



## East African Journal of Law and Ethics

[eajle.eanso.org](http://eajle.eanso.org)

Volume 5, Issue 1, 2022

Print ISSN: 2707-532X | Online ISSN: 2707-5338

Title DOI: <https://doi.org/10.37284/2707-5338>



EAST AFRICAN  
NATURE &  
SCIENCE  
ORGANIZATION

Original Article

# Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda

John Mary Vianney Kimuraheebwe<sup>1</sup>, Dr. Dennis Zami Atibuni, PhD<sup>2\*</sup> & Deborah Manyiraho<sup>2</sup>

<sup>1</sup> Makerere University P.O. Box 7072, Kampala, Uganda.

<sup>2</sup> Busitema University, P.O. Box 236, Tororo, Uganda.

\* Author for Correspondence email: [Zamidennis79@gmail.com](mailto:Zamidennis79@gmail.com)

Article DOI: <https://doi.org/10.37284/eajle.5.1.725>

### Date Published: ABSTRACT

27 Jun 2022

### Keywords:

Public Service,  
Public Officer,  
Tenure Security,  
Tenure Fragility,  
Employment,  
Corruption,  
Legal Framework,  
Policy Framework.

This conceptual paper examines the security and fragility of tenure of public servants in Uganda within the established legal and policy frameworks. The conceptualisation involved a systematic literature review of the 1995 Constitution of the Republic of Uganda, as amended, together with a host of other principal and subsidiary legislation that provides for the security of tenure of public servants in Uganda. Other primary sources such as court cases and secondary sources such as policy documents, relevant articles, and reviews were also reviewed. The paper reveals that despite its strength due to its robustness, the labour law of Uganda has gaps which, in addition to the manner of its coordination and implementation, potentially and actually generates both positive and negative expectations and outcomes for the public officers in relation to their security of tenure at the workplace. In this paper, we argue that a fair implementation of the law guarantees tenure security while unfair implementation of it predisposes the public officers to a fragile and insecure tenure. We also suggest strategies that can be employed to avert tenure fragility and enhance tenure security to foster the socioeconomic transformation of the civil servants and the country as a whole.

### APA CITATION

Kimuraheebwe, J. M. V., Atibuni, D. Z., & Manyiraho, D. (2022). Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda. *East African Journal of Law and Ethics*, 5(1), 13-24. <https://doi.org/10.37284/eajle.5.1.725>.

### CHICAGO CITATION

Kimuraheebwe, John Mary Vianney, Dennis Zami Atibuni & Deborah Manyiraho. 2022. "Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda". *East African Journal of Law and Ethics* 5 (1), 13-24. <https://doi.org/10.37284/eajle.5.1.725>

#### HARVARD CITATION

Kimuraheebwe, J. M. V., Atibuni, D. Z., & Manyiraho, D. (2022) "Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda", *East African Journal of Law and Ethics*, 5(1), pp. 13-24. doi: 10.37284/eajle.5.1.725.

#### IEEE CITATION

J. M. V. Kimuraheebwe, D. Z. Atibuni, & D. Manyiraho "Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda", *EAJLE*, vol. 5, no. 1, pp. 13-24, Jun. 2022.

#### MLA CITATION

Kimuraheebwe, John Mary Vianney, Dennis Zami Atibuni & Deborah Manyiraho. "Security and Fragility of Tenure of Public Servants within the Legal Framework in Uganda". *East African Journal of Law and Ethics*, Vol. 5, no. 1, Jun. 2022, pp. 13-24, doi:10.37284/eajle.5.1.725.

## INTRODUCTION

Sustainable employment is universally acknowledged as the main source of livelihood and self-fulfilment of people. The social, economic, and political stability of a country is critically hinged on the quality of employment, earnings, and subsequent standard of living among the citizenry.<sup>1</sup> In this regard, countries desirous of establishing and maintaining social, economic, and political order are obliged to offer and safeguard fundamental income-generating activities including public service jobs that guarantee better remuneration and wealth. Thus, the government of Uganda has enacted a number of laws to guide and protect officers formally employed in the Public Service of the country.<sup>2</sup> In addition, the government is the biggest employer in Uganda and therefore, a substantial number of employees are employed in the public service. According to the Natural Resource Governance Institute,<sup>3</sup> legal frameworks or documents usually comprise such documents as the country's constitution, legislation and policy, regulations, and contracts, in that order of hierarchy. The Constitution forms the base because it serves as the supreme law, having a binding force on all authorities, and all the other laws or customs must be consistent with it for them not to be void.<sup>4</sup>

Other laws on labour in Uganda are contained in the Employment Act 2006, The Occupational Safety and Health Act 2006, and The Workers

Compensation Act 2000, among others. However, the labour laws of Uganda are not without flaws. In many ways, they fail to provide for and safeguard the basic rights and freedoms of the employees in the public sector and thus do not guarantee job security to the public officers. Sometimes they are manipulated to cause maltreatment and exploitation of employees by their supervisors or fellow workmates. This is further heightened by the lack of effective mechanisms to implement the existing safeguards. This paper views the labour laws of Uganda with a binary potential to offer as much guarantee as they would offer fragility of tenure of service among public servants in Uganda. Anchored on Marxist views of law, the paper argues that the labour laws, though well-articulated in the principal and subsidiary legislation, serve to perpetuate, if not exacerbate, the existing gaps between the poor and the rich and hence lead to the exploitation of the poor. The debate for a guarantee of tenure includes the exposition on the legal and policy frameworks of public service, the coordination and implementation framework of the laws, the entitlements of the public officers as provided for by the laws, and the employee benefits due to legal regulation of entitlements within the public service in Uganda.

The meanings of public service and public officer are provided for in the Constitution of the Republic of Uganda. The constitution<sup>5</sup> defines a "public officer" as "any person holding or acting in an office

<sup>1</sup> Ministry of Gender, Labour, and Social Development (MGLSD) of the Republic of Uganda the national employment policy for Uganda: Increasing Decent Employment Opportunities and Labour Productivity for Socio - Economic Transformation. (2011). Author.

<sup>2</sup> Employment Act, No. 6, (2006) Uganda.

<sup>3</sup> National Resource Governance Institute [NRGI], *Legal framework: Navigating the web of laws and contracts*

*governing extractive industries*. (2015) [https://resourcegovernance.org/sites/default/files/nrgi\\_Legal-Framework.pdf](https://resourcegovernance.org/sites/default/files/nrgi_Legal-Framework.pdf)

<sup>4</sup> Art. 2, Clause 1 & 2 of the Constitution of the Republic of Uganda (1995) Kampala: Republic of Uganda.

<sup>5</sup> Article 175 of the Constitution of the Republic of Uganda (1995 as amended, p. 137) Clause (a) and Clause (b)

in the public service;” while “public service” is defined as “service in any civil capacity of the Government the emoluments for which are payable directly from the consolidated fund or directly out of monies provided by Parliament.”

The constitution further provides that unless the context otherwise requires, a reference to an office in the public service includes (i) a reference to the office of Chief Justice, Deputy Chief Justice, Principal Judge, a justice of the Supreme Court or a justice of Appeal, or a judge of the High Court and the office of a member of any other court of law established by or under the authority of this Constitution, other than a court-martial, being an office the emoluments of which are paid directly from the Consolidated Fund or directly out of monies provided by Parliament; and (ii) a reference to the office of a member of the Uganda Police Force, the Uganda Prisons Service, the education service and the health service.<sup>6</sup> According to the constitution, “a reference to an office in the public service does not include a reference to the office of the President, the Vice President, the Speaker or Deputy Speaker, a Minister, the Attorney General, a member of Parliament or a member of any commission, authority, council or committee established by this Constitution.”<sup>7</sup>

The term “security of tenure” is often understood with reference to the land tenure system. For instance, the Special Rapporteur for adequate housing defines it as “*Security of tenure is understood ... as tenure of land and/or housing which ensures a secure home and enables one to live in security, peace and dignity.*” However, in this paper, the term *tenure* is operationally defined as “the term during which some position is held”.<sup>8</sup> Tenure security and fragility therefore concerns the

expectations and actual outcomes of holding a public office as mandated and protected by Labour Law.

The paper examines the extent to which the Labour Laws in Uganda are effective in safeguarding public officers and by extension, the extent to which it fails to accord tenure security to them. The paper also suggests strategies to enhance the security of the tenure of office of public officers.

## LEGAL FRAMEWORK OF PUBLIC SERVICE IN UGANDA

A paper titled *Information Paper on Labour Law in Uganda* by the Institute of Chartered Public Accountants of Uganda<sup>9</sup> details a number of legal and policy provisions governing the dispensation of labour law in Uganda. Among the vast domain of legal instruments, Section 14 of the Judicature Act of Uganda specifies the law applicable in Uganda to include the 1995 Constitution of the Republic of Uganda, Acts of Parliament (principal legislation), subsidiary legislation, common law, judicial decisions, and customary law. These form the legal framework within which the tenure of public servants is safeguarded. The Constitution spells out the protection of public officers.<sup>10</sup> The principal and subsidiary legislations on the protection of public officers are aimed at promoting decent work, providing conducive working conditions, improving productivity, and compensating officers in case of accidents, occupational hazards, diseases, and injuries at the workplace. The Constitution stipulates that “Every person in Uganda has the right to practice his or her profession and to carry on any lawful occupation, trade or business.”<sup>11</sup>

The Constitution also guarantees decent work under several articles.<sup>12</sup> To operationalise all these

<sup>6</sup> As provided in Article 257 (2) (a)

<sup>7</sup> Article 257 (2) (b)

<sup>8</sup> Lewis, A. (2014). *Word Web 7.1*. Retrieved from wordweb.info.

<sup>9</sup> Institute of Certified Public Accountants of Uganda (ICPAU). (2019). *Information paper on labour law in Uganda: Sample AML & CTF Policies and Procedures Manual – 2019*. Retrieved from <https://www.icpau.co.ug/sites/default/files/Resources/INFORMATION%20PAPER%20ON%20LABOUR%20LAW%20IN%20UGANDA.pdf>

<sup>10</sup> Article 173 of the constitution of the Republic of Uganda (1995, as amended)

<sup>11</sup> Article 40 Clause 2 of The Constitution of the Republic of Uganda 2005 as amended

<sup>12</sup> Articles 25(1) on slavery and servitude; Article 25(2) on forced labour; Article 29(1) on right to freedom of association; Article 34(4) on protection of children from economic exploitation and hazardous work, Article 39 on right to a clean and healthy environment, Article 40 (1) on right to work under satisfactory, safe and healthy conditions; equal pay for equal work without discrimination, rest and reasonable working hours and periods of holidays with pay and remuneration for public holidays; Articles 40(3) right to form and join trade unions; and Article 40(4) on protection of women during pregnancy and after birth, in accordance with the law.

provisions of the Constitution, a number of principal legislations have been enacted.<sup>13</sup> The above laws are in conformity with the Regional and International Treaties that Uganda has signed and ratified.<sup>14</sup>

### Policy Framework of Public Service in Uganda

The Government of Uganda, through her various authorities and agencies, has put in place a number of policies to consolidate and create synergies among different sectors and anchor employment creation and tenure security as a key driver of economic development.<sup>15</sup> Key among these policies is the National Employment Policy for Uganda.<sup>16</sup> The policy generally aims at promoting “productive and decent employment and enterprise development; compliance with labour standards by employers, investors and workers; social protection; and social dialogue.” Other policies in the framework include the National Development Plan III (NDP III) 2020/2021-2024/25 with the theme “Sustainable Industrialisation for inclusive growth, employment and sustainable wealth creation.”

In line with the National Development Plan, the Social Development Sector Strategic Investment Plan, and Uganda Vision 2040 emphasis is on the promotion of employment and productivity for sustainable livelihoods. There are other relevant policies<sup>17</sup> with similar emphasis. Other policy interventions that provide opportunities for creating

employment and safeguarding the security of tenure of public officers in Uganda include; the Public Service Reform; the Medium-Term Competitive Strategy for the Private Sector; the Road Sector Development Programme; the Education Strategic Investment Plan; the Health Sector Plan; the Decentralisation Policy; the Plan for the Modernisation of Agriculture; and Prosperity for All. These policies are in consonance with the Sustainable Development Goals.<sup>18</sup> There are also contracts such as employment contracts which are agreements between two or more parties. Employment contracts usually lay out roles and responsibilities that may not have been specified by law and may often include terms bearing on operational, financial, social, environmental and production obligations.<sup>19</sup> Thus a contract only applies to a specific location and to the actors that are party to it unlike a law that applies to an entire territory.

### Coordination and Implementation Framework of Public Service Regulations

The National Employment policy<sup>20</sup> states that “There shall be established a National Employment Council to coordinate, guide, streamline and monitor efforts towards implementation” of the policy. The National Employment Council is constituted of Permanent Secretaries and Chief

<sup>13</sup> These include; The Employment Act No. 6 of 2006; the Labour Unions Act No. 7 of 2006; the Labour Disputes (Arbitration and Settlement) Act No. 8 of 2006; the Occupational Safety and Health Act No. 9 of 2006; the National Social Security Act, Cap 220, and the Statutory Instrument No. 62, Employment (Recruitment of Ugandan Migrant Workers Abroad) Regulations (2005). In addition, there are other relevant laws, such as, the Local Government Act Cap 243, Laws of Uganda (2000); the Public Service Act (2008); the Education Act (2008); the Uganda Citizenship and Immigration Act (1999); the Prevention of Trafficking of Persons Act (2008); the Public Service (Negotiating, Consultative and Disputes) Settlement Machinery Act (2008); National Disability Act (2006); and the Equal Opportunities Commission Act (2007). Negotiations are handled within the legal framework of the Labour Union Act; the Budget Act; the Public Service Act; the Public Finance and Accountability Act; the Public Service (Negotiating, Consultative and Dispute) Settlement Machinery Act; Workers Compensation Act 2000 (Ch. 225); and other relevant laws.

<sup>14</sup> These include; the East African Community Treaty (2000), which provides for integrated approach to employment strategies (Article 104); the East African Common Market Protocol and the Free Movement of Persons Regulations; the

Ouagadougou Declaration and Plan of Action on Employment and Poverty Alleviation in Africa (2004); the Africa Agenda (2003); ILO Convention No. 122 on Employment Policy (1964); as well as the ILO Declaration on Fundamental Principles and Rights at Work (1998).

<sup>15</sup> (Institute of Certified Public Accountants of Uganda [ICPAU], 2019).

<sup>16</sup> National Employment Policy (2011)

<sup>17</sup> Other relevant policies include; the National Child Labour Policy (2006); the Uganda Gender Policy (2007); the National Policy on HIV/AIDS and the World of Work (2007) and Plan of Action (2010); the National Policy on Disability, the National Equal Opportunities Policy (2006); the Community Mobilisation Strategy (2006); National Industrial Policy (2008); National Population Policy (2010); National Oil and Gas Policy of Uganda (2008); the Agriculture Investment Policy (2010); and the Public Service Commission Regulations.

<sup>18</sup> Sustainable Development Goals (2030)

<sup>19</sup> National Resource Governance Institute [NRGI] (2015). *Legal framework: Navigating the web of laws and contracts governing extractive industries*. [https://resourcegovernance.org/sites/default/files/nrgi\\_Legal-Framework.pdf](https://resourcegovernance.org/sites/default/files/nrgi_Legal-Framework.pdf)

<sup>20</sup> National Employment Policy (2011)



Executive Officers drawn from various Ministries, Departments and Agencies. The member ministries include; Ministry of Gender, Labour and Social Development to serve as Chair and Secretariat to the Council; Ministry of Finance, Planning and Economic Development; Ministry of Public Service; Ministry of Agriculture, Animal Industry and Fisheries; Ministry of Tourism, Trade and Industry; Ministry of Works and Transport; Ministry of Education and Sports; Ministry of Local Government; Ministry of Health; Ministry of Foreign Affairs; Ministry of Lands, Housing and Urban Development; Ministry of Internal Affairs, Immigration Department; Ministry of Energy and Mineral Development; Ministry of Information Communication and Technology; Ministry of East African Community (EAC); National Planning Authority; Uganda Bureau of Statistics; Uganda Investment Authority; Federation of Uganda Employers (FUE); National Organisation of Trade Union (NOTU); Central Organisation of Free Trade Unions (COFTU); and Enterprise Uganda (Ltd). The coordinated approach to employment in public service in these various ministries with different departments, while observing the relevant legal and policy provisions, is expected to afford tenure security to the employees and hence facilitate their productivity. This should reciprocally enhance the social, economic, and political harmony and development of the country.

### **Security of Tenure of Public Servants in Uganda within the Legal and Policy Frameworks**

The Public Service Standing Orders (PSSO) of Uganda<sup>21</sup> provide for a cohort of entitlements for public servants in Uganda. These entitlements<sup>22</sup> are also stipulated in the Constitution.<sup>23</sup> The Constitution<sup>24</sup> stipulates how public officers are appointed into offices, their confirmation, disciplinary control, and their removal from office. This means that once an individual is appointed as a public servant, there are rules and procedures to be followed before such a person is removed from that office. The Constitution<sup>25</sup> further stresses that public officers shall not be victimised or discriminated against performing their duties and that they shall not be dismissed or removed from office or reduced in rank or punished without any just cause. This offers protection to all public officers in Uganda as court rulings in some cases indicate.<sup>26</sup> Besides this, the Constitution protects public officers from discrimination and guarantees that they are given a fair hearing in case of any offence, as explicated in other articles.<sup>27</sup> The law against discrimination in employment is further emphasised in the Employment Act.<sup>28</sup> This implies that when someone is working in public service, there should not be any discrimination whatsoever along such lines as race, religion, colour, sex, disability, and political opinion. In addition, if a public servant is accused of a criminal offence or must appear before an administrative official or body, they deserve to be

<sup>21</sup> Ministry of Public Service (2010). The Uganda public service standing orders: The roles, obligations and conduct of a public officer. Author. Kampala.

<sup>22</sup> The entitlements include negotiable items and items for consultation as indicated in Appendix G – 2 (p. 318). Negotiable items include salaries/allowances (see Appendix A-24 PSF9 of the PSSO);

<sup>23</sup> Articles 172 and 200 of the 1995 Constitution as amended; PSSO, 2010, p. 6); hours of work; health and safety at work; all types of leave (including annual, maternity/paternity, sick, study, sabbatical); principles and procedures of redundancy; medical expenses and sick pay; funeral expenses; retirement and other terminal benefits; and any other matter by mutual agreement. Items for consultation include disciplinary procedures; welfare; training; promotion; transfers; methods of salary payment; technological changes; and policy aspects that affect employment such as employment policy, structural adjustment programme (SAP), incomes policy, and schemes of service.

<sup>24</sup> Art. 172 of the constitution of the republic of Uganda

<sup>25</sup> Art. 173 of the constitution of the republic of Uganda

<sup>26</sup> For instance, in *Agwee Kalanga Vs AG* (SC – 2001/119) [2008] UGHG 82 (27 March 2008) the high court ruled that dismissal of the applicant was wrongful and in breach of Art. 173 (b) of the constitution. Similarly, in *Lukwago Vs Attorney general & 3ors* (Miscellaneous Application – 2014/94) [2044] UGHCCD 47 (28 March 2014), the civil division court ruled that the applicant had a right to remain in office as Lord mayor as per the laws of the land.

<sup>27</sup> Ways, for instance, Art. 21 provides for equality of all persons in all spheres of political, economic, social, and cultural life. Further, Clause 2 institutes that a person will not be discriminated against on grounds of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. Art. 28 of the constitution talks about fair hearing for any criminal offence in court or tribunal. This is strengthened further in Art. 42 which gives the right to just and fair treatment in administrative decisions.

<sup>28</sup> S. 6 of the Employment Act (2006).

treated justly and fairly and thus have a right to apply to a court of law in respect of any administrative decision taken against them.<sup>29</sup> The above provisions ensure that no public officer is unjustifiably terminated from their employment in the public service.

A fair hearing for officers is further supported by the Employment Act,<sup>30</sup> which provides that there shall be appointed a Commissioner who shall be responsible for the implementation of the Act.<sup>31</sup> In other articles, the Constitution stipulates the tenure of office for particular officers.<sup>32</sup> The Public Service Commission, which is mandated to appoint persons to hold offices, confirm, exercise discipline control, and remove them from office, shall be independent and shall not be subject to the direction or control of any person or authority; except that it shall take into account government policy relating to the public service.<sup>33</sup> Other commissions delegated by the public commission to perform similar functions such as the District Service Commission, the Education Service Commissions, the Health Service Commission follow the same law. This means that there is no single individual who can influence decisions taken for the good or bad of a public officer. Similar provisions are also enjoined to several other public offices like judicial officers in the performance of their individual functions.

The Constitution<sup>34</sup> further stipulates that a public officer shall, on retirement, receive such pension as is commensurate with his or her rank, salary and length of service. This means that as they carry on

with their duties, public servants are assured of their terminal benefits when they finally leave office. NSSF Act also protects this entitlement for other public servants (not on the pension scheme) such as staff in public universities.<sup>35</sup> Such terminal benefits offer the security of tenure for employees by way of not being easily laid off by their organisations for fear of meeting huge pay-outs.

The above notwithstanding, Public Servants are also protected by other labour laws which apply to all employment indiscriminately of the source of employment. Citizens' Coalition for Electoral Democracy Uganda [CCEDU]<sup>36</sup> observes that Uganda has key labour laws.<sup>37</sup> These laws, in one way or another, outline the conditions of employment including, contract of service, termination of a contract, termination notices, and protection of wages, hours of work, rest and holidays, automatic compensation in case of injury or death, employment of women, employment of children and care of employees.

In addition to all this, the Employment Act provides minimum thresholds for the enjoyment of leave by employees in Uganda.<sup>38</sup> Paid annual leave is meant for every employee to renew their physical and mental capabilities as they rest and re-energise so as they remain fully productive. According to Obilil, leave should not be forced as a punishment to a worker, but rather workers should willingly apply for annual leave for a healthy work-life balance and cited a labour dispute.<sup>39</sup> Therefore, the legal frameworks in Uganda, including the public service

<sup>29</sup> A case in point is *Nkuningi Ssembajja vs Secretary, Public Service Commission & Anor* (Miscellaneous cause – 2019/82) [2020] UGHCCD 74 in which the civil division court ordered the reinstatement of the applicant because he had been dismissed without fair hearing.

<sup>30</sup> S. 9 Sub-section 2 of the Employment Act (2006)

<sup>31</sup> At the local government level, the Employment Act has instituted District labour officers who receive complaints of employers, public servants inclusive, investigate them against any defense put forward and settle or attempt to settle such complaints made by way of reconciliation, arbitration, adjudication or such procedure as they think appropriate and acceptable to the parties. In other institutions, work tribunals are the legal entities put in place to handle officers' complaints. In June 2020, court awarded UGX 120 million to Stella Nyanzi in a court case against her former employer, Makerere University for violating its staff appeals tribunal to reinstate her. <sup>32</sup> (e.g., members of parliament in Art. 83, and judicial officers in Art. 144).

<sup>33</sup> (Art. 166, Cls. 2).

<sup>34</sup> Art. 254 of the constitution of the republic of Uganda

<sup>35</sup> S.17 Sub-section 1 of the NSSF Act states that the treasury may make payments to the fund in respect of those Government employees specified by the Minister responsible for public service who are under fifty-five years of age (NSSF Act, CAP 222 Vol. 9).

<sup>36</sup> Citizens' Coalition for Electoral Democracy Uganda [CCEDU] (2021). *Labour rights in Uganda: A summary overview*. <https://www.ccedu.org.ug/index.php/blog/36-labor-rights-in-uganda-a-summary-overview>

<sup>37</sup> The key labour laws include the Workers Compensation Act 2000, the Minimum Wages Act 2000, the Employment Act 2006, the Labour Union Arbitration and Settlement Act 2006 and the Occupational Safety Act 2006.

<sup>38</sup> Obilil, I. A. (2020). *Uganda: The right to annual leave and the law in Uganda*. Kampala Associated Advocates. Mondaq

<sup>39</sup> The author cited,

In *KyazzeVs Busoga College Mwiri* (Labour Dispute Reference No. 143 of 2016) it was held that, although an employee is entitled to leave in accordance with the

standing orders protect public servants' entitlement to leave.

Apart from leave entitlements for public officers, the public service standing orders<sup>40</sup> are in line with all the laws expounded above.

In a nutshell, the tenure of office for public servants in Uganda is guaranteed by legal frameworks as explained above in their expression of their powers, duties, and responsibilities. However, unfair treatment of public servants in their offices usually arises as a result of poor enforcement of the law or simply ignorance of the law on the side of the public officers.

### **BENEFITS OF SECURITY OF TENURE OF PUBLIC SERVANTS**

A regulatory framework is, therefore, essential to first of all ensure meritorious and non-discriminatory attainment of full employment coupled with decent work and equitable economic growth.<sup>41</sup> Compliance with national, regional, International Labour Organisation conventions and other international treaties promotes the rights of workers. When employees are assured of the security of tenure in their employment, then they serve with a sense of stability which leads to stable incomes, savings and improved livelihoods, thus contributing to economic growth. Therefore, the National Employment Policy for Uganda<sup>42</sup> provides a framework for achieving this goal.

The application of labour laws in public service provides for improved labour market information and database for monitoring the trends in

employment in key sectors as well as trends in real wage growth for vulnerable workers. The law sets out the provision of necessary requirements such as minimum education qualifications and skills required for holding given public offices. Thus, individuals and authorities are able to pursue more innovative strategies for employment creation and intensive job investments, particularly within the National Core Projects of the National Development Plan.<sup>43</sup> This results in the promotion of skills development and training, especially for the vulnerable youth<sup>44</sup> already expressed in wage employment to favourably compete for the available job opportunities.

The law promotes affirmative action, adequate safety nets and social protection for the poor and vulnerable groups to hedge against risks associated with the operation of the market system.<sup>45</sup> It emphasises equal opportunity without discrimination on the grounds of gender, religion, tribe, ethnicity, origin, and health status.<sup>46</sup> Issues of favouritism and discrimination in jobs are spelt out, and remedies are provided in case of a breach. Such provisions promote contentment with the government system, thus fostering peace, unity, and development among the populace.

The establishment of the External Employment Unit<sup>47</sup> enhanced coordination, licensing of private recruitment agencies and facilitating access to job opportunities abroad. Such formalised externalisation of labour contributes to the increase in remittances to the government, which in effect contributes to the growth in the gross domestic

---

Employment Act, such leave is ordinarily granted when the employee applies for it and unless there are special circumstances, an employer may not force an employee to go on leave.

<sup>40</sup> Section (F-c) stresses on that posting and reporting for duty should always be justified on genuine administrative guidelines, not as a punitive measure. Section (F-r) emphasizes following of proper disciplinary procedures in handling public officers. Sub-section 4 states that the rules of natural justice must apply in all disciplinary cases of whatever description and Sub-section 8 stipulates that interdiction of an officer can only be done after expeditious investigation has been done to reach a conclusion.

<sup>41</sup> (Public Service Commission Regulations; PSSO, 2010).

<sup>42</sup> by MGLSD (2011)

<sup>43</sup> Government of the Republic of Uganda, 2010. National Development Plan, National Planning Authority. (NDP 3; 2020/2021—2024/2025).

<sup>44</sup> Fox, L., Senbet, L. W., & Simbanegavi, W. (2016). Youth employment in Sub-Saharan Africa: challenges, constraints and opportunities. *Journal of African Economies*, 25(suppl\_1), i3-i15.

<sup>45</sup> International Labour Organisation (ILO). (2009). *Global Wage Report 2008/9*. Geneva: International Labour Organisation.

<sup>46</sup> (Article 173 of the 1995 Constitution of the Republic of Uganda, as amended; ICPAU, 2019; Equal Opportunities Commission Act [EOCA], 2007).

<sup>47</sup> In the Ministry of Gender, Labour and Social Development by Statutory Instrument No. 62 of 2005(Recruitment of Ugandan Migrant Workers Abroad)

product (GDP). Public officers' pay can then be enhanced.

The labour laws of Uganda provide for the establishment of administrative structures and systems that promote and protect the rights of workers, ensure safety and health at the workplace and guarantee industrial harmony. With allowance given for and emphasis on freedom of association that includes the freedom of the workers to form or join trade unions of their choice for effective representation at all levels and collective bargaining through social dialogue,<sup>48</sup> the laws promote free and fair treatment of workers. The Ugandan law further mandates the High Court, which is the apex of the industrial relations machinery, to promote equity, effective and expeditious settlement of labour disputes.<sup>49</sup> Such measures ensure that industrial harmony, improved working conditions and therefore higher productivity, as well as sustained employment, are fully utilised.

### **Fragility of Tenure of Public Service in Uganda**

The public officers in Uganda are confronted with a vast domain of threats to tenure.

Currently, the Public Sector is not the most significant source of recorded wage employment. The civil service reforms and the privatisation process of the 1990s led to a decline of employment in the public sector .... Employment opportunities in the public sector are limited, especially for women .... The annual average growth rate of government wage employment over the period 1992 to 2009/10 was negative (-0.6 percent). The above scenario indicates that employment in the public sector is limited and unlikely to grow.<sup>50</sup>

This attests to the fact that getting appointed to serve in a public office in Uganda is not easy-come. Many persons who seek employment in public office have been made to part with monies and other such offers as to corrupt the public officers responsible for

granting the appointments to the public offices. This implies that many holders of public offices in Uganda probably used corrupt means to get appointed and do not genuinely and meritoriously qualify for those offices at the time of their appointment.<sup>51</sup> Such holders of public offices will also entertain corrupt deals with qualifying prospective incoming public servants before they afford the latter the positions they seek. Corrupt public officers will not want to relinquish their positions even when they are legally disqualified or they attain mandatory retirement due to age; they are likely to continue exercising corrupt tendencies such as falsifying documents to prove that they qualify to continue to hold onto office.

By and large, detailed information on employment in public service in Uganda is not readily available to persons outside the recruiting departments. As the economy continues to expand, new employment opportunities are expected to emerge in various sectors such as the construction sector and oil and gas sector that generate direct employment for science and engineering professionals and technicians, among others.<sup>52</sup> However, a small section of the population—officers already employed in these sectors—may get to know them first-hand information about such opportunities and prepare their own kin through specialist training to take up such positions. Officers responsible for the appointment of persons to public service have insidiously disallowed those who are not their relatives, friends, and affiliates to take up a public office within their dockets.<sup>53</sup> According to the Uganda National Health Survey,<sup>54</sup> the monthly wages of public service employees in Uganda are generally low. This means that many public officers' incomes cannot satisfy their basic needs. They cannot save and therefore cannot invest in profitable ventures and are likely to remain below the poverty line. It also means that many such lowly paid employees are likely to give more time to other income-generating activities rather than their

<sup>48</sup> (Article 29 of the 1995 Constitution as amended),

<sup>49</sup> For instance, in the case [2009] UGHC 139, the High Court caused Uganda Wild Life Authority to pay Mr. Mugisha Richard Bob Kagoro damages, compensation and suit costs for unfairly terminating him from service.

<sup>50</sup> The National Employment Policy for Uganda (MGLSD, 2011, p. 9)

<sup>51</sup> (See the case UGHCCD 59; 14 May 2015).

<sup>52</sup> (MGLSD, 2011).

<sup>53</sup> This contravenes natural justice as can be seen in the cases *John Jet Tumwebaze v. Makerere University Council and 3 Others Civil Application No. 353 of 2005* and *Lugolobi v Tororo District Local Government (HCT-04-CV-MC-2014/19) [2015] UGHCCD 35 (26 March 2015)*.

<sup>54</sup> Uganda National Health Survey 2009/2010



official duties. Cases of late coming to work, leaving work earlier than stipulated, absconding from duty, taking more time on non-duty related activities such as chatting, poor service delivery to clients, tendencies of corruption, and faking frequent leaves from duty are likely to increase. Generally, the employees' productivity and output on the job is grossly compromised. Consequently, the public office is labelled as a hub of inefficiency, corruption, and inhuman treatment, lending itself to the liability of legal contention and subsequent litigation. Therefore, poor remuneration provides a recipe for the insecurity of tenure through a whole cohort of unbecoming practices.

Chances of upskilling while on the job are rarely available for public officers in Uganda. If granted, the employees are rarely accorded study leaves with pay; most of them are granted study leaves without pay. Yet with heightened advances in technology, most public servants find themselves deficient in skills to handle most of the demands of their jobs. Most duties and responsibilities that used to be handled by secretaries and office attendants are now scalded down to be handled by the public officer, which would require further studies in the critical skills areas. The fear of forfeiting the monthly wage earnings in the face of biting poverty forces<sup>55</sup> them to endure at the same level of low skill and pay. In this respect, Uganda's labour productivity has been rated the lowest in East Africa due to inadequate skills, negative attitude to work, poor managerial practices and poor working conditions. The State of Uganda Population Report<sup>56</sup> revealed that one Kenyan worker does the same task as six Ugandan workers. For one Tanzanian worker, it takes four Ugandans to do the same job. Comparative studies were done for Uganda, India, and China show that value-added per worker in Uganda is far lower than that in India and far much lower than that in China. This implies that migrant workers from other countries would be preferred to native Ugandan workers, which puts the security of tenure of Ugandan public servants at risk.

Another critical challenge posing fragility to the public servants in Uganda is the differential treatment of nationals and immigrant workers. The Ministry of Gender, Labour, and Social Development<sup>57</sup> contends that:

*Data on immigrant workers are hardly accessible and therefore it is difficult to regulate the inflow and working conditions of both skilled and less skilled immigrants. The evidence available from workers organisations indicate that some allegedly skilled immigrant workers do same or even less work and are highly paid as compared to their Ugandan counterparts, while others are smuggled into the country, confined and work under very poor terms and conditions of employment.*

Such differential treatments result in social costs including among others breaches of contracts, unsafe working conditions, intrigue, and harassment among workers.

The Ugandan public service is also cluttered with disparities in management and administrative styles and decisions which result in wide variations in wages as well as terms and conditions of service across sectors, ministries, and departments.<sup>58</sup> Even pay rises are not clearly structured to the extent that employees in certain departments have to go on strike in order to receive an increase in pay. Whereas civil servants are generally happy serving the public, for employees having the same qualification, for instance, at Bachelor's degree level, receiving a lower minimum wage and 'unfavourable' terms and conditions of service causes a sense of discontentment and job dissatisfaction.<sup>59</sup> At best, such employees seek to change careers in order to attain more meaningful and gainful employment. This implies that such positions are denied of the best-qualified officers who would deliver quality service to the populace. Instead, the positions end up being filled by lower-skilled workers to the detriment of the quality of service delivered. On the other hand, some

<sup>55</sup> (See case [2018] UGIC 25)

<sup>56</sup> Uganda Population Report (2010)

<sup>57</sup> MGLSD (2011, p. 12)

<sup>58</sup> Harris, A., Schuster, C., Meyer-Sahling, J., & Mikkelsen, K. S. (n.d.). Civil service management practices for a more motivated, committed and ethical public service in Uganda.

<sup>59</sup> Harris, A., Schuster, C., Meyer-Sahling, J., & Mikkelsen, K. S. (n.d.). Civil service management practices for a more motivated, committed and ethical public service in Uganda.

employees continue to serve all the same, but with low morale for and sense of duty, which ultimately translates into corrupt tendencies of late coming for work, missing work more often due to fake reasons, leaving office earlier than stipulated, and exhibiting unprofessional conduct such as client disrespect in office. In most cases, these variations and hence negative consequences arise due to little, if any, coordination among key ministries, departments, and sectors. For instance, the Ministry of Gender, Labour and Social Development in the *Employment Policy for Uganda* notes that “over the period 1995–2007, average wages lagged behind the growth in GDP per capita, which is an indication that increases in productivity failed to translate fully into higher wages. During this period, there have also been slow reductions in the wage gap ... [with] increase in inequality among wage earners.” The International Labour Organisation (ILO)<sup>60</sup> asserts that “as output growth declines ..., global wage growth may fall even more rapidly, increasing the poverty of vulnerable workers.”

Despite affirmative action for youth and women in education, coupled with ‘free’ universal primary education (UPE), many youths and women who are in their prime working-age and energetic are redundant, underemployed, unemployed and vulnerable to manipulations because of being illiterate, rural-based, lacking vocational and artisan skills.<sup>61</sup> This poses a serious threat to social, economic, and political stability. According to the National Employment Policy for Uganda,<sup>62</sup> youth unemployment is suffered most by female youth. The proportion of women in public service and hence wage employment is generally lower than that of men, with male participation being about three times higher than that of women.<sup>63</sup> Except in non-wage sectors such as agriculture, women in the lowest-paying sectors receive at most half the average male wage. This indicates how tenure

security is highly compromised for women and youth.

Despite provisions<sup>64</sup> in the Constitution of the Republic of Uganda, as amended, minority groups such as ethnic minorities, women, and Persons with Disabilities (PWDs) face stigmatisation and discrimination in their search for and during their tenure of employment.<sup>65</sup> Such discrimination could be politically motivated or due to a sheer lack of consideration and legal provision. PWDs, for instance, are often confronted with negative societal attitudes and other impediments such as enormous infrastructural barriers with most public buildings lacking ramps for wheelchairs and the visually impaired. Public transport and road infrastructural designs do not meet the requirements of PWDs. In the media and ICT arena, the PWDs are constrained in their access to employment and other critical information. Similarly, the older persons (60 years and above) are mandatorily retired from public service. This implies that many older persons have no obvious source of income and may be straining to make ends meet. The lack of a comprehensive social assistance system exacerbates their vulnerability.

Decentralisation raises another concern of fragility of tenure to Ugandan public servants. Some key aspects of labour administration were decentralised to the regions and districts in accordance with the decentralisation policy. The increase in the number of districts has caused a reciprocal increase in the number of public offices in the new districts, yet these districts are devoid of the requisite quality of personnel to occupy the available public offices to effectively run the affairs of the districts. However, it has been variously observed that public servants who do not ‘originally belong’ to certain districts have been rejected by members of the districts, some after being incited by rivaling parties ‘originally belonging’ to those districts. Sometimes, intrigue<sup>66</sup> within the districts is of concern to the

<sup>60</sup> International Labour Organisation (ILO). (2008). Key indicators of the labour market, 2008. Geneva: International Labour Organisation.

<sup>61</sup> Filmer, D., & Fox, L. (2014). *Youth employment in sub-Saharan Africa*. The World Bank.

<sup>62</sup> MGLSD (2011)

<sup>63</sup> MGLSD (2011)

<sup>64</sup> such as Article 21 of the 1995 and the Disability Act 2006 of the Republic of Uganda.

<sup>65</sup> Uganda Human Rights Commission (UHRC), *Human rights and business country guide Uganda*. (2020) Retrieved from <https://www.uhrc.ug/download/uganda-business-and-human-rights-country-guide/> MGLSD (2011).

<sup>66</sup> as is seen in the case [2018] UGHCCD 236 where the incumbent Acting Principal Education Officer for Gulu Municipal Council was not shortlisted by Gulu District Service Commission. The Commission decided that only one candidate was the only applicant to be shortlisted and an

citizens whose districts do not have openings for similar jobs and yet they have a constitutional right<sup>67</sup> to seek and be employed anywhere in any part of the country.

Some of the Ugandan public servants serve under “poor working conditions, lack of adequate maternity protection, unfair dismissal, casualisation of labour, low wages and inadequate occupational safety and health.”<sup>68</sup> For instance, during the COVID-19 pandemic, many health workers were not provided adequate personal protective equipment (PPEs). This potentially predisposes these employees to morbidity and hence ill health, yet health benefits are a constitutional right.

### Strategies to Enhance Tenure Security among Public Servants in Uganda

Tenure security is a matter of national peace and security. Therefore, the Government of the Republic of Uganda needs to directly and indirectly influence the creation of decent jobs and conditions of service to meaningfully employ the citizens to be productive and generate income for personal and collective progress. All government ministries and departments need to be made to mainstream employment strategies into their policies, plans and programmes. Actors are called upon to internalise this policy and put in place the most appropriate mechanisms for increasing decent employment opportunities in the country. Respect for international labour standards, recruitment and retooling relevant staff must be given priority.

A synergistic application of labour law is desired in the country through harmonisation of the various employment policies in various ministries and departments so as to foster a unified wage system and conditions of work.<sup>69</sup> The government needs to emphasise improved productivity and value in public services so that everyone in the workplace and entrepreneurs can focus on value addition,

increased productivity and better performance.<sup>70</sup> Extreme disparities in wages among employees of similar qualifications across public offices need to be reviewed and levelled to avert poor work ethics such as unethical behaviour, time wastage, inappropriate managerial skills and lack of respect for work and workers’ rights, which lead to low labour productivity. Instead, social dialogue and tripartism, solidarity, patriotism and respect for national values need to be promoted as a critical driver of increased labour productivity. This way, the negative attitude and work culture among the population can be changed.

The immigrant-native disparities with regard to wages and other conditions of service within the public service need to be levelled. The various international treaties concerning labour movement such as “the East African Common Market Protocol and regulations on free movement of labour, the employment policies and other labour market policies, labour legislation, as well as employment structures of partner states ... have to be harmonised.”<sup>71</sup> This further implies that the education system of the country should be reformed to produce skills sets that can enhance favourable competition for job opportunities with immigrants within the country and across the borders. This would promote the emigration of Ugandans into jobs of higher remuneration in other countries’ public service, for instance, as teachers and health professionals, which reciprocally attracts foreign currency that can be used to enhance the wage system within the public service in Uganda. The government needs to put in place measures to guide Multinational Enterprises on employment promotion and social dialogue.

In the face of inadequate employment opportunities within the public service, there is a need for the government to create more jobs in the private sector to meet the growing numbers of new entrants into the job market.<sup>72</sup> More financial resources need to

invitation to that effect was published on 16<sup>th</sup> July, 2018 fixing the date of interview as 27<sup>th</sup> July, 2018. This prompted the Acting Principal Education Officer to file an application for the prerogative orders of certiorari, prohibition, mandamus, and an interim injunction.

<sup>67</sup> (Article 173 of the 1995 Constitution of the Republic of Uganda, as amended)

<sup>68</sup> (MGLAD, 2011, p. 19).

<sup>69</sup> Harris et al (n.d.)

<sup>70</sup> (MGLSD, 2011, p. 15).

<sup>71</sup> (MGLSD, 2011, p. 14).

<sup>72</sup> Brooks, K., Zorya, S., Gautam, A., & Goyal, A. (2014). *Good jobs in agriculture for Africa's young people: What will it take to create them?* A paper presented at PIM Seminar on Youth Employment in Sub-Saharan Africa on February 27, 2014, at IFPRI, Washington, DC.; Fox, L. (2016). What will it take to meet the Youth Employment Challenge in Sub-Saharan Africa? *GLM/ LIC Synthesis Paper No. 2*; MGLSD, 2011, p. 9

be dedicated to creating jobs in sectors such as agriculture,<sup>73</sup> industry, construction and services, “which currently contribute high GDP.”<sup>74</sup> Such jobs in the private sector need to be made attractive, not positing the labourer as subservient to the public servants in terms of earnings and public image. This calls for “mainstreaming vulnerable groups, strengthening labour administration, social dialogue, improving working conditions and the workplace environment as well as establishing a more appropriate institutional framework for coordination and sustainable employment.”<sup>75</sup> In this case, the government needs to invest in robust socioeconomic data, especially data on labour market status explicitly linked to the influence of various key players such as the vulnerable on the labour market. The government further needs to provide regulatory measures to Multinational Enterprises (MNEs) on employment promotion and social dialogue so as to promote employment of Ugandans in the MNEs.

## CONCLUSION

The public service in Uganda<sup>76</sup> targets to offer public services to the populace, for which the servant is paid from the “Consolidated Fund or directly out of monies provided by Parliament.” The tenure of the public servants is established and well provided for by robust legal and policy frameworks. The coordination and implementation of the frameworks rest with the National Employment Council constituted of Permanent Secretaries and Chief Executive Officers drawn from various Ministries, Departments and Agencies. The Ministry of Gender, Labour and Social Development serves as Chair and Secretariat to the Council. However, the implementation of the National Employment Policy is faced with a number of challenges and threats amidst enormous unemployment and poverty that impart a high level

of fragility to the tenure of public servants in the country.

In this paper, we suggest strategies including recourse to strengthening job creation in the private sector, which, if adequately implemented by the government and the relevant stakeholders, could enhance the tenure security of the public servants in Uganda. In this regard, the USAID report *Reforming Public Administration in Post Conflict Societies*<sup>77</sup> provides a good wrap-up for our paper:

Improving the effectiveness of the civil [public] service in post-conflict environments is urgent because of serious weaknesses in the capacity of public administration either to carry out government policies or to deliver public services efficiently and effectively. The weaknesses in public administration are similar across post-conflict countries in different regions of the world. [...] Essential features that need to be in place include: Professional administrative and managerial capacities and competencies, efficiency and effectiveness of organisation and procedures, professional recruitment and career management, et

<sup>73</sup> Fox, M. L., Haines, C., Munoz, M. J. H., & Thomas, M. A. H. (2013). *Africa's got work to do: employment prospects in the new century*. International Monetary Fund.

<sup>74</sup> (MGLSD, 2011, p. 9).

<sup>75</sup> Opiyo, G., Foreword. In MGLSD, *The National Employment Policy for Uganda: Increasing Decent Employment Opportunities and Labour Productivity for Socio - Economic Transformation*. Kampala: MGLSD. (2011, p. iii).

<sup>76</sup> as defined in Article 175 (b) of the 1995 Constitution of the Republic of Uganda as amended,

<sup>77</sup> Rondinelli, D. A. (2006). *Reforming public administration in post-conflict Societies: Implications for international assistance*. Washington DC: United States Agency for International Development. (2006, pp. 13–14)