

The Effect Of The COVID-19 Pandemic On Women Labour Related Rights



A Technical Brief



A. Background

- ④ On 11th March, 2020, the World Health Organization declared the novel Corona Virus Disease (COVID-19) outbreak a global pandemic.
- Following the declaration, the government of the Republic of Uganda having confirmed its first positive case on 21st March, 2020 adopted various measures to mitigate the spread. These
- culminated into a lockdown which has in various ways changed the social order including the work place. The lock down has adversely affected business activities by more than 50 percentage points¹.
- Overall, 76% of the business reported to have reduced the size of their work force due to the pandemic. Of these, 29% reduced their
- employees by more than 50%.

Businesses in agriculture which employees the largest number of the work-force reported to have undertaken the largest restructuring with 76% severe decline and 12% moderate decline in business activity which reflected a 37% reduction in their workforce by at least 50%². It is projected that a six months persistence of the Corona Lock down environment would result into loss of 3.8 Million jobs temporarily and 0.6 jobs permanently.³ Further, it is projected that most businesses will begin to recover after 18 to 24 months.

Ultimately labour relations have suffered. There have been reports of conduct prejudicial to employees. For instance, employees discontent about the terms of their layoffs⁴; concerns about the absence of consent in determining pay cuts; and the manner in which downsizing has been conducted by employers. All these point to a break down in the relations between employees and employers. For women the experience is exacerbated by the fact that they hold less paying jobs, and are largely involved in informal work.⁵

Uganda is largely a neo-liberal economy. As such the idea that the market will drive economic development weighs heavily on the country's planning and implementation processes. In addition, being a developing country, labour is a major tool of production. However, as is the case elsewhere in Africa, labour is a cheap factor in the course of production. It is reported that the unemployment level in Uganda stands at 9% of the working age population.⁶ As a result, the power dynamics in this relationship are biased towards the employer. This engenders the uncertainty and vulnerability experienced by many employees across various sectors in the economy.

Uganda has a progressive employment legal regime embedded in the Employment Act 2006, Occupational Safety and Health Act, the Workers Compensation Act and other supporting instruments. The laws and policies which were adopted in 2006, are largely a reflection of the international standards of the International Labour Organization. However, within the context of a neo-liberal setting, it is arguable that the laws reflect ideals of a rather competitive and market driven society. As such enforcement has always posed a challenge because the dictates of demand and supply outweigh the aspirations of the laws and policies.

¹ Economic Policy and Research Centre, The Uganda Business Climate Index Issue No.1 May 2020.

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⁴ <https://www.monitor.co.ug/News/National/Sacked-Sanyu-FM-employees-blame-managers-over-strike/688334-5576358-61ameoz/index.html>.

<https://www.independent.co.ug/parliament-to-probe-mass-layoffs-at-vision-group/> . Also see <https://www.ceo.co.ug/finance-trust-bank-in-the-spotlight-for-asking-staff-to-refund-salary-earned-during-covid-19-lockdown/>

⁵ UN Policy Brief: Impact of Covid 19 on Women (April 2020), page 4.

⁶ UBoS, Uganda National Household Survey, 2016/17.

Of the reported working age population, women contribute a majority⁷ in a society that is largely patriarchal. It is also imperative to note that most of the women are employed in the informal sector which is poorly regulated and checked. Moreover, to earn a living, such workers often depend on public spaces and social interactions, which are now being restricted to contain the pandemic⁸. Women in the work place as a result face unique challenges owing to their vulnerability. There are a few legal provisions that could be argued as gender specific to women. These include constitutional guarantees of equality and non-discrimination; protections surrounding maternal functions and statutory protections from sexual harassment. As the effects of pandemic and lock down escalate, women are in certain aspects prone to suffer more than their male counterparts. Compounded economic impacts are felt especially by women and girls who are generally earning less, saving less and holding insecure jobs or living close to poverty.⁹

i. Occupational Health and Safety

The Occupational Safety and Health Act 2006 lays out the measures that employers need to put into place in order to guarantee the health and safety of their employees. The law obliges an employer at his or her own cost to take all measures as far as is reasonably practicable to protect the health and safety of employees at the work place¹⁰. In addition, the employer has an obligation to provide training to employees to minimize risk to health or injury. There is evidence that Covid- 19 is spread through human contact and as a result poses a threat to human interaction at the workplace. It is also notable that women form the bulk of the frontline of the response to the crisis¹¹. They are also majority of health facility service staff¹². They similarly form 76% of the agricultural sector¹³ and 51% of the manufacturing sector¹⁴ which have remained active during the lockdown. They therefore run a higher risk of exposure to incidents of contracting the disease. There is also already concerns about the gender sensitivity of the personal protective equipment made available to employees especially frontline workers on the pandemic task forces which is more suited for male employees in terms of size and shape and is therefore uncomfortable for women to use¹⁵.

ii. The right to work, remuneration and termination.

At the onset of the lockdown, the Ministry of Gender, Labour and Social Development issued guidelines to all employers. Within these guidelines, the Minister advised employers not to terminate employees on monthly pay. However, those employed on casual terms could be advised to stay home.¹⁶ Those employers who chose to terminate their employees were subsequently required to submit a notification to the Commissioner for Labour to show the number of employees terminated, the reasons for terminating and their gross pay.



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7 UBoS National Labour Force Survey 2018.
 8 (https://ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publications/wcms_626831.pdf, pages 20-21)
 9 UN Policy Brief: The Impact of Covid 19 on Women.
 10 Section 13 Occupational Safety and Health Act, 2006.
 11 E,Pozzan and U Cattaneo: Women Health workers:Working relentlessly in hospitals and homes, ILO news story,7 Apr,2020.
 12 UN Policy Brief: Impact of Covid 19 on Women
 13 FAO National Gender Profile of Agriculture and Rural Livelihoods (Uganda)
 14 UBoS, Women and Men in Uganda – Facts and Figures 2016.
 15 <https://www.bbc.com/news/health-52454741>
 16 http://mglsd.go.ug/Press/Press%20Statement%20By%20Hon%20Rukutana%20Mwesigwa%20on%20Labour%20and%20Industrial%20Relations%20Issues%20in%20Light%20of%20Covid%2019.pdf?fbclid=IwAR3zTwUSOWm-Yb0f_8_juLV4ISYIUyUs9QSyZFlBc9Ovat7JoD8F-Jl7S08



A survey of the Economic Research and Policy Centre showed that 76% of business reported to have reduced the size of their workforce due to the lock down arising from the pandemic.¹⁷ The reasons cited for this trend are the inability to offer work to employees by their employers and the inability to pay wages. However, the ministry has to date received, approximately 200 notifications of termination by employers.¹⁸

Section 40 of the Employment Act confers a duty on the employer to provide work to the employee in accordance with the agreed contractual terms. However, saving is made where the duty is prevented by an act of God or Civil strife. It is arguable that the events following the pandemic can be categorised as an Act of God that could be read to render it impossible for the employer to provide work owing to the lockdown. Similarly, under subsection 3, an employer is not obliged to provide work where interruptions to his or her business activities are caused by economic reasons which result into shortage or reduction of work beyond the employee’s control. However, the Employment Act does not explicitly state if the consequences of a failure to provide work must result in an employee not being entitled to pay that they are accustomed to receiving during the subsistence of the contract of employment. In addition, where the employer has made a decision to lay off workers, there is concern that employers will lay off more female employees due to stereotypes associated with the female gender. For example, men are perceived to be physically stronger than their female counterparts and such would be retained at work to do the work of persons that would be laid off. Similarly, the bread winner role is assigned to the male gender within patriarchal settings making it easier for them to be retained at work over their female counterparts. This however certainly not the case for a neo-liberal economy like Uganda coupled with the ever increasing number of women led house-holds in Uganda¹⁹. Second, there are roles which are stereotypically left to women which cannot be done virtually. An example being front desk staff in most work places. Also as women take on greater care demands at home, their jobs will be disproportionately affected by cut offs and layoffs²⁰. It also means a disproportionate increase in unpaid care work as is typical of patriarchal settings is likely to manifest.

Uganda Bureau of Statistics data indicates that 48.8 % of the labour force is self-employed. Out of these, 57.8% of them are women²¹. The state of lockdown also means that many women are unable to work for themselves due to restrictions on movement and access to public spaces. This ultimately translates into financial stress for them during and after the lock down.

iii. Remuneration and wages

There is a close connection between the inability to provide work and the inability to pay wages. As business continue to suffer a slump, their ability to pay wages dwindles. Section 31 of the Employment Act provides for termination of an employment contract on the basis of the employer’s inability to pay wages. As mentioned above, women form the highest number of the working population and therefore

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¹⁸ This information was gleaned from a telephone interview with an official from the Ministry of Labour.

¹⁹ UBoS, Women and Men in Uganda – Facts and Figures 2016.

²⁰ UN POLICY BRIEF: The Impact of Covid 19 on Women.

²¹ UBoS National Labour Force Survey 2016/17

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suffer more than their male counterparts from termination arising from the employer's inability to pay wages. As also noted above the pandemic is likely to increase the levels of unpaid care work as women take to domestic care due to the pandemic. Moreover, due to the existing policies on social security, which limit the circumstances under which an employee can claim for benefits, the women have a lower safety net to absorb the economic shock arising from the pandemic. Moreover, the informal sector which employs most women is excluded from the formal social security schemes²² whereas those in the formal sector are restricted to low skilled and low paying jobs and continue to earn less than their male counterparts²³.

iv. Length of working hours

Due to the lock down and curfew hours, some employers have had to vary the hours of work. Section 53 of the Employment Act, stipulates the maximum number of hours of work per day and per week. Conventionally, most employees in Uganda work between eight to ten hours a day. These have significantly shrunk due to the lock down to mostly six hours a day. This has a devastating impact on women who form majority of work force of the informal sector that thrives on little resort to conventional working hours for example as is the case for street vendors who are historically considered illegal²⁴ who tend in order to find customers for their merchandise to resort to evening hours that now form curfew time.

v. Entitlement to Leave

Closely linked to hours of work, is entitlement to leave. Section 54 of the employment Act entitles an employee to 21 days of leave in a period of 12 months of services. Likewise, female employees are entitled to a sixty working days' period of leave as a consequence of becoming pregnant per Section 56 and four working days leave for male employees whose wives deliver or miscarry per Section 57. As a consequence of the lock down due to the pandemic, many employees have had to stay away from their work stations. As a result, some employers have cornered their employees to consider the period of lock down as their leave entitlement guaranteed by law²⁵. However, this means that employees will be required to work more than four months continuously without leave once the lock down is lifted contrary to the intentions of the law. More so, for the case of maternity leave it means loss of the minimum requirement of leave for four weeks after birth or miscarriage as was intended by the drafters of the law. This shows that the pandemic has negatively impacted on the right to take some time off work. Given the slowdown, it may also be difficult for an employee to request for leave once business returns to close to normal. This is likely to affect women more because their role as primary care givers of sick family members remains.



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22 Uganda Feminist Forum- The State of the economy for Women in Uganda.
23 Uganda Feminist Forum- The State of the economy for Women in Uganda.
24 Ghida Ismail- Uganda's Street Vendors need a Working Regulatory Frame-work.
25 Covid 19: The Dilemma of Employment in the Private Sector – Abio Patience



Policy Recommendations

The proposed Government of Uganda stimulus through Uganda Development Bank (UDB) for business may offer an opportunity to protect some employers from the effect of covid-19. It is pertinent that government supports employers through incentives in the short and medium term.

i. Support businesses and social protection post covid-19.



Government support during this period has taken the form of social assistance and protection.²⁶ This has covered food rations for the vulnerable and a moratorium on enforcement of payment for utilities such as water supply services in the urban areas. The government has also proposed economic support. The form of this economic relief is what remains to flesh out. The government should consider supporting businesses after the lock down in order to enable employers to recover and provide employment for laid off workers and to enable self-employed employees to resume work. This support could be targeted in the direction of micro and small traders who largely constitute women; and by putting money in the hands of women entrepreneurs or providing subsidies to women led sectors/ businesses.



ii. Policy measures



The government should take steps to concretise the Ministry of Gender, Labour and Social Development guideline which proposed that employers who lay off employees should commit to re-engage them when the situation normalizes. The Ministry should consider a policy that compels employers to give first option of employment to workers they laid off once they are able to continue with full production. This can be effected if there is a record at district level of which employees have been laid off by each employer.



iii. Strengthen occupational safety and health.



Employers should take all reasonably practicable measures to protect workers from exposure and contracting the Covid- 19 virus especially in the health service sector that has most personnel front line workers being women. Such measures and or protective gear should be gender sensitive.

In addition, as work places continue to open for business, the employers should provide training to all employees on how to prevent infection and likely spread of covid-19. Such training should also address the steps to take where there is a suspected case in the workplace in order to minimize stigmatization of employees.

²⁶ <http://documents1.worldbank.org/curated/en/590531592231143435/pdf/Social-Protection-and-Jobs-Responses-to-COVID-19-A-Real-Time-Review-of-Country-Measures-June-12-2020.pdf>, page 460-461.



iv. Regulations to support enforcement

The Ministry of Gender, Labour and Social Development should provide specific regulations which can guide labour officers to enforce uniform standards in each district. For instance, where employees are not wearing masks in the work places or are not adequately socially distanced, there should be mechanisms for inspection and closure of work places which may pose a health risk to employees. The labour officers would be better placed to maintain standards where they are provided with explicit guidelines on their powers, the standards and repercussions for breach of each standard.

v. Support to the institution of the labour office

In addition, the labour offices need to be strengthened through expanding their structure. Currently, labour officers are within the district local government structure. Typically, each district has one labour officer, who is already overstretched and unable to enforce the entire spectrum of labour legislation. There are only 88 labour officers for the more than 130 districts which constitute Uganda. As a means of speeding up access to labour justice, there is a need to add to the number of labour officers and also ensure that each district fills the vacant positions. Funding of the district labour officers is therefore paramount.

vi. Support to employers

The proposed Government of Uganda stimulus through Uganda Development Bank (UDB) for business may offer an opportunity to protect some employers from the effect of covid-19. It is pertinent that government supports employers through incentives in the short and medium term. For instance a tax waiver for the lockdown period rather than a mere rescheduling of the obligation to pay income tax, particularly to employers who will demonstrate by the end of the 2020/2021 financial year that they have retained their pre-covid-19 staff levels.

There Government should consider ring fencing of a proportion of the government support to local governments to meet the challenges of small and micro businesses in each district's budget allocation.

vii. Support to the informal sector workers

Although the informal sector workers are heterogenous, it is possible to target support to this sector to enable them keep their employees in work. This may be achieved through social dialogue. ILO experience has often demonstrated that dialogue with all affected parties to labour issues works. Social dialogue would ensure that employers, employees and government are engaged in discussion. For the informal workers, it would ensure that they are represented at the points where decisions about the nature of specific support is being determined. Such that any discussions about where and what nature of relief or waivers are pertinent to restart the businesses of informal sector workers, should be arrived at with their participation.



Conclusion

The full effect of the Covid-19 pandemic remains to be seen. As the pandemic continues to devastate both developed and developing economies, its worst impact is expected to be felt among developing economies, such as Uganda. At the same time, women as players in the Ugandan economy are likely to suffer much more than their male counterparts due to the fact that they constitute the vast majority of the working population in informal and low income earning roles. It is therefore imperative on government to consider gender specific and targeted responses to minimize the effect that the pandemic will have on women workers if the country is to recover better post Covid-19.



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June 2020

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