

AN OVERVIEW OF LABOUR LAWS IN KENYA:

SEEKING PATHWAYS TO
EMPOWERING WOMEN IN THE
LABOUR SECTOR IN KENYA

Discussion Paper Series No 4.



Analysis By Naomi Njuguna
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The discussion paper showcases research findings conducted by the Women's Economic Empowerment Hub at the African Women Studies Centre the University of Nairobi. The aim of the study was to analyze employment laws and policies from a social and legal perspective and ultimately identify gaps, and provide recommendations on how to make employment laws on WEE responsive for women employed in all sectors of the economy.

FOREWORD

This report presents research findings conducted by the Women's Economic Empowerment Hub at the African Women's Studies Centre the University of Nairobi. The aim of the study was to analyse employment laws and policies from a social and legal perspective and ultimately identify gaps and provide recommendations on how to make employment laws on women economic empowerment responsive for women employed in all sectors of the economy.

The labour sector in Kenya is segmented into formal and informal work and majority of women in the labour force earn their living in the informal sector where they perform poor quality and low paying jobs.

This report is timely as it analyses the international as well as the domestic regulatory framework of the labour sector in Kenya. At the domestic level, the report analyses the articles in the Constitution of Kenya that provide individual rights, equality and protection against discrimination among other rights. The Constitution of Kenya also states that any treaty or convention that is ratified by Kenya forms part of domestic law.

The report also analyses the main labour laws such as the Employment Act 2007; Labour Relations Act 2007; Occupational Safety and Health Act 2007; Work Injury Benefits Act 2007 and the Labour Institutions Act 2007; The Employment and Labour Relations Court Act (No 20 of 2011); National Social Security Fund Act 2013; National Hospital Insurance Fund Act; Social Assistance Act and finally the Health Act of 2017. The report uses a gender lens to analyse these laws with the aim of finding out whether they are inclusive and ensure gender parity considering the many challenges and constraints that women face in accessing and fully functioning in the labour sector in Kenya.

The authors contend that the Kenya labour laws are not gendered and are not quite responsive and sensitive to gender realities. The report provides proposals for possible interventions and pathways to make these laws more responsive to gender realities and sensitivities. This would open the way for women to take up opportunities in the labour force with the possible outcome of economic empowerment.

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Table of Contents

1.0 Introduction	1
2.0 Spheres of Concern for Women in the Formal and Informal Labour Sectors	1
3.0 The Domestic Regulatory Framework	2
3.1 The Constitutional Provisions	2
3.2 Domestic Legislative and Policy Provisions	3
3.2.1 The Employment Act 2007	3
3.2.2 The Labour Relations Act 2007	7
3.2.3 Occupational Safety and Health	7
3.2.4 Social Security and Protection	8
4.0 Proposals for Possible Intervention Pathways	10
5.0 References	12

AN OVERVIEW OF LABOUR LAWS IN KENYA: SEEKING PATHWAYS TO EMPOWERING WOMEN IN THE LABOUR SECTOR IN KENYA

1.0 Introduction

Historically, the consideration of women in the labour process in Kenya has been a picture of inequalities and inequities. At the time of independence, women's involvement in the paid labour market was relatively low due to various structural, social, cultural and historical factors. This does not mean that women did not work (Zezeza, 1988). But the kind of work that they engaged in domestically was not given an economic value. The patriarchal ideologies about labour led to the marginalization and non-recognition of women's labour in the household (which was and still is non-waged) as opposed to the notion that men should be in the public and waged labour sphere (Muinde, 2020). These ideologies in turn led to structural inequalities fueled by a lack of opportunities for education, employment and political and social participation by women. Even when women were able to access the waged labour sector, there were (and still are, in certain sectors) ingrained prejudices by employers against women leading to discriminatory practices. This historical perspective is important in understanding the implications of the concept that not all work is employment related. There are numerous individuals, including a significant number of women, who are currently not engaged in formal employment, yet their contributions possess an immense value that merits recognition.

The inequalities and inequities facing women in the labour sector have led to the dichotomization of women in formal and informal work. Infact, statistics show that more than 60% of the world's population is in the informal sector (International Labour Organization, 2018). Women, due to their weaker bargaining power, form a larger proportion

of these statistics. In many settings, particularly in low-income countries, women can only take lower-quality and lower-paying jobs. As a result, they have fewer chances to access financial services (e.g. loans, and other credit facilities), education and skills development, collective bargaining forums, decent incomes, property and social protection.

2.0 Spheres of Concern for Women in the Formal and Informal Labour Sectors

The discussions in this report on the sufficiency of the regulatory framework regulating the labour sector in Kenya will dwell mainly around the following themes:

1. Inclusive hiring and promotion policies and practices
2. WorkingW environment and conditions
3. Sexual harassment and violence in the workplace
4. Occupational safety and health and compensation for workplace injuries
5. Same pay for equivalent work or work of the same value/protection of wages
6. Social protection for women in the formal and informal sectors
7. Equality/collective bargaining and social dialogue
8. Relevant education and training
9. Gender-responsive budgeting and policy formulation, engagement and suitable interventions.
10. Private investment into the labour sector
11. The protection of vulnerable and marginalized women and youth



12. New forms of work arrangements e.g. platformisation of work/gig economy
13. Empowerment and legal protection for women in the informal sector
14. Enforcement of labour regulations
15. Women in the care economy

3.0 The Domestic Regulatory Framework

3.1. The Constitutional Provisions

The Constitution of Kenya, 2010 is the supreme law of the land. All legislative and policy interventions, therefore, have to be adherent to the provisions of the Constitution.

The provisions in the Constitution that are particularly relevant to anchor the conversations about labour protection, especially for women are as follows:

- i. Article 41 of the Constitution of Kenya, 2010, provides for the right to:
 - Fair labour practices
 - Fair remuneration
 - Reasonable working conditions
 - Join, form and participate in the activities and programmes of a trade union
 - Go on strike
 - Engage in collective bargaining
- ii. Article 27 of Constitution of Kenya, 2010, ensures equality and protects individuals from discrimination. It particularly provides for the right to equal treatment and opportunities for women and men in political, economic, cultural and social practices. Neither the state nor any person is permitted to discriminate against anyone on any of the grounds that are set out in that provision, including parameters that largely are used to discriminate against women e.g. sex, pregnancy, marital status, disability, etc. This article also permits the use of positively discriminating programmes

and policies that would give redress to disadvantages that are suffered by persons or groups because of historical injustices. This would have an impact on policies that ensure that women have opportunities to access certain labour sectors (The Constitution of Kenya, 2010).

- iii. Article 43 of the Constitution of Kenya, 2010, states that every person has the right:
 - to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
 - to accessible and adequate housing, and to reasonable standards of sanitation;
 - to be free from hunger, and to have adequate food of acceptable quality;
 - to clean and safe water in adequate quantities;
 - to social security; and
 - to education
- iv. Article 36 of the Constitution of Kenya, 2010, provides for the “right to freedom of association which includes the right to form, join and participate in the activities of an association of any kind”– This includes trade unions and women’s organizations which can be used as vehicles for bargaining for better conditions of work for women both in the formal and informal sectors.
- v. Article 37 which is a corollary of Article 36 provides for the right to have peaceable and unarmed assemblies, demonstrations, picketing and to present petitions to public authorities.
- vi. Article 28 provides for the inherent dignity of everyone.
- vii. Article 54 of the Constitution of Kenya, 2010, applies to persons with disabilities. Individuals with disabilities have the right to dignity, respect and access to integrated educational institutions and facilities..
- viii. Article 55 of the Constitution of Kenya, 2010, applies to young people (which includes young women). They have a right to appropriate

schooling and training and the right to access employment

- ix. Article 56 of the Constitution of Kenya, 2010, protects the rights of minorities and marginalized groups and ensures that the State puts in place positive discrimination programmes to ensure their participation, and representation in governance and other spheres of life as well as special opportunities to access employment.

It should be noted that by virtue of Articles 2(5) and (6) of the Constitution of Kenya, 2010, any treaty or convention that is ratified by Kenya forms part of domestic law. There are a number of these conventions that affect the labour protection of women which shall be seen later in this report (The Constitution of Kenya, 2010).

3.2. Domestic Legislative and Policy Provisions

The main labour laws in Kenya consist of what can be referred to as the 2007 “quintet” of laws that were enacted specifically for the labour sector. There are other relevant laws as shall be seen in the discussion below.

The “quintet” consists of the following statutes:

- b. The Employment Act 2007
- c. The Labour Relations Act 2007
- d. The Occupational Safety and Health Act 2007
- e. The Work Injury Benefits Act 2007
- f. The Labour Institutions Act 2007

Other relevant laws include:

- a. The Employment and Labour Relations Court Act (No 20 of 2011)
- b. The National Social Security Fund Act 2013
- c. The National Hospital Insurance Fund Act
- d. The Social Assistance Act
- e. The Health Act 2017

3.2.1. The Employment Act 2007

This Act only regulates those that are in the formal labour sector and not the informal sector. The preamble to the Act states that this is an Act to “declare and define fundamental rights of employees; to provide basic conditions of employment of employees...” It, therefore, means that informal workers, despite being the majority of workers in Kenya, are not covered by the Employment Act. The Kenya Economic Survey Report of 2020 showed that 90.7% of new job opportunities created in that year were in the informal sector (Kenya National Bureau of Statistics, 2020). The following section reviews the extent to which the Employment Act is responsive to the concerns of women in the labour sector.

Inclusivity and Gender Parity

In seeking to ensure inclusivity and gender parity, the Employment Act at section 5 provides for equal opportunity in employment. The employer has the duty to eliminate discrimination in all employment policies and practices. (Section 5(2)), Employment Act 2007 (Ke)). In addition, it is the responsibility of the Cabinet Secretary overseeing labour, the Employment and Labour Relations Court, and labour officers to ensure that employment equality is promoted and guaranteed for migrant workers and their families who are lawfully present in Kenya. (Section 5(1)), Employment Act 2007 (Ke) Discrimination is prohibited on stated grounds in section 5(3) (a) of Employment Act 2007 (Ke) such as race, colour, sex, pregnancy, disability, mental or HIV status, etc. According to Section 5(3)(b) of the Employment Act 2007 (Ke), employers are prohibited from discriminating against employees in recruitment, training, promotion, termination of employment, or other employment-related matters (Employment Act, 2007(Ke)). These are good and progressive provisions which are in line with international labour standards and human rights conventions.



However, these provisions do not necessarily reflect and take into account the structural barriers that contribute to the inequalities that women face when it comes to access to employment opportunities.

In Kenya, there is a prevalence of women in low-paid, flexible precarious work. This is the kind of work that they have access to as a result of home responsibilities. The work done at home results in unpaid care work (Miruka, 2023). They have to take care of their children, husbands and male partners, elderly and ailing parents, etc.

Discrimination thus takes more subtle and unnoticeable forms as a result of the decreased or compromised negotiating power that women have in the workplace (Stamarski & Son Hing, 2015). They may not be able to equally negotiate for equal terms of employment or work with their male counterparts.

Section 5(3) of the Employment Act, 2007 does prohibit direct and indirect discrimination. Direct discrimination which is based on the equal treatment principle may still be unfair and discriminatory to women. Using the same criteria and applying them equally to men and women may render it significantly more difficult for women to access the job concerned. It would be a case of equal treatment leading to unequal results. Equal treatment is discriminatory if it has a unequal result on women (and men) unless it can be justified as an inherent requirement of the job. This kind of discrimination is known as indirect or disparate or impact discrimination.

According to the Employment Act of 2007 (Ke), it is acceptable to take affirmative action to promote equality and eliminate discrimination in the workplace. It is also allowed to distinguish, exclude, or prefer individuals based on the specific requirements of a job. Additionally, hiring citizens under the national employment policy

and restricting access to certain job categories for the sake of state security interests is permitted. It is interesting to note that legislation in Kenya was formulated on the issue of discrimination based on ethnicity but none has specifically been formulated on the important issue of gender discrimination (National Cohesion and Integration Act, 2008).

With respect to gender pay gaps, Section 5(5) Employment Act does provide for equal pay for the same work or work of equal value (Employment Act, 2007). However, the gender pay gap in Kenya increased in 2021. Females are 30% less likely to have the same opportunities as men in Kenya. The dimensions of gender pay gaps include economic participation and opportunity, educational attainment, health, and political empowerment. (World Economic Forum, 2023).

Gender-based violence can take many forms for women in the informal and formal sectors of work. For women in the formal sector, the most common manifestation of gender-based violence is sexual harassment. The ILO, on the 21st of June 2019, in its commitment to end work-related violence and harassment adopted the Violence and Harassment Convention, 2019 (International Labour Conference, 2019). This was during the ILO Conference which also adopted the Centenary Declaration on the Future of Work.

The Employment Act, 2007 provides that if an employer, their representative or a co-worker makes unwelcome sexual advances or requests (*quid pro quo*) or displays bodily behaviour of a sexual nature that directly or indirectly makes an employee uncomfortable. The test is subjective and not an objective test (the aspect of unwelcomeness).

Interestingly, although the EA 2007 takes a quasi-penal approach to other provisions relating to discrimination, etc., it does not have any

punishments for sexual harassment. Instead, this is left to the Sexual Offences Act – section 23(1)). There are also weaknesses in the reporting system for sexual harassment. A policy statement on sexual harassment must be issued by employers with 20 or more employees after consulting with their representatives or employees, as per section 6(2) of the Employment Act 2007 (Ke)..

The weaknesses of the system involve the following issues:

First, the mandate of receiving the complaint, investigating and providing the remedy is given to the employer, who may be the perpetrator. This diminishes confidence in the independence and impartiality of this system set out in the law. There is also the risk of potentially unsatisfactory remedies, especially where senior members of the organization are concerned. These weaknesses have the potential of exacerbating sexual and gender-based violence in the workplace. The limitation of the requirement of a sexual harassment policy to an employer of twenty employees and above is also problematic. The rationale for the figure of 20 employees is not clear. The assumption made is that where there are less than 20 employees there is no sexual harassment taking place and a policy is therefore not needed.

The sexual harassment provisions in the Employment Act are only available to those in the formal sector. They do not apply to those in the informal sector. Sexual and gender-based violence among women working in the informal sector such as agriculture, street vending, and market selling, among others, has not been well documented. There is also inadequate sensitization about sexual harassment and other forms of gender-based violence in the informal sector. This is despite the vice being more predominant in the grey economy (47%) where females are more affected (58%) than males (35%) (Federation of Kenyan Employers, 2021). The various coping strategies by women (silence, acceptance, denial, tolerance)

and detachment (job hopping, withdrawal and distancing) contributes to the normalization of the vice and cases are hardly reported. For women in the informal sector, reporting mechanisms are not spelled out and they may not know where to report and what remedies to expect.

The proposed interventions to enhance the protections for women against sexual and gender-based violence in the formal and informal sectors are:

- a. Deculturatisation of sexual assault and harassment particularly in informal spaces through sensitization programmes. There should also be an investment in surveillance equipment and infrastructure
- b. Dissemination of information by circulating a popular and easily understandable version of the sexual offences act and any other relevant laws
- c. The formulation of county anti-sexual harassment compliance conditions on the issuance of licenses
- d. The formation of a directorate to deal with sexual harassment
- e. Data collection and monthly or quarterly reporting on cases of sexual harassment to generate evidence and data that will enable better enforcement of the law
- f. A complaints redress system at the community level and an effective feedback mechanism for victims of sexual harassment.

The Employment Act, 2007 (Ke) also provides for maternity and paternity leave. According to Section 29 of the Employment Act, 2007 (Ke), female employees have the right to take three (3) months of maternity leave with full pay. Thanks to the Employment (Amendment) Act 2021, they can now also take one month of pre-adoptive leave with full pay starting from the day the child is placed with them. Unfortunately, the proposal for mothers to get children through surrogacy was not approved and thus they are not covered for maternity leave under the law. It has also been



argued that the one-month pre-adoptive leave is not sufficient time for the mother to be able to bond with the child she has adopted and that the time should be increased or at least be at the same level with a mother who has delivered a pregnancy (three (3) months).

The Employment Act and the Occupational Safety and Health Act are, however, silent on the safety precautions and the conducive working environment that pregnant women should be provided. This may lead to inequity in the workplace for pregnant women, who may not be able to perform certain assignments simply because they are pregnant. Despite the anti-discrimination provisions, the enforcement and implementation of gender equity and equality for pregnant workers is not very well done.

Section 29(2) Employment Act 2007 does provide some form of job security and protection for women who have taken maternity leave. Under the Employment Act of 2007, individuals who have taken maternity leave are entitled to return to their previous job or a similarly appropriate position with terms and conditions that are no less favorable than if they had not taken leave.. The Health Act also provides for lactation stations in the workplace which shall be adequately provided with the necessary equipment and facilities. The Act also provides that employers shall grant all nursing employees break intervals to breastfeed or express milk and this shall be in addition to the regular break intervals that they are entitled to (Employment Act, 2007) .

Women in the informal sector, however, do not get to enjoy these legislative benefits. They have to resume work very soon after delivery or stay out of work for prolonged periods as they are the primary carers of their children and do not have the resources to employ domestic assistance.

One of the weaknesses of the Employment Act is that it presupposes that the employment

relationship can only be based on the contract of employment. This contract-based perspective of the employment relationship is quite limiting and does not reflect the emerging work patterns and working arrangements (Employment Act, 2007). According to the Africa Digital 2021 report by the Ministry of Information Communication and Technology, around 1.2 million Kenyans are employed on digital platforms (Ministry of Information Communication and Technology, 2021). The types of work include –digital marketing, virtual assistants, sports betting, writing articles, ride-hailing services, goods delivery, etc. many young women are using these arrangements to earn a livelihood, particularly at the onset of the COVID–19 Pandemic(Hackl & Gardiner, 2021). The main concerns of these new working arrangements are that: first, it is not clear what the employment status is of these workers. The Uber case in the United Kingdom is a case in point where this point was canvassed. The Supreme Court in the United Kingdom upheld the view that Uber drivers were employees (Ashokbharan, 2022; Freedland & Adams-Prassl, 2017). This matter has not come up in Kenyan courts; however, if it were to arise, the Uber case in the United Kingdom serves as an instructive example.

There is also the concern of unfair treatment of women in platformised work. There are unfair assumptions that women will not be able to perform the job e.g. taxi hailing or delivery services. There are also low earnings, lack of social protection, lack of voice and representation and safety concerns when there is intimidation, violence, verbal and physical abuse and sexual harassment.

Labour laws in Kenya thus need to respond appropriately to the technology-driven market and economy which has changed in the last 10 years. The pandemic has created a renewed push to reexamine the relevance of the Labour laws in Kenya.

3.2.2. The Labour Relations Act 2007

The Labour Relations Act aims to consolidate laws related to trade unions and disputes. Its purpose is to facilitate the registration, regulation, management, and democratization of trade unions and employer organizations. The Act also encourages effective collective bargaining and promotes freedom of association and effective bargaining processes. These goals are outlined in the Act's preamble. There have been limitations to women's voices and representation in the labour sector in Kenya. This is brought on by the unequal bargaining power between women and men in labour markets. Labour union representation is largely perceived as a male-dominated arena. It is seen as burdensome and incompatible with female roles and responsibilities in the home due to the long hours the activities may take. Another weakness of the collective bargaining process is that many of the Collective Bargaining Agreements are not negotiated with women's specific issues in mind.

Just like the Employment Act, the Labour Relations Act only covers those who are employed in the formal labour sector. Those in the informal sector are not covered, and yet these workers are the lowest paid and the most vulnerable working under precarious conditions. There is, therefore, a need to increase the voice, agency and representation of women in both the formal and informal sectors. Social dialogue mechanisms can be used for this.

Social dialogue has been described as all types of negotiations, consultations and exchange of information between or among representatives of governments, employees and employers and their respective organizations. For formal workers, the points of negotiation are normally centred around working conditions, retirement ages and benefits and pay. However, for informal workers, the negotiation platform and issues are

not as straightforward. The challenges include the identification of whom to negotiate with and for what, the sustainability of any agreed-upon solutions and gains. This is because many of the officials in government who they would negotiate with may be there for a short time (an election cycle) and then a change of officials would occur. There is difficulty in gaining access to the decision-makers and policymakers, as well as negative attitudes by leaders towards informal workers and particularly women. These negative attitudes often lead to harassment of informal workers, especially women. There is difficulty in sustaining organizational membership (should there be any organization or groups of women) due to the difficulty in holding strategic meetings as well as a lack of the appropriate information as to their rights and entitlements and the protection that the law offers them.

Interventions are thus needed to strengthen organizations and to capacitate them to bargain and negotiate with decision and policymakers.

3.2.3. Occupational Safety and Health

The National Occupational Safety and Health Policy 2012 supports the occupational safety and health regime. The Act aims to ensure the safety, health, and welfare of all workers and individuals who are legally present in the workplace according to its preamble. There is an increased push globally to consider gender issues within workplace safety and health laws and policies. This kind of analysis has not been effectively done in many countries in sub-Saharan Africa, including Kenya. The Policy and the Occupational Safety and Health Act 2007, do not specifically address the safety and health risks that face women in the workplace. Yet there are quite unique occupational safety and health risks and hazards that are gender specific and need gender-specific responses. This gender-neutrality of the laws may exacerbate gender inequalities when it comes to workplace safety and health.



For women in the informal sector, there are higher risks to their safety and health, and they are bound to suffer more injuries for which the labour regulatory regime does not provide any specific protections.

The main objective of the Work Injury Benefits Act of 2007 is to offer compensation to employees who suffer from work-related injuries or illnesses that occur during their employment. However, it is important to note that the Act only covers formal employees and does not extend to those in the informal sector. The language used in the preamble clearly indicates this exclusion. It is worth noting that in the schedule of injuries or of dangerous occurrences that are contained in the Schedules of both statutes, there is no mention of gender-based injuries and psychosocial injuries, particularly those that are caused by gender-based violence in the workplace. The provisions of both statutes are gender-neutral and the work inspection and audit frameworks do not take into account gender equality as a parameter. Occupational inspections and workplace audits need to take into account three parameters: Hazard identification, Risk assessment and Actions and Procedures to minimize the risk (Sorrentino et al., 2016). Hazard identification needs to be gender sensitive to take into account issues such as sex susceptibility to certain bio and chemical hazards, or even certain stressors which expose women to higher levels of work-related stress.

3.2.4. Social Security and Protection

Social security is part of the larger concept of social protection. The African Union Social Policy Framework has defined social protection in this way:

“Social protection includes social security measures and furthering income security; and also the pursuit of integrated policy approach that has a strong developmental focus such as job satisfaction (African Union, 2008).”

Kenya in its National Social Protection Policy has defined social protection as:

“The policies and actions, including legislative measures, that enhance the capacity and opportunities for the poor and vulnerable to improve and sustain their lives, livelihoods and welfare, that enable income earners and their dependants to maintain a reasonable level of income through decent work, and that ensure access to affordable healthcare, social security and social assistance (Ministry of Labour and Social Protection, 2019).”

Social protection is thus very much a part of the Decent Work Agenda of the ILO.

Ensuring social protection is crucial for lifting people out of poverty and ultimately eradicating it. It involves providing security against unforeseen events and vulnerabilities, and ensuring access to healthcare and safe, dignified working conditions. Social security has been defined by the ILO as “the protection that a society provides to individuals and households to ensure access to healthcare and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner (Sarkar, 2022).” In Sub-Saharan Africa, the social protection offered to those in both the formal and informal sectors is very low. There is particularly a lack of social security for those in the informal sector which is a larger source of income and work for more women than men (Sarkar, 2022). This is even though social protection can be an effective way of promoting women’s empowerment and gender equality. The design of social protection policy can be done in a way that recognizes the unique social and structural challenges that women face in the labour sector.

The legal regime for social protection and security in Kenya is contained in various sources.

- a. The Constitution of Kenya 2010 in article 43 provides for the right of everyone to social security

- b. There is the National Social Protection Policy
- c. The Social Assistance Act 2013
- d. The National Social Security Fund Act 2013
- e. The National Health Insurance Fund Act
- f. The National Health Insurance (Amendment) Act 2021
- g. The Retirement Benefits Act

These pieces of legislation are gender-neutral in their provisions. One significant aspect of social protection for workers is access to healthcare services. For women, access to healthcare is part of the Sustainable Development Goals and the 2019 Political Declaration on Universal Health Coverage. The 1995 Beijing Declaration also provided that women should be able to access equitable, affordable and quality healthcare services. In Kenya, one of the main Agendas of the incumbent government is the Universal Health Coverage (UHC) Agenda which they aim to attain by 2022.

There are various impediments to access to universal health coverage by women in the labour market. According to Vijayasingham et al., “women’s higher unpaid care work, lower income and often limited decision-making power over household resources and their healthcare, converge to create significant barriers to healthcare (Vijayasingham et al., 2020).” In low to middle-income countries, 37% of pregnant women lack adequate antenatal care, which amounts to 45 million women. In Kenya, the current regulatory framework for financing healthcare for workers is heavily reliant on employment-based financing. This is where contributions are mandated from the employee’s salary (Kimani et al., 2004). Deductions are made mandatory for all employees. Under the NHIF (Amendment) Act 2021, the law now requires all adults over the age of 18 years, and who are not already registered as dependents under the scheme, to make contributions to the Insurance scheme. This is already problematic in and of itself in a country where almost half of the population

is living in abject poverty and most of those are women who are exposed to indigence.

When access to healthcare financing is pegged on employment status, then it may further reinforce the realities of gender inequalities in employment participation by women. For instance, unpaid care work, which is performed by more than 80% of women globally, is not considered and valued as work that should be paid work (Georgieva et al., 2019). Employment-based health financing suggests that healthcare is treated as an employment benefit, not a human right. This makes it difficult to enforce from a rights-based perspective.

Employment-based health financing fails to take into account the women working in the grey economy. In Africa and South Asia, women represent 90% of those who work in the informal sector (Bonnet et al., 2019; Chen, 2001). Therefore a significant proportion of women are not getting health-related social protection. As mentioned earlier in this report, socioeconomic and cultural barriers impede the implementation of UHC.

The laws, therefore, need to be more responsive to gender realities and sensitivities.

New forms and arrangements of work have taken place over the past several years. They have become even more pronounced due to the COVID-19 Pandemic. These non-standard forms of employment such as platformised work or remote work have been taken up by women – especially young women and migrant workers. Many women prefer flexible work arrangements where they can balance their work and their family responsibilities. However, this is at the risk of lower income and higher poverty levels.

The social security laws as they are do not take these risks into account.



4.0 Proposals for Possible Intervention Pathways

1. Labour Laws in Kenya focus on the formal sector and the “employee” and this leaves out women in the informal sector. The laws need to be reviewed in order to integrate specific gender needs and to protect women in the informal sector.
2. Labour laws need to be backed up by gender responsive budgeting processes so as to promote gender equality. This would involve integrating gender issues into macroeconomic policies and budgets and ensuring that they contribute to women’s economic empowerment. The government in its policy and budgeting processes needs to map out the various sectors that have the greatest gender issues e.g. health, education, water, social security, and food security. Public participation of women in both the informal and formal sectors, as well as those in the public and private sectors needs to be ensured. The national and county governments also need to synchronize their programmes and budgetary priorities so that funding and policies can be properly formulated to respond to the gender issues arising.

The government should be able to assess how public expenditure has benefited women in the labour sector (e.g. gender specific expenditure targeting women and girls, equal opportunity expenditure e.g. evaluation of job advertisements and descriptions to ensure equitable hiring policies). There should also be sensitization and awareness creation among policymakers on the gender impacts of budgets and holding the government accountable for any commitments that it makes.

3. The Ministry of Labour and Social Protection needs to invest in innovations in social protection and social security mechanisms which take into account the irregularity of incomes from those in the informal sector. The schemes should be attractive and the

benefits should be easily understandable and accessible. There should be long-term and short-term accounts (especially for emergencies). There should be flexibility in the withdrawals and the levels of contribution. The government should also invest in digital platforms to bridge the coverage gap. There should be social registries, ease of payment systems and identification systems that would be efficient and effective to prevent and avoid fraud. These digital systems would be useful in tracking savings accounts, assessments for any fiscal subsidies, managing withdrawals and assessing eligibility for financial incentives. Schemes should particularly cover those in the informal sector.

4. Interventions are needed for the protection of female workers in the care economy (for both paid and unpaid care work) to promote gender equality and decent work. Unpaid care work remains largely unrecognized and invisible and unprotected. Policy and budgetary interventions are required for the state to support childcare programmes and elderly care services so that women can be free to pursue more economic activities.
5. The Ministry of Labour and Social Protection needs to invest to support skills creation, employment and work for adolescents and young women. The pathway from education to employment is unfortunately not linear. Therefore gender smart investment approaches are needed in recognition of the complex network of factors influencing the transition from education to work for young women.
6. Investments can be made in promoting and enhancing Gender Responsive Due Diligence (GRDD) in companies and organizations (Nelson & Kuriakose, 2017). Gender equality and empowerment are essential to building businesses and increasing the participation of women in global supply chains.

7. Measures need to be taken to enhance the bargaining power of women in negotiating for better working conditions, particularly in the informal sector. There needs to be the promotion of agency, freedom and choice for women. In the formal sector, the collective bargaining process needs to include more gender-specific issues; women need to be encouraged to join leadership positions to represent the needs of women employees. For women in the informal sector, the legal framework needs to facilitate them to collectivize into various groups which are not necessarily trade unions. The environment in terms of the resources that are needed for collectivization needs to be facilitative for women (e.g. non – restrictive fees and licenses, etc.).
8. Advocacy can also take place around intersecting issues such as formal and informal work for women and issues such as sexual and reproductive health rights, mental health, etc.



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“Social protection includes social security measures and furthering income security; and also the pursuit of integrated policy approach that has a strong developmental focus such as job satisfaction (African Union, 2008).”



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