

**THE CENTER FOR POLICY ANALYSIS  
(CEPA)**

**DOES UGANDA NEED MINIMUM WAGE LEGISLATION?  
A CRITICAL REVIEW OF UGANDA'S MINIMUM WAGE POLICY**

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**POLICY SERIES PAPERS NUMBER 8 OF 2016**

## **Published by CEPA**

P. O. Box 23276, Kampala

Email: [info@parliamentwatch.ug](mailto:info@parliamentwatch.ug)

Web site: <http://www.parliamentwatch.ug>

## **Citation**

Wambuga H, (2016). Does Uganda Need Minimum Wage Legislation? A critical review of Uganda's Minimum Wage Policy. Policy Series Papers Number 8 of 2016. Kampala

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## 1. INTRODUCTION

The advocacy for a minimum wage is a movement that has swept furiously across the globe over the last century. Proponents have continuously praised its penchant for social transformation, human rights' protection and most interestingly, economic growth. On the other hand, opponents have invariably scorned and rebuffed the former's 'sentiments,' advising that minimum wages are an ill-advised interference that is notorious for increased unemployment, low investment and low economic development. Today, several countries; developed, developing and under developed have set themselves on either path; their experiences creating opportunities for the proponents and opponents alike.

For counties like Uganda, the question whether to fix a minimum wage for the labor market remains unresolved. Our current government and in particular the President, has quite vocally expressed hesitance and even aversion towards the call for a minimum wage; trailing in the wake of the opponents' emphasis on economic development. However, this has not always been the case for Uganda. From the colonial government's introduction of minimum wage boards in 1935 through actions in 1950, 1963, 1964, 1965, 1970 to 1984 when a minimum wage was set at UGX 6000 for particular sectors, various Ugandan governments have fronted pro proponent minimum wage policies.

Quite obviously, a minimum wage of UGX 6000 set in 1984 for a handful is no longer practical or feasible. Nonetheless, it remains law; no government having since repealed nor otherwise altered it. This inaction however, does not particularly lend itself to a policy of pro- proponent or pro- opponent. Indeed, although the current government has been vocal in its criticism of the concept, it has simultaneously taken steps for the investigation, negotiation and creation of a minimum wage. From its constitution of a Minimum Wage Advisory Council in 1995, the commissioning of bench marking studies on the wage's application and enforcement in other countries, the 2003 private sector negotiations and most recently, statements about the Minimum Wage Bill 2015, government has managed to blow hot and cold on the minimum wage question.

Despite Civil Society's sustained calls for a minimum wage, the government remains, at least officially, 'on the fence.' The arguments for are as varied as those against and neither the pro- proponent proposals nor the pro – opponents' have apparently been successful. Even a constitutional petition filed by the Platform for Labour Action in 2006 to challenge 'the current minimum wage' as being 'inconsistent with the Constitution' was dismissed on technicalities. Coupled with the glaring fact that the Minimum wage Bill 2015, continues to gather dust on Parliament's shelves, the current government's policy towards minimum wage remains indecisive. What is clear is that it is skeptical (at least vocally) of the economy's performance in a minimum wage labour market.

Much has been written about the 'minimum wage' and this paper does not pretend to exhaust the topic. However, it does intend to investigate the need for a minimum wage in Uganda by illuminating the rationale behind the pre 1984 Ugandan governments' pro proponent policy, comparing the minimum wage legislation in force with the Minimum wage Bill 2015 and explaining the basis for stake holder concerns on the subject.

## 2. WHAT IS A MINIMUM WAGE?

The term ‘wages’ is defined to mean ‘remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations.’<sup>1</sup>

A minimum wage is therefore the lowest monetary value which may be paid to a worker at a particular point in time.<sup>2</sup>

It is ‘the minimum sum payable to a worker for work performed or services rendered, within a given period, whether calculated on the basis of time or output, which may not be reduced either by individual or collective agreement, which is guaranteed by law and which may be fixed in such a way as to cover the minimum needs of the worker and his or her family, in the light of national, economic and social conditions.’<sup>3</sup>

## 3. PRE – 1985 UGANDA; WHY A MINIMUM WAGE?

**Although** debate on a minimum wage in Uganda is now rife, the country’s brush with the concept is in no way recent. In 1935, the British colonial government introduced minimum wage boards to determine the minimum wage for unskilled employees<sup>3</sup>. And in 1947, it extended the appointment of wage boards to different regions in Uganda. In 1950, these efforts culminated into the concrete implementation of the first Minimum Wages Order that set the minimum wage at 33 shillings<sup>4</sup> and the enactment of the Minimum Wages Advisory Boards and Wages Councils Act in 1957.<sup>5</sup>

The rationale for the adoption of the colonial government’ minimum wage policy can be traced back to Australia from where it was adopted. The idea of minimum wage legislation was first pioneered in Australia and New Zealand (then British Colonies) from whom Great Britain adopted the minimum wage.<sup>6</sup> According to Matthew B. Hammond in his paper, ‘the Minimum Wage in Great Britain and Australia,’ the motive behind the establishment of the minimum wage in British Australia was twofold; to ‘prevent strikes and lock outs’ and to halt the ‘payment by an employee to his work people of a wage that is insufficient to purchase for them the necessities of life.’<sup>7</sup>

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<sup>1</sup> s.2 of the Employment Act 2006

<sup>2</sup>The lowest wage that an employee is allowed to pay by law, AS Hornby, ‘Oxford Advanced Learner’s Dictionary, Oxford University Press, p.1667

<sup>3</sup> S Devereux ‘Can Minimum Wages Contribute to Poverty Reduction in Poor Countries?’ (2005) Journal of International Development, 899 at 906.

<sup>4</sup> Ibid. The order was made by virtue of Article 12 of the 1902 Order in Council which empowered the Commissioner ‘to make ordinances for the administration of justice, raising of revenues and generally for the peace, order and good government of all persons in Uganda.

<sup>5</sup> The Act was enacted, inter alia, to provide for the establishment of minimum wages advisory boards and wages councils. It is still in force to this day.

<sup>6</sup>It is from these that Britain enacted it’s Trade Boards Act (9 Edw.7, Ch. 22) to facilitate the creation of minimum wage boards.

<sup>7</sup>Matthew B. Hammond, ‘The Minimum Wage in Great Britain and Australia’ in The Annals of the American Academy of Political and Social Science, Vol. 48, The Cost of Living (Jul., 1913), p. 26

It is reported that the extension of this concept to other trades and arguably, Britain's adoption of the minimum wage was born of its success in both those objectives.<sup>8</sup> At the time, Britain had also ratified the International Labour Organization's Minimum Wage-Fixing Machinery Convention, 1928 and undertaken to 'similarly improve labour relations in her colonies.' And so it happened that minimum wage boards were introduced in 1935 and extended regionally after the 1945 strikes which Uganda's first trade union (Uganda Motor Drivers' Association) organized to secure better wages.<sup>9</sup> In 1950, the British set a definitive minimum wage of 33 shillings and in 1957; they sought to concretize these reforms by enacting the Minimum Wages Advisory Board and Wages Council Act<sup>10</sup>.

It was commercial expedience; a concession made to the labour market to ensure their basic survival and so secure their continued productivity. This of course, was not the only means of securing their objectives for the British, like most governments, monopolized the use of force<sup>11</sup>. However, they had plantations and works all over the country and it was both cheaper and easier to secure their objective by keeping the laborers 'satisfied'. Whether the British also set the minimum wage out of a humanitarian need to improve the laborers' conditions of work is anyone's guess. It certainly cannot be discounted for this was one of the reasons for British Australia's introduction of a minimum wage.<sup>12</sup> It was also the post - World War 1 commitment to social justice that led to the creation of the International Labour Organisation<sup>13</sup>.

**Nonetheless**, in this the British were to be imitated for Uganda's history from Independence to 1984 showcases a leaning toward pro proponent tendencies. In 1963, barely a year into its independence, Uganda became a member of the International Labour Organisation thereby committing to the promotion of social justice in its labour relations<sup>14</sup>. Shortly thereafter, the country ratified the Minimum Wage-Fixing Machinery Convention, 1928 by which she agreed to 'create or maintain machinery for fixing minimum wages.'<sup>15</sup>

And so in 1965, the Independence government advised the fixing of a UGX 75 minimum wage for mills (oil, saw jiggery), cotton ginning and mining enterprises which employed over 50 persons. In 1970, government appointed a minimum wage board which recommended a UGX 185 minimum wage for tea and sugar estates, UGX 125 for trading centres and UGX 104 for all employers with at least 10 employees<sup>16</sup>.

This trend continued to 1984 when government constituted another Minimum Wage Advisory Board; this one recommending a minimum wage of UGX 6000 for the following sectors:

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8 Ibid, p.30

9 Roger Scott, 'The development of trade unions in Uganda,' East African Studies/East African Institute of Social Research, no.29. Nairobi: East African Pub. House, 1966

<sup>10</sup> This Act has been the basis for minimum wage policies since and is still in force to this day.

<sup>11</sup> In 1945, when the strikes organized by Uganda Motor Drivers' Association reached their climax, the British deported its leaders like Kivu and I.K. Musazzi, *ibid*.

<sup>12</sup> *Supra*, p.4

<sup>13</sup> 'The ILO was created in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice, <http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm> (last accessed on 16/7/2016)

<sup>14</sup> <http://www.ilo.org/dyn/normlex/en/F?p=1000:11110:0::NO:1111> (last accessed on 16/7/2016)

<sup>15</sup> Art 1 of the ILO Convention 26 (Minimum Wage-Fixing Machinery Convention). Uganda ratified this convention on 4<sup>th</sup> June 1963.

<sup>16</sup> Platform for Labour Action, 'The Need for a Minimum Wage,' January 2014, p.12

- The City of Kampala and all municipalities and towns as declared under the Local Governments Act
- Lugazi Town and Sugar Factory and Plantation
- Kakira Trading Centre and Sugar Factory and Plantation
- agricultural estates (tea, coffee, cocoa, sugar, sisal, rice) employing ten or more persons at any one time
- mining establishments
- cotton ginneries
- saw mills
- oil mills
- jaggery mills
- sugar mills

It is this minimum wage that exists to this day<sup>17</sup>.

It is noteworthy that all these pro proponent policies that Uganda undertook during this era were made under the administration of Milton Obote. The country's membership and ratification of the International Labour Organisation Conventions in 1963 occurred when Obote, who served in the Independence government from 1962 – 1966, was prime minister. The appointment of wage boards which fixed minimum wages in 1970 occurred when Obote, who had abolished the 1962 Independence Constitution, was president of Uganda. So did the appointment of wage boards which fixed the current minimum wages in 1984 take place during the era of Obote II. Obote's socialist tendencies are well known and well documented and it is clear that his government policies in this regard were fueled by a belief, at least at the time, in the ideal of socialism<sup>18</sup>.

#### 4. POST 1985 UGANDA; A POLICY 'SHIFT'

Unlike their predecessors, post 1985 Ugandan governments have not revised the minimum wage set or established minimum wages in other sectors. This is despite the fact that they have had enabling legislation. The current government has since ceding power in 1986 taken no definite minimum wage policy. While members of cabinet and even the president often criticized the call for a minimum wage, they did not rule out the possibility altogether<sup>19</sup>. Their argument was always that our country is not ready for a minimum wage and that what we need to prioritize is investment and infrastructure.

At the same time, they took measures to entertain the issue; engaging stakeholders in various fora on the subject. For instance, in 1995, the government constituted a Minimum Wages Advisory council to inquire

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<sup>17</sup> In light of the nonexistence of a number of these enterprises, it is debatable whether this wage is relevant today.

<sup>18</sup> From 1968 to 1971, Obote's brand of socialism was characterized by a policy 'move to the left' in which he advocated for strong government control of the economy, [https://en.wikipedia.org/wiki/Move\\_to\\_the\\_Left](https://en.wikipedia.org/wiki/Move_to_the_Left) (last accessed on 21/7/2016).

<sup>19</sup> In a 2000 speech to workers, the Observer quoted the President's responses to call for a minimum wage. He said, 'And I will show you how erroneous these positions you are taking are. I am not necessarily against a minimum wage. But we have not resolved the issues which we must resolve,' Observer, 9/2/2015

into the wages of Uganda's unskilled labour and make recommendations<sup>20</sup>. Their recommendations included a monthly uniform rate of UGX 75000 which cabinet reviewed to UGX 65, 000. However, the government neither adopted nor officially rejected these proposals. In 1999, cabinet directed the Ministry of Finance and Economic Planning to carry out benchmark studies on the application and enforcement of a minimum wage in Malaysia, China and Philippines. The study's conclusions did not support Uganda's adoption of a minimum wage. However, government neither adopted the recommendations nor repealed the minimum wage statutes in force.<sup>21</sup>

In 2003, government and the private sector negotiated a new rate of UGX 54,000 but no legislation was passed to implement it.<sup>22</sup> In the National Development Plan (NDP) 2009/10 2014/15, government identified the establishment of a minimum wage as an enabler for high quality employment. The strategy to achieve this was indicated as "implement the existing policies, regulations, laws and guidelines"<sup>23</sup>. However, no steps were taken to operationalize the objective<sup>24</sup>. The government's perceived reluctance to take up a minimum wage policy only gained momentum.

## 5. INCOMING; THE MINIMUM WAGE BILL 2015

In 2013, Workers' Member of Parliament Arinaitwe Rwakajara successfully tabled a motion seeking leave of Parliament to draft a Private Member's Bill on the minimum wage in Uganda<sup>25</sup>.

In his speech to Parliament, he stated that<sup>26</sup>;

*'The existing legislation on minimum wage is outdated and lack of one exposes workers to exploitation by their employers and poor working conditions ... we need to have a comprehensive legislation to protect employees.'*

Despite the delays, this led to the preparation and laying of the Minimum wage Bill 2015. Although the government of Uganda had for long failed, refused or neglected to make any official definitive commitments towards the rejection or the adoption of a minimum wage, it has since undertaken before the International Labour Organisation, to enact a minimum wage law<sup>27</sup>. This, by far is the closest that post 1985 governments have come to definitively fixing a minimum wage policy. If these reports can be

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20 This was done under General Notice No. 176/1995 in accordance with section 3(1) of the Minimum Wages Advisory Boards and Councils Act, Platform for Labour Action, p.13

21 ibid

22 Danish Trade Council for International Development and Cooperation Labour Market Profile 2015; Uganda, p.5

23 NATIONAL DEVELOPMENT PLAN (2010/11 - 2014/15), page 206

24 National Development Plan (2010/11 - 2014/15), p.207

25 The motion was tabled together with Paul Mwiru (Jinja Municipality) and James Mbahimba (Kasese Municipality). Stuart Oramire, 'Instituting minimum wage will protect workers from exploitation,' The Daily Monitor 23rd February 2015

26 This was reported in the Daily Monitor on 21st February 2013.

27 The Daily Monitor has reported that a 'government delegation led by Labour minister Kamanda Bataringaya and Pius Bigirimana informed the ILO that Uganda had approved the appointment of a Minimum Wage Advisory Board to kick-start preparations for setting up a minimum wage for workers in the country', May 3rd 2016.

credited, the Bill's long awaited passing will come at a time when many Ugandan employees are desperate for reform. Currently, Uganda's only minimum wage<sup>28</sup> stands at the UGX 6000 that the Obote 11 government fixed in 1984; a rate which is legitimately considered dysfunctional. More so because the 1999 devaluation and conversation of the shilling left it at 60 shillings<sup>29</sup>.

According to the UN Sustainable Development goals, persons in developing regions who earn less than \$1.25 per day are considered poor.<sup>30</sup> These are people who earn a 'wage that is insufficient to purchase for them the necessities of life.' At UGX 6000, a Ugandan employee working in the sectors mentioned would earn about 1.7 dollars a month! At 60 shillings, he or she would earn about 0.017 dollars! The existing rate is therefore not relevant to current socio economic conditions and the clamor for the 2015 minimum wage bill, being driven by equity considerations, recognises this challenge.<sup>31</sup>

### **5.1. CAP 221 vs MINIMUM WAGE BILL 2015; A STEP FORWARD?**

Uganda's current minimum wage regime is comprised of the Minimum Wages Advisory Board and Wages Council Act 1957 (also referred to as cap 221 of the Laws of Uganda). It is this Act that the Minimum wage Bill 2015 seeks to repeal. In order to establish whether Uganda needs the 'new' minimum wage legislation, a situational analysis should be conducted to answer the following questions; is the problem lack of legislation, lack of adequate legislation or lack of implementation?<sup>32</sup> This calls for a comparison between the current law and the bill:

The Bill states as its object the provision of a sectoral based minimum wage determination. Although Cap 221 does not expressly refer to a sectoral approach, it does mandate the creation of wage boards 'for any specified area or for any employees or groups of employees in any occupation in which he or she considers that it may be desirable to fix a minimum wage.'<sup>33</sup> It therefore effectively authorizes a sector based determination of minimum wages.

However, the Bill does set out two defects in Cap 221 which it seeks to cure; first, the Bill intends to create an employer-employee led minimum wage determination by requiring the presence of employer – employee representation and enabling employers or employees to make presentations to the board on the conditions acceptable to them before a wage is set<sup>34</sup>. This is an improvement from the existing regime under which the Minister had discretion to include those representatives but only as additional members<sup>35</sup>

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<sup>28</sup> The wage was fixed only for the sugar plantations, mills, ginneries, mines and agricultural estates, supra, p.5

<sup>29</sup> 'The Minimum Wage in Uganda: An Urgent Call,' Development Research and Training Policy Brief No. 4 October 2013. However, the wage is also dysfunctional because the operations of some of the sectors for which it was set have since ceased. This statement also recognises the fact that a minimum wage should be fixed for other workers in different sectors.

<sup>30</sup> 'Development Goals in an Era of Demographic Change,' Global Monitoring Report | 2015/2016

<sup>31</sup> Art 3 of the International Labour Organisation recommendation 135 stipulates that the determination of minimum wages should take into account inter alia; the needs of workers and their families and the cost of living.

<sup>32</sup> Strategy 1 of the National Development Plan (NDP) 2009/10 2014/15 (which aimed at increasing high quality employment) was to implement the existing policies, regulations, laws and guidelines. It therefore seemed to suggest that the challenge was lack of implementation.

<sup>33</sup> S.3(1) of the Minimum Wages Advisory Board and Wages Council Act 1957

<sup>34</sup> Clause 2, 8(4) of the bill

<sup>35</sup> S.4, article 1 of the 1<sup>st</sup> schedule to the Minimum Wages Advisory Board and Wages Council Act 1957

and where the public could raise concerns to the minister but only after the board had made its recommendations<sup>36</sup>.

However, there are concerns about the Bill's call for unequal representation from employers and employees. Whereas, the Minister may take a representative from the Central Organisation of free trade unions and another from the National Organisation of Trade Unions, there is only one representative of employers, from the Federation of Uganda Employers.<sup>37</sup> The composition of the Bill is also made unclear by the fact that the Bill calls for four members but mentions five entities from which they are to be selected<sup>38</sup>.

Secondly, the Bill seeks to enable a sector based determination by taking into account the peculiarities of each sector in fixing a minimum wage. In recommending the wages, the boards are required to take into account factors such as the country's economic development and living conditions, peculiarities of sector, skill of workers, needs of worker's family etc.<sup>39</sup> The considerations of the Board in this regard appear to represent both the socio economic concerns of pro – proponents and the economic concerns of pro – opponents. The act on the other hand does not set out these factors that the board has to consider<sup>40</sup>.

The identifiable problem with the current Act and in the sister jurisdictions is the lack of enforcement machinery. The current Bill seeks to cure this by introducing a penalty for non-compliance. It is proposed that errant employers shall be liable to a fine not exceeding 500 currency points or imprisonment not exceeding 3 years or both<sup>41</sup>. These penalties apply to each employee in respect of whom an infraction is made.<sup>42</sup> The proposed punishment is quite deterrent and therefore does not offer an incentive to offend or re-offend

Further it is proposed that a duty should be imposed on employers' to keep proper records and to notify employees.<sup>43</sup> Noncompliance will render the employers liable to a fine not exceeding 200 currency points or imprisonment not exceeding a year or both<sup>44</sup>. This is too deterrent and therefore information will be available to trace the offenders. Many of the prevailing problems with regard to the Act originate from weak management rather than weaknesses in the Act itself. However, the proposed law addresses most of the concerns and therefore it is accommodative of the changing needs.

## **6. ECONOMIC CONCERNS; WHY UGANDA DOES NOT NEED A MINIMUM WAGE**

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<sup>36</sup> S.6(4) of the Minimum Wages Advisory Board and Wages Council Act 1957

<sup>37</sup> Clause 4 (2) of the Bill

<sup>38</sup> In addition to the representatives mentioned, the Minister is to ensure as far as possible the presence of representatives from the Ministry of Gender and the Ministry of Finance. No rotation or substitution provided for.

<sup>39</sup> Clause 8 (7) Minimum Wages Bill 2015

<sup>40</sup> S.3(2) Minimum Wages Advisory Boards and Wages Councils Act 1957

<sup>41</sup> Clause 15

<sup>42</sup> These are quite stringent penalties since the Act only requires the employer to settle the unpaid dues. (s 14 (2), (3) of the Act) However, this alone does not guarantee compliance

<sup>43</sup> Clause 16. This too is adopted from s.18 of the Act. However, the requirement in the latter that the exhibits be kept for only two years is proposed to be scrapped.

<sup>44</sup> Concerns have been raised about the enforceability of the law in the case of oral employment contracts. This duty to keep records coupled with the penalty for noncompliance does seem to cure the challenge. However, it poses interesting questions about the continuance of oral employment contracts in the wake of the bill.

Despite the fact that a bill has been prepared on the minimum wage, speculation remains rife about the need for a minimum wage in Uganda. These concerns and fears are not without justification. Indeed, they conform to basic economic principles. In a liberal economy like Uganda's, state control is extremely limited and even discouraged by both the state and the private sector. It is believed therefore that any undue interference would adversely affect not only the economy but also the work force that is sought to be protected. The following are their concerns;

## 6.1. REDUCED INVESTMENT AND GROWTH

Uganda's Vision 2040 aims at transforming the country from a predominantly peasant and low income country to a competitive, upper middle income status. To achieve this vision, the NDPII<sup>45</sup> prioritizes growth in Agriculture, Tourism, Minerals, Oil and Gas and the development of infrastructure and human capital development. Being a liberal economy<sup>46</sup> which is overwhelmingly run by private entrepreneurs<sup>47</sup>, the conduciveness of the investment climate is seen to be paramount to the vision and all efforts which ensure this objective are pursued.

One of the most fundamental principles of economics is that people tend to buy more when the price is lower and less when the price is higher. This is the crux of the pro opponents' arguments; that a minimum wage increases the cost of labour which in turn increases the general cost of doing business thus reducing investments. Indeed, standard economic theory insists that an 'increase in labour costs through minimum wage adjustments imposes a negative scale effect on companies, in turn leading to a reduction in fixed capital investment.'<sup>48</sup>

These concerns explain why the president has in the past advocated for the prioritization of a stable investment climate over the enactment of a minimum wage.<sup>49</sup> Economic theory agrees for it predicts reduced investments in the face of fixing or increasing minimum wages. However, evidence from other economies reveals that wage costs are only one of several factors influencing investment and that while reduced investments are possible, their extent and scope are indefinite and vary from time to time.

And so, while it remains to be seen whether and to what extent Uganda's experience with the minimum wage would reduce investments, no definitive conclusions in this regard have been made in peer economies<sup>50</sup>. The table below compares Uganda with its peers who have enacted minimum wage legislation;

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45 Second National Development Plan 2015/16 – 2019/20

46 *Infra*, p.10

47 In 1991, the government embarked on a large-scale selling off of previously state-owned parastatals apparently because Ugandans had failed to manage their own national assets.

48 Tobias Haegg and Carl Lin, 'How Does the Minimum Wage Affect Firm Investments in Fixed and Human Capital?' SOLE/EALE World Conference 2015 Submission, April 29, 2015, P.18

49 At the 2013 Labour Day Celebrations, President Museveni urged Ugandans to stop lamenting about the minimum wage and instead concentrate on addressing factors that can lower the cost of production. 'If the production costs are low, a lot of investors will be attracted, hence offering a wide range of job opportunities,' Edris Kiggundu, 'Minimum wage: Uhuru, Museveni worlds apart.' 2/May/2013

50 According to the World Justice Rule of Law Index Report 2015, Tanzania, Uganda and Kenya are all low income countries.

**Fig. 1 Growth Comparison Table<sup>51</sup>**

	<b>Uganda</b>	<b>Kenya</b>	<b>Tanzania</b>
<b>Population</b>	39.03 million	46.05 million	43.47 million
<b>GDP (USD)</b>	26.37 billion	65.8 billion	44.9 billion
<b>Growth</b>	5%	5.6%	7%

The table reveals the growth rates for all 3 economies remain comparable. It also reveals that both Kenya and Tanzania (despite having minimum wage legislation) have higher GDP and higher growth rates than Uganda. Kenya has had its national minimum wage legislation since 2007<sup>52</sup> while Tanzania has had its own since 2002.<sup>53</sup>

However, there are no reports in either country which correlate their growth or any reduction with minimum wage legislation. In Tanzania while reports have shown that a new wage order rendered the country more expensive than Kenya as far as cost of labour is concerned, the report concluded that the wage increases were not directly associated with the expressed decrease in business performance. This was because both the categories of employers that had complied with the new wage rates and those who had not had a decrease in their business performance.<sup>54</sup>

Indeed global competitiveness rankings continue to offer even less illumination on the impact of a minimum wage on investment. They place Uganda at 115<sup>th</sup>, Kenya in 99<sup>th</sup> and Tanzania in the 120<sup>th</sup> place<sup>55</sup>. This time, Uganda is revealed to be a more attractive investment destination than Tanzania (which has a minimum wage) but less than Kenya (which also has a minimum wage).

## **6.2. INCREASED UNEMPLOYMENT**

The pro opponents' second most important argument has always been that minimum wage legislation ultimately increases unemployment. Based on the same economic theory, pro opponents argue that in the face of minimum wages, employers are more likely to lay off workers or substitute human resource for alternative means. For them, reduced employment is not the variable in the minimum wage debate; the extent of reduced employment is. President Museveni has often insisted that a minimum wage would leave workers (especially unskilled workers) unemployed<sup>56</sup>.

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<sup>51</sup> Data collected from World bank, <http://www.worldbank.org/en/country> (last accessed on 19/7/2016)

<sup>52</sup> The Labour Institutions Act, No.12 of 2007 provides for Minimum Wages in Kenya

<sup>53</sup> The Labour Institutions Act (2004) provides for Minimum Wages in Tanzania

<sup>54</sup>International Labour Organisation [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/generic\\_document/wcms\\_166643.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/generic_document/wcms_166643.pdf) (last accessed on 19/7/2016)

<sup>55</sup> World Economic Forum <https://widgets.weforum.org/global-competitiveness-report-2015/> ((last accessed on 19/7/2016))

<sup>56</sup> "With today's fewer jobs, an employer can sack you but another person can accept to do the same job at a much lower salary. So, the best option is to have a lot of investors and increase the demand for jobs and the wage will rise," Edris Kiggundu, *supra*

Indeed in China, a study has indicated ‘that the Chinese minimum wage policy has reduced firm investment rates in human capital and led to an increase in fixed capital investment rates.’<sup>57</sup> Slapped with higher minimum wages, investors generally substituted their investment in labour with fixed capital. It also found that firms whose work depended on unskilled labour tended to base their investment decisions on wage prices compared to those seeking skilled labour.

This summation is corroborated by the basic theory of competitive labour which predicts that a minimum wage imposed above the market wage rate will reduce employment. According to the theory, ‘in a generally competitive labor market, employers bid for the most productive workers and the resulting wage distribution reflects the productivity of those workers. If the government imposes a minimum wage on the labor market, those workers whose productivity falls below the minimum wage will find few, if any, employment opportunities.’<sup>58</sup>

Based on these modalities, the levels of unemployment in a minimum wage controlled labour market would seem to increase; more so for states with a large unskilled labour force. According to the NDP II, Uganda’s total labour force is about 16.3 million persons and about 15 percent has no formal education<sup>59</sup>. The proportion of the labour force that is self-employed is about 81.5 percent. Since the minimum wage Bill effectively regulates only the persons in formal employment<sup>60</sup>, this would mean that the percentage of unskilled persons who are formally employed in this country would be in danger of losing their jobs.

Nonetheless, the study in China has qualified its findings; not on the conclusiveness of the fact that a minimum wage leads to unemployment but on the extent of the unemployment. It notes that previous non-investors were not significantly discouraged from undertaking human capital investments in face of minimum wage hikes and therefore limits the substitution effect to existing investors.

In Tanzania, reports have shown that impact of the minimum wage on employment levels varied from sector to sector. They also revealed that employment increased in only two sectors namely mining and agriculture; the rest of the sectors (especially security services) recording marginal decreases in employment. However, the report went on to conclude that ‘much of the explanation with regard to the negative results has more to do with the seasonality of economic activities of the respective sectors rather than the new wage rates per se.’ Although the report did not attribute the lower employment levels to the minimum wage, it did not entirely rule out the latter’s role therein.

Notwithstanding the pro opponents’ findings in this regard, it should be noted that while they are supported by the existence of developed countries which have high employment and no minimum wage, such countries have availed and perfected alternative modes of ensuring favourable wages for their workers. Sweden, Iceland, Denmark, Norway and Switzerland are often cited as the paragons for development and low unemployment levels in the absence of a minimum wage. However, reports reveal that workers in these countries are effectively protected through the collective bargaining of their trade and labour unions which fix competitive minimum wages for them. For instance, ‘employees in Iceland

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<sup>57</sup> Tobias Haepf and Carl Lin, *supra*, p.18

<sup>58</sup> Randall K. Filer, Daniel S. Hamermesh, and Albert E. Rees, *The Economics of Work and Pay*, (New York: HarperCollins, 1996) cited in Mark Wilson, ‘The Negative Effects of Minimum Wage Laws,’ September 1, 2012

<sup>59</sup> NDP 11 *supra*, p.65

<sup>60</sup> *Infra*, p.16

are automatically enrolled in trade unions which are responsible for negotiating baseline salaries for the industries they represent.<sup>61</sup>

### **6.3. IT WILL NOT ACHIEVE THE DESIRED OBJECTIVES**

Apart for the pro opponents' 'objective' arguments against the enactment of minimum wage legislation, they raise other subjective concerns;

#### **6.3.1. UGANDA HAS A LARGELY INFORMAL SECTOR**

An informal sector is 'the part of an economy that is not monitored by any form of government.' It is therefore almost if not always difficult to monitor or ensure compliance with minimum wages in such a sector. Most people in the informal sector do not even earn a wage. Statistics have shown that over 80% of Uganda's entire work force is in the informal sector<sup>62</sup>. In 2013, the proportion of the labour force in paid employment was reported at a meagre 18.5 percent<sup>63</sup>.

For pro opponents, this means that minimum wage legislation would not benefit the majority of Ugandans as our socio economic conditions question the reach of statutory measures. For them, this failure to attend to the needs of most Ugandans renders minimum wage legislation irrelevant.

#### **6.3.2. UGANDA HAS WEAK ENFORCEMENT MECHANISMS**

In many developing countries, enforcement mechanisms are poor and compliance with legal requirements is low. Uganda is no exception. Indeed, the World Justice Rule of Law Index of 2015 has rated the country ninety-fifth out of one hundred and two countries assessed on their adherence to the rule of law.<sup>64</sup> In Tanzania, a report by the International Labour Organisation has put the compliance levels at 55%. Pro opponents of minimum wage legislation argue that Uganda does not need to add another empty piece of legislation onto the pile. They claim that the country should leave the determination to the forces of demand and supply<sup>65</sup>

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<sup>61</sup> Claire Boyte White, 'Five Developed Countries without a minimum wage,' August 2015 (last accessed <http://www.investopedia.com/articles/investing/080515/5-developed-countries-without-minimum-wages.asp#ixzz4FRnUS9dD> at on 18/7/2016)

<sup>62</sup> *ibid*

<sup>63</sup> NDP II, *supra*, p. 4

<sup>64</sup> <http://data.worldjusticeproject.org/> (last accessed on 19/7/16)

<sup>65</sup> Pro opponents oppose the rigidities of a minimum wage controlled labour market where under it may become unresponsive to changes in the rest of the economy. This is considered unfair to employers who have to pay high wages for lower returns.

## 7. WHY UGANDA NEEDS MINIMUM WAGE LEGISLATION

### 7.1. TO IMPROVE WELFARE AND FIGHT POVERTY

Government interventions to set a minimum wage are often, if not always driven by a need to improve the living conditions of the country's work force. This has certainly been the case in Kenya<sup>66</sup> and in Tanzania. In a liberal economy (such as ours) where free market and laissez-faire considerations limit the government's role to providing support services<sup>67</sup>, the welfare of citizens is largely neglected. The cost of labour, like all other costs of doing business, is solely moderated by the forces of demand and supply; the inevitable result being that workers (especially the unskilled) are forced to receive the least possible pay.

These concerns are corroborated by a survey conducted by the Platform for Labour Action in 2014. The team's discoveries in selected areas revealed the following<sup>68</sup>;

TRADE / OCCUPATION	AVERAGE DAILY WAGE (UGX)	AVERAGE DAILY WAGE (USD)
Security Guards	3,847	1.14
Domestic Workers	2,138	0.64
Food Vendors	5,066	1.51
Casual Laborers	3,333	0.99
Plantation Laborers	2,000	0.59
Mechanics	11,200	3.57
Shop Attendants	3,447	1.02
Carpenters	13,333	3.96
Waiters	3,404	1.01
Cleaners	1,547	0.46

The Survey conducted by PLA<sup>69</sup> revealed that most unskilled employees do not earn enough to afford all their basic needs e.g. education, adequate food, health services and adequate clothing<sup>70</sup>. For instance, at

<sup>66</sup> In 2013, President Kenyatta announced a 14% increase in the minimum wage to facilitate an improvement of the standard of living for the lowest paid.

<sup>67</sup> This resonates with the government's privatization policy and its reluctance to set a minimum wage for fear of scaring away investors.

<sup>68</sup> Platform for Labour Action, supra, p. 29 - 39

less than UGX 4000 daily, most of the unskilled laborers can barely be expected to support themselves, let alone their families. Many respondents admitted to a failure to educate their children in good schools, at higher levels or at all. Despite their having worked for several years or months, some respondents intimated that their meagre income had prevented them from saving or acquiring any real assets. For other respondents, accessing health services was difficult because ‘the good clinics are expensive’ and government aided centres ‘lack drug stocks.’<sup>71</sup>

Poverty statistics also corroborate these findings. According to the NDP II, about 19.7 % of the Ugandan work force is considered poor. Over 6.7 million people in Uganda live below the poverty line and an additional 43 percent of the population is highly vulnerable to falling into poverty.

It is the recognition of these challenges that has always influenced minimum wage legislation. From the rationale behind the pre 1985 governments’ pro proponent policies<sup>72</sup> to the contemporary call for a minimum wage, it is clear that pro proponents believe government intervention necessary to ensure a decent livelihood for workers, to increase household income and to fight poverty. It is believed that by setting a minimum wage, government will not only ensure the improved welfare of citizens but also curtail their exploitation by the free labour market.

## 7.2. TO PREVENT LOCK OUTS AND STRIKES

Although pro proponent arguments are mostly equitable, they also resonate with an ancillary economic consideration; the need to prevent lock outs and strikes. It is often the case that poor conditions of work result into strikes which in turn discourage investment. The market almost always predicts reduced cash flows as a direct result of strikes and indeed studies in South Africa (where mining strikes have been monumental) have revealed that ‘there appears to be a permanent loss to shareholders of companies that experience strikes.’<sup>73</sup>

In the case of Uganda, although labour unions and collective bargaining are not as organized as they should be<sup>74</sup>, the effect on the investment climate can be similarly disastrous. With a low income and high poverty levels, the government has always opted, for the sake of the investment climate, to persuade, engage or coerce the work force into abandoning strikes<sup>75</sup>. This explains its ‘no strike policy’ which has indiscriminately been applied to both political and economic strikes.

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69 However, it must be understood that the argument lacks sufficient empirical evidence. The study conducted by PLA, while representative was lacking in scope.

<sup>70</sup> Platform for Labour Action, *supra*, p. 26

<sup>71</sup> *ibid*, p.28

<sup>72</sup> *Supra*, p. 4

<sup>73</sup> Narendra Branha, ‘The effect of Industrial Strikes on the value of shares listed on the Johannesburg Stock Exchange, Investment Analyst Journal No. 44 Summer 1997, p. 49

41 During the May 2015 teachers’ strike, the New Vision reported that ‘the teachers’ strike over government failure to raise their salary was holding ground in Kampala but ineffective upcountry.’ [http://www.newvision.co.ug/new\\_vision/news/1326501/teachers-responded-strike](http://www.newvision.co.ug/new_vision/news/1326501/teachers-responded-strike)

<sup>75</sup> In 2013, government threatened to fire teachers who did not abandon the strike and return to their stations.

Due to poor conditions of living, Uganda has witnessed labour strikes from both skilled and unskilled laborers. For teachers and doctors employed by government enterprises, the pleas for increased pay have become perennial<sup>76</sup>. According to the Platform for Labour Action, 2013 saw over ten industrial actions by teachers, security guards and other workers<sup>77</sup>. Pro proponents believe that a minimum wage in Uganda will reduce strikes, increase morale, increase productivity and improve the country's investment climate.

### 7.3. TO UPHOLD THE CITIZEN'S PUBLIC INTEREST ASPIRATIONS.

The enactment of minimum wage legislation is supported by the public interest aspirations of Ugandan Citizens as enshrined in the Constitution and in the National Objectives and Directive Principles of State Policy which are meant to 'guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.'<sup>78</sup>

And so while the pro opponents' economic policy arguments are also justified by the Constitution, the Constitution appears to subject them to the public interest aspirations of social transformation.

According to the Constitution,

*'The State shall endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that—*

*All developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and*

*All Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefit.'*<sup>79</sup>

The pro proponents' arguments in this regard are that policy considerations of economics are secondary to the welfare principles as enshrined in the citizens' Constitution. This would mean that government's development efforts should ensure the enactment and enforcement of a minimum wage to ensure the maximum social and cultural well-being of the people.

The following International, national and policy obligations set out the citizen's public interest aspirations;

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76 In May 2015, more than 200,000 primary and secondary teachers in Uganda's public schools on went on strike, in an attempt to force the government to fulfil an agreement it had made with them three years before.

77 Platform for Labour Action, supra, p. 65

78 Directive I (i)

79 Directive XIV

### 7.3.1. INTERNATIONAL OBLIGATIONS

The right to ‘just and favourable conditions of work ensuring for himself and his family an existence worthy of human dignity’ and the right to ‘equal work for equal pay’ are enshrined in the Universal Declaration of Human Rights<sup>80</sup>, the International Covenant on Civil and Political Rights (ICCPR)<sup>81</sup> and the African Charter On Human And Peoples’ Rights (ACHPR).<sup>82</sup>

More specifically, Uganda has ratified the International Labour Organization’s Minimum Wage-Fixing Machinery Convention (No. 26) (1928) which requires ratifying member states to create or maintain machinery for fixing minimum wages.<sup>83</sup>

In addition, Uganda is a member of the East African Community and has signed the protocol; committing to integrating and harmonizing its policies with those of its partner states.<sup>84</sup> In particular, states agreed to remove restrictions on movement of labour, harmonise labour policies, programs, legislation, among other things. It is noteworthy that all the five partner states have ratified the ILO Convention 26, that Kenya and Tanzania have taken the lead in operationalizing the minimum wage and that pro opponents argue that fixing a minimum wage in Uganda is fundamental to the facilitation of a common market.

Uganda’s ratification of these International Instruments therefore creates an International obligation to enact minimum wage legislation and to ensure favourable, decent and just conditions of work for its work force.

### 7.3.2. THE 1995 CONSTITUTION

The Parliament of Uganda is under a constitutional duty to enact laws to provide for the rights of persons to work under satisfactory, safe and healthy conditions and to ensure equal payment for equal work<sup>85</sup>. The right is also enshrined in Art 45 of the Constitution. Parliament is also under an obligation to protect the Constitution<sup>86</sup> and like government, it is obliged to ‘respect, uphold and promote’ the rights and freedoms in the Constitution<sup>87</sup>.

## 7.4. TO REDUCE INCOME INEQUALITY

One of the most common arguments that pro proponents have made in favor of fixing a minimum wage is the need to narrow the gap between the rich and the poor. Interestingly, it is an argument rooted in both equity and economics. They argue that setting a minimum wage is a policy through which government can strive to achieve the equality and fairness guaranteed to its citizens under the law<sup>88</sup>. In the

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<sup>80</sup> Art 23

<sup>81</sup> Art 7 (b)

<sup>82</sup> Art 15

<sup>83</sup> Article 1 (1)

<sup>84</sup> Article 5(2)(c) Protocol on the Establishment of the East African Common Market

<sup>85</sup> Art 40 Constitution

<sup>86</sup> Art 79 *ibid*

<sup>87</sup> Art 20 *ibid*

<sup>88</sup> Art 21 of the 1995 Constitution guarantees the right to equality before and under the law.

same breath, they argue that an increase in the household income of the vulnerable means an increase in purchasing power which means a boost in demand and therefore supply in the economy. In this way, both the rich and the poor are more able to fuel the economy.

Indeed a ‘study by UNICEF<sup>89</sup> has shown that inequality slows economic growth, results in health and social problems and generates political instability. Lessons from the developed world and more recently from the Arab World and the late industrialisers, on which Uganda’s vision 2040 is benchmarked, show that an inclusive development agenda promoting employment and universal social policies is key to rapid economic and social transformation. More equal income distribution stimulates consumption, raises productivity and helps sustain growth<sup>90</sup>.

In Uganda, the distribution of income is still notoriously unequal. There are significant disparities in poverty levels across regions with the highest levels reported in Northern Uganda (44 percent) followed by the Eastern region at 24.5 percent<sup>91</sup>. In fact some have argued for a vertical equity minimum wage on this basis.<sup>92</sup> This argument is corroborated by the PLA study which found that when interviewed, recommendations from similarly employed persons varied significantly from region to region<sup>93</sup>. In terms of national house hold income, the latest data gathered by the World Bank’s GINI Index reveals that the extent to which the distribution of income among individuals or households in Uganda is unequal is 39.5.<sup>94</sup>

It is believed that fixing a minimum wage would increase household incomes and ultimately bridge the gap between the rich and the poor<sup>95</sup>.

## 8. CONCLUSION

The debate on the enactment of minimum wage legislation is primarily one between hopes and fears. While the pro proponents address us on their hopes for improved welfare and our commitment to social transformation, the pro opponents warns us of the very likely dangers of unemployment and investment sabotage.

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89 Global Inequality, Beyond the Bottom Billion; A quick review of Income distribution in 141 countries. UNICEF Working Policy Paper (2011)

90 NDP II supra p. 91

91 Ibid, p.4

92 The principle of vertical equity suggests that, when individuals are in different circumstances and have different abilities to pay, they should not be taxed at the same rate. Imported to the minimum wage concept, this would call for different wages across different regions.

93 For instance, whereas waiters and waitresses who were interviewed in Kampala generally proposed a daily minimum wage of UGX 20,000 – 30,000, their counterparts in Dokolo district generally proposed a minimum wage of UGX 300,000, PLA, supra, p.36.

94 The Gini coefficient is a number between 0 and 100, where 0 corresponds with perfect equality (where everyone has the same income) and 1 corresponds with perfect inequality (where one person has all the income—and everyone else has zero income). GINI index (World Bank estimate) (last accessed at <http://www.indexmundi.com/facts/indicators/SI.POV.GINI/rankings> on 18/7/2016)

95 According to the GINI assessment, the income distribution gap in Uganda has reduced from 2012 when it was at 42.3. This improvement was registered without a minimum wage and indeed there is no conclusive empirical evidence as to the ability of a minimum wage to reduce income inequality.

Fortunately or unfortunately, the debate has come to a head; the Bill is currently before the Parliamentary committee on gender, labour and social development and the country will soon have to end the controversy. The question whether it should enact minimum wage legislation is one that must be taken independently. Although experiences from other jurisprudences are important, the people in each country must make an assessment based on their own values, priorities and belief system.

For this reason, they must be enabled to understand the meaning and the multi-faceted impact that a minimum wage may have on both their social and economic wellbeing. It is hoped that this paper will create a platform upon which these views may be informed and upon which the debate may be carried to collectively and finally determine the question whether Uganda needs a minimum wage.