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LEGAL ADVICE CENTRE

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LABOUR LAW IN THE KENYAN CONTEXT.

Since independence in 1963, Kenya's economic, social and political aspirations were founded on the Sessional Paper No. 10 of 1965 on "African Socialism and its Application to planning in Kenya" (Republic of Kenya, 1965). In 2007, Kenya redefined its development agenda by developing a blue print, "The Vision 2030" that aspires to transform Kenya into "A Globally Competitive and Prosperous Country" (Republic of Kenya, 2007). And in order to enhance its commitment to its development agenda, Kenya enacted a new constitution in 2010 that put in place two levels of government: the national and the devolved systems that are geared towards enhancing inclusive economic growth (Republic of Kenya, 2007). Just to mention, Kenya's economy grew by 5.4 and 5.6 Per cent in 2014 and 2015 respectively. (Republic of Kenya, 2016)¹

Since the 2nd cycle UPR mid-term review, the labour law landscape has been a vibrant scene for change and reform. The Kenyan government has made land mark strides that have improved the labour law landscape that must and should be appreciated and acknowledged. However, in the same breath, there have emerged new problem areas that require government attention. The below are an over view of the above named three subject areas.

PROBLEM AREAS, GOVERNMENT INTERVENTION AND CAUSAL FACTORS OF ISSUES.

- ***Issue 1:* Lack of implementation of remuneration practises and policy that ensure favourable and reasonable working remuneration for workers in extractive industries.**

Article 41 of the constitution provides that all workers have the right to work in favourable conditions. This is not observed especially in extractive industries that often flaunt safety and occupational regulations e. g salt and gypsum mining industries.

In accordance with the provisions of the Labour Institutions Act 2007, workers' salaries must at least be equal to the minimum wage, ensuring every worker a decent standard of living consistent with the human dignity.

¹ © WageIndicator 2019 - ALREI.org - Assessment Of The State Of Trade Unions in Kenya by Owidhi George Otieno

An employer who fails to pay statutory minimum wage or provide a worker with conditions of employment as provided under the Wages Order commits an offence. Labour inspector is authorized to monitor and enforce compliance with the Labour Law. Non-compliance with

The Employment Act is an offence, punishable by a fine of maximum 100,000 shillings and imprisonment of 2 years.²

Government intervention I;

The State has developed an integrated wage and remuneration policy for civil servants. In May 2017, the State announced an 18% minimum wage increment.

Causal Factor I;

Lack of public education drives when wage orders are issued and the procedure regarding their implementation by employers in the formal and informal sector.

- ***Issue 2;* Restriction of Refugees and asylum seekers from getting meaningful employment.**

Kenya hosts a large asylum-seeking and refugee population. This is due largely to the country's location in a conflict-prone area. For example, neighbouring countries like Somalia and South Sudan have experienced ongoing civil wars that have caused internal and external displacement of large segments of their population. According to the United Nations High Commissioner for Refugees (UNHCR), there were a total of 625,250 refugees and asylum seekers in the country in 2014.³ This figure increased to 650,610 in 2015.⁴

In theory, refugees in Kenya are free to engage in any form of self-employment without the need to obtain formal authorization and they may take paid employment after obtaining a work permit. The Refugees Act provides that "every refugee and member of his family in Kenya shall, in respect of wage-earning employment, be subject to the same restrictions as

² Section 17(10) of the Employment Act 2007; §43-47 of the Labour Institutions Act 2007; the Regulation of Wages (Agricultural Industry (Amendment) Order 2013; the Regulation of Wages (General) (Amendment) Order 2013

³ United Nations High Commissioner for Refugees (UNHCR), Global Appeal 2014–2015: Kenya 2 (Dec. 1, 2013), <http://www.unhcr.org/528a0a244.html>, archived at <http://perma.cc/68GJ-CQCQ>.

⁴ [2] UNHCR, Global Appeal 2015 Update: Kenya 2 (Dec. 1, 2014), <http://www.unhcr.org/5461e600b.html>, archived at <http://perma.cc/NX7P-GUYZ>.

Are imposed on persons who are not citizens of Kenya.”⁵ Refugees and their spouses may apply for and obtain a class M work permit.⁶ A holder of a class M work permit may engage in any occupation, trade, business or profession.

While refugees may theoretically work, the practice is reportedly much different. The Refugee Consortium of Kenya stated in 2012 that the government does not issue work permits to asylum seekers or refugees except in “a few isolated cases.”⁷ As a result, refugees and asylum seekers are forced to seek employment in the informal sector.⁸ However, this is increasingly being made difficult by the country’s encampment policy, which restricts the ability of refugees and asylum seekers to move about the country freely.

Government intervention 2;

Obtaining a work permit previously cost refugees US\$700, however this is no longer the case as Kenya has removed this fee and made permits available free of charge.⁹

Causal Factor 2;

Lack of public education drives regarding refugee rights and the procedure regarding their implementation.

Furthermore, Lack of a multi-stake holder action plan for employers, refugees and the government further exacerbates the problem.

- ***Issue 3; Discrimination in County and national Employment pertaining to Persons Living with Disability, Women and other Marginalized Groups.***

Within the public sector, only few employers and subsequently work places meet the Constitutional threshold of 5% of employment for PWDs. Most public sector employers do not have any PWDs in their workforce.

The Persons with Disabilities Act, 2003, is a comprehensive law covering rights, rehabilitation and equal opportunities for people with disabilities. It creates the National

⁵ Refugees Act § 16.

⁶ Kenya Citizenship and Immigration Regulations, 2012, Seventh Sched., 11 Laws of Kenya, Cap. 172 (rev. ed. 2014), <http://www.kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=CAP.%20172>, archived at <https://perma.cc/ZW7B-UURU>.

⁷ Refugee Consortium of Kenya, *supra* note 13, at 80–81.

⁸ *id*

⁹ Pavanello et al., *supra* note 11, at 21; Kenya Citizenship and Immigration Regulations, *supra* note 79, Ninth Sched.

Council of Persons with Disabilities as a statutory organ to oversee the welfare of persons with disabilities. The Law also requires that both public and private sector employers reserve 5 per cent of jobs for disabled persons.

Government Intervention 3;

The allocation of 30% of all State procurement to youth, women and PWDs has to a great extent increased levels of self-employment among youth living with disability.

Parliament in 2016 did pass the National Youth Employment Authority Act to provide various opportunities for job seekers and to give effect to Article 55(c) and 56(b) of the Constitution of Kenya, 2010.

Causal Factor 3;

Lack of adequate public awareness on Employment policy regarding Persons Living with Disability targeting both the private and public sector.

Conclusion and Recommendations.

- Establishment of a multi-stake holder action plan for employers, refugees and the government.
- Ensuring a disability perspective in all aspects of policy and labour legislation.
- Implementation and enforcement of existing disability laws and policies and providing for equal employment opportunities and training are among the factors that contribute to the reduction of poverty and to the social and economic inclusion of people with disabilities in Kenya.