



THE SUDD INSTITUTE

RESEARCH FOR A PEACEFUL, JUST AND PROSPEROUS SOUTH SUDAN

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Weekly Review

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South Sudan Retracts its Labor Regulations under Pressure

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Introduction

When the Ministry of Labor, Public Service and Human Resource Development of the Republic of South Sudan, issued a ministerial circular on September 16th, 2014, announcing a new policy regarding the employment of foreign nationals, the order was greeted with applause by many unemployed nationals who had long criticized the government for not creating enough jobs for its people. But the order also caused a rather shocking row all over the region of East Africa and among the international agencies and foreign businesses operating in the country. There was so much anger coming from the Kenyan intellectuals, media, and some lawmakers.

One Kenyan scholar based at the Brookings Institution in Washington, D.C, Mwangi Kimenyi, described the order as “clearly stupid.”¹ The social media was overflowing with comments of derision and abuse from ordinary Kenyans toward South Sudanese and their country. A number of Ugandan lawmakers demanded that the government of Uganda retaliates by expelling South Sudanese, both refugees and economic immigrants. The international Non-Governmental Organizations (NGOs) and foreign corporations were all in arms against the order. Why was there such an angry reaction to a decision by a sovereign state, a new country that is trying to create its own labor laws to provide opportunities for employment to its citizens? What do some of the labor policies in these neighboring countries say about the employment of foreign nationals? Is South Sudan the first and only country in the world or the region to attempt to regulate its labor force such that its nationals get a priority access to employment?

¹ Mwangi Kimenyi, who is an economist, wrote on Brookings Institution website saying that this decision by the government of South Sudan was likely to “have broader implications for the region.”

This review discusses this new labor regulation, its merits and implications, and the extent to which it has been received in various settings. It also discusses the orthodoxy of policy-making.

Factors Responsible for Angry Reactions

There are several factors that explain this overreaction, the most prominent of which was the misunderstanding of the content of the ministerial order itself. Most people who expressed anger in the media and parliaments of East Africa were responding before the circular was published and had most likely not seen a copy of it. They declared that the order was to expel foreign workers from South Sudan, which was entirely incorrect. What the circular said was that certain occupations should prioritize the hiring of South Sudanese nationals before filling them with foreigners. These jobs were listed, covering such positions as secretaries and front desk personnel in the NGOs, private businesses, banking institutions, as well as public institutions. It also said that certain types of jobs that do not require specialized skills should also prioritize nationals, as South Sudan's unemployment rate among young people is the highest in the region.

Another factor was the abrupt nature of the order and the window of time provided for these entities to enable appropriate transitions by foreign nationals. The order gave only one month and this was seen as insanely short and fell short of established international standards regarding employment termination. The order was also rushed in terms of traditional policy-making, as this decision was not a product of a thoughtful reflection, with research and analysis preceding it. For example, the country does not have a clear idea about the nature, capacity and size of available human resources. Instead, for years, the government has attentively listened to claims from donor countries, NGOs and multilateral organizations, that the country lacks “capacity” in terms of skilled human resources, but has never conducted an inventory of its own. How many of the currently unemployed youth are university graduates, what subjects they have studied or how many people with necessary skills in the Diaspora are willing to return home, which sorts of industries require more focus, which technical skills require mobilizing externally and for how long, how many are foreign employees in the country and in what industries—are all questions that should have been explored prior to making such an important decision. Essentially, expert opinion that would have substantially delineated or laid out potential implications of the new policy, the result of which would have been an appropriate direction or decision, was explicitly ignored. From the circular, the decision evaded orthodoxies of meaningful policy-making. Like a great deal of GoSS' prior policy interventions, this was haphazard at best.

What is more, the decision was not discussed widely within the policy bodies of the nation, including the parliament, bypassing the kind of scrutiny that is often expected of a country that aspires to abide by minimum rules of engagement with other nations. The order was also poorly written and did not really reflect the exact meaning and spirit of what the Ministry of Labor intended to convey. Labor is one of the best-staffed ministries in terms of capable cadres, as the 2011 GoSS' comprehensive evaluation indicates. Its two undersecretaries are among the most skilled and effective. It has a very skilled legal counsel. And yet, how a ministerial order was issued without review and editing by these

capable personnel is a puzzle. However, the circular confirms the ubiquitous claim that the country lacks capacity to run its institutions. Drawing from the circular a foreign social media commentator remarked: “From the way this circular was written, your country surely needs foreigners.” Rather than ascertaining the nature of the circular from incapacity perspective, we think that the problem, in this and more other preceding cases, lies with institutional incoherence in GoSS, that which stems from blatant disregard for internal coordination and prudent vetting of institutional products.

A further factor in the angry reaction is pure economic interests of the neighboring countries. While there are no reliable statistics on Eastern African workers in South Sudan, the number is speculatively vast, many of them working in such disparate sectors ranging from hospitality industry to construction to retail to the local NGOs and the United Nations. These workers, who are hardly paying any taxes and oftentimes get employed without credible work permits, send huge remittances back to their home countries, significantly contributing economically back home and maintaining the welfare of thousands of families there. The economic importance of South Sudan to the Eastern African economies was underscored by two Kenyan analysts from KIPPRA, Paul Odhiambo and Augustus Muluvi in their Brookings Institution blogpost, following the outbreak of conflict in South Sudan.² It is these interests that the politicians and ordinary citizens alike in Eastern Africa are trying to protect but often get coated as assistance to a neighboring and sisterly new country; that the workers from Eastern Africa are mainly in South Sudan to help build the new country and its citizens should show them gratitude, not expulsion. Some Ugandan Members of Parliament suggested that South Sudanese have ungratefully forgotten how much Uganda has done for their country over the years, citing the current presence of the Ugandan Peoples Defense Forces in the country and the role Uganda played in support of South Sudan’s liberation efforts.

While the contributions countries like Kenya, Ethiopia, Uganda, and Eritrea made towards South Sudan’s ascension to statehood are widely acknowledged and appreciated in the country, such gesture should not be interpreted to constitute equal economic rights between South Sudanese and the citizens of these countries. That is, do these angry East African leaders want South Sudan to transfer its own people’s economic rights to East Africans merely in gratitude for what is practically a mutual relationship? Such is considered mutual because South Sudan was home to thousands of Ugandan refugees during Idi Amin’s brutal regime. Would such a situation where South Sudanese have limited access to employment in their own country in favor of foreign nationals really contribute to regional stability? A careful leader from any of these countries would have wondered first as to why South Sudanese, many of whom have lived in their countries for close to three decades and have attended universities there, have never been part of the labor force of these countries. The answer to such question invokes the reason that South Sudan is now trying to establish its labor laws, assess its existing capacity, and determine how much foreign labor force is necessary to augment its current capacity. For instance,

² “Impact of Prolonged South Sudan Crisis on Kenya’s Economic and Security Interests,” P. Odhiambo and A. Augustus of Kenya Institute for Public Policy Research and Analysis, in piece on the Brookings website, March 12, 2014.

Kenya has labor and immigration ordinance that says that all jobs with earnings less than 2 million Kenyan Shillings annually cannot be occupied by foreigners; likewise, foreign nationals who are below the age of 35 seeking work in Kenya are denied work permits.³ Given this Kenyan example, it is mindboggling that South Sudanese are expected to relinquish their economic rights to East Africans.

The government of South Sudan was also chided by its East African neighbors due to a rather pervasive notion that South Sudan has no requisite skilled human resource that is capable of running the economy, government, humanitarian, and development projects. Clearly, South Sudan has serious shortages of health workers, teachers and agricultural extension experts, but skills are created and learned, not naturally born with citizens. How are South Sudanese going to learn these skills if their sisterly neighbors keep telling them that they should stay unemployed until they are skilled?

Making Sound Labor Policies

While this order was conceived and executed very poorly, there is no question that South Sudan has a right and obligation to pursue such a policy. But to do it right, first things must always be considered first. Such an order needed to be preceded by a study and analysis, a discussion within the major structures of government, clear communication with groups and representatives of the various communities of foreign nationals, including their diplomatic missions, to alert them to what is to come and solicit their opinions on the best mechanism to assist them to come to terms with the new rules. It is indeed unfortunate that the ministerial order has now been retracted under pressure and not due to a realization that it has to be done correctly.

If the government decides to regulate its labor practices, it would also be important to first organize the current foreign workforce in a way that benefits the country, not just in terms of skills it brings but also in terms of specific economic contributions it makes in South Sudan. These foreign workers are often under the cover of the companies and agencies that employ them, with government institutions such as the Interior, National Security, and Revenue Authority not made to have full disclosure of how these people obtain permits, how much income they earn, and what percentage of that should be collected in taxes. Instead of ordering termination of their employment, the government should have first established the real picture of how much economic and skill contribution this foreign workforce offers the country.

Furthermore, the country needs a policy direction, a template for all institutions to follow. In terms of preparing local workforce, such a policy would compile statistics on available human resources, identify areas of service provision that have shortage of trained personnel, and set up a plan to get more people into training programs. In regards to effecting economic development, this policy would first create a registry of all available

³ “Kenya locks out young and low-paid foreign workers.” *Business Daily*, 25 September, 2014.

natural resources that the country needs to develop, from agricultural lands, forestry, livestock industry, fisheries, mining, enterprise to tourism, and then design a training program that is tailored to the exploitation of these resources, and put a timeline on it, say ten years. It would then be possible to import foreign labor during this period, phasing them out as the local workforce gradually takes over. Meanwhile, the imported workforce would have set contracts, a program of remittances and tax collection. In our opinion, this is the kind of economic interdependence policy that would best serve South Sudan and its neighbors.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

Authors' Biography

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