/02822 pdf.

Swepston, L., (1998), "Human Rights Law and Freedom of Association: Development through ILO Supervision," in *International Labour Review*, Vol.137, No. 2.

Valticos, N., (1998), "International Labour Standards and Human Rights: Approaching the year 2000," in *International Labour Review*, Vol.137, No. 2.

Valticos, N., & Von Potobsky, (1995),International Labour Law, Deventer, *Kluwer Law & Taxation Publisher.*

HURIPEC WORKING PAPER SERIES

1. ***Ronald Naluwairo,*** *The Trials and Tribulations of Rtd Col. Dr. Kizza Besigye & 22 Others: A Critical Evaluation of the Role General Court Martial in the Administration of Justice in Uganda* **[October, 2006].**

2. ***Isaac Bakayana,*** *From Protection to Violation? Analyzing the Right to a Speedy Trial at the Uganda Human Rights Commision* **[November, 2006].**

3. ***J. Oloka-Onyango,*** *The Problematique of Economic, Social and Cultural Rights in Globalized Uganda: A Conceptual Review* **[March, 2007].**

4. ***John-Jean Barya****, Freedom of Association and Uganda's New Labour Laws: A Critical Analysis of the State of Workers' Organizational Rights* **[April, 2007].**