

LEGAL DIGEST ON WOMEN IN THE FORMAL AND INFORMAL LABOUR SECTORS

Discussion Paper Series No 5.



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Reviewed By Nkatha Kabira**

MAY 2022

An Overview of Labour Laws in Kenya: Seeking Pathways to Empowering Women in the Labour Sector in Kenya

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LEGAL DIGEST ON WOMEN IN THE FORMAL AND INFORMAL LABOUR SECTORS



Discussion Paper Series No 5.

LEGAL DIGEST

This legal digest was researched by the Women's Economic Empowerment Hub at African Women Studies Centre, the University of Nairobi. The objective of the research 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 more Women's Economic Empowerment (WEE) responsive for women employed in all sectors of the economy.

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Foreword

The idea to write a legal digest on women in the formal and informal labour sectors in Kenya was born in early 2020, at a time when the Women's Economic Empowerment (WEE) Hub of the University of Nairobi was in the process of being established. It was also the time when the COVID-19 pandemic had just hit, and the country was in lockdown. The team working on the establishment of the WEE Hub was led by Prof Wanjiku Mukabi Kabira. Other members of the team included Prof Tabitha Kiriti-Ng'ang'a, Prof Patricia Kameri-Mbote, Dr Mary Mbithi, Ruth Wamuyu, Rachael Keeru and Dr Agnes Meroka-Mutua. During those initial months, while the country was in lockdown, we spent many hours working together but remotely, through Skype, which was the most popular video conferencing platform at the time. While conducting the initial research on legal aspects, Prof Mbote and I realized that the legal framework on women in the formal and informal labour sectors was extensive and disparate. We then thought that it would be important for the WEE Hub to plug this gap by developing a legal digest, which would provide detailed information and analysis about women and Kenya's legal framework on labour in the formal and informal sectors.

Prof Mbote tasked me with the duty of raising this proposal before the rest of the team. I made the presentation as tasked and what I shared was an idea for a legal digest on women in labour in Kenya. Prof Kiriti quickly pointed out that it could not simply be a legal digest! Given that this work would be done by the WEE Hub, it had to include social issues. This proposal by Prof Kiriti was supported by both Prof Kabira and Dr Mbithi. Further, the team also noted that there was a need to focus also on the informal sector, given that the majority of women in Kenya's labour force work in the informal sector, yet the legal framework primarily applies to workers in the formal sector. We, therefore, had to develop a socio-legal digest in women in the formal and informal labour sectors. We also realized that the nature of work would be impacted by the COVID-19 pandemic. The fact that we were spending many hours on video calls, as we witnessed the merging of the public and private spheres of life, was a testament to this. Indeed, we came to know much about each others' families simply by working together through video calls. It became clear to us that this digest was even more significant and relevant, as it presented an opportunity for us to conduct research at a time when things were "a changing." It excited the researchers in us! Thus, in 2020, after many hours spent on video calls, debating the issue of what this digest would cover, the concept of a socio-legal digest on women in the formal and informal labour sectors was birthed.

The team had planned to have the digest completed within the first year of work, but as it turned out, there was much research to be conducted. Dr Nkatha Kabira, who leads research on issues of employment at the WEE Hub began researching on the initial ideas about the digest in 2021, and in 2022, Dr Naomi Njuguna, an expert on labour issues came in to conduct the legal analysis of the laws through a gender lens. By 2023, the team had realized that while the digest was born out of a need to have a one-stop shop where one can easily find information about Kenya's legal framework on women in the formal and informal labour sectors, it developed into a document that also highlights key gaps in the legal framework. It also provides detailed discussions as to how these gaps result in gender discrimination, and crucially, it makes recommendations on how these gaps may be filled. The analysis done by Dr Naomi Njuguna, and the reviews done by Dr Nkatha Kabira, are therefore, illuminating and insightful. Further, the socio-legal digest has been informed by the WEE Hub's research findings on issues such as women's access to affirmative action funds, the gender dimensions of social protection, the impact of the COVID-19 pandemic on women's work, child care and unpaid care work. It is, therefore, the hallmark of cutting-edge research, sharp enough to cut through gender biases.

The Digest has been reviewed by several technical experts, including Prof Winifred Kamau, Dean Faculty of Law, University of Nairobi; Dr Samwel Wakibi, statistical expert from the Institute of Population Studies and Research; Dr Mary Mbithi, from the Department of Economics and Director of Research at the WEE Hub; and myself. Several research fellows were also involved in the development of this digest, and they are the people who can truly tell the story of the many hours that were spent on this work. Ruth Wamuyu, Rachael Keeru and Esther Kyalo worked tirelessly alongside the research team to ensure the successful completion of this work.

The finalization of this Digest on women in the formal and informal labour sectors is a momentous occasion not only for the WEE Hub team, but also for the women of Kenya. It is our hope that this piece of work will continue to light the path towards gender equality and non-discrimination, as well as a fair, just, and progressive society.

Agnes Kemuma Meroka-Mutua

Acknowledgements

The Women's Economic Empowerment Hub thanks Prof Wanjiku Mukabi Kabira, through whose leadership, the development of this Digest was achieved. The WEE Hub also thanks Dr Naomi Njuguna, who compiled the analyses that went into this digest; Dr Nkatha Kabira who reviewed the compilations; the team of technical experts who, at different times, reviewed the Digest, including Prof Winifred Kamau, Dr Mary Mbithi, Dr Samwel Wakibi and Dr Agnes Meroka-Mutua. We also sincerely appreciate Prof Patricia Kameri-Mbote and Prof Tabitha Kiriti-Ng'ang'a, who shaped the concept for this digest. The WEE Hub further thanks the research fellows who supported the development of the Digest, including Ruth Wamuyu, Rachael Keeru and Esther Kyalo. The secretary to the project was Beatrice Kamau, who worked tirelessly to support its finalization.

List of Abbreviations

KNBS	The Kenya National Bureau of Statistics
WIBA	Work Injury Benefits Act
OSHA	Occupational Safety and Health Act
ILO	International Labour Organization
ICLS	International Conference of Labour Statisticians
NHIF	National Health Insurance Fund
NSSF	National Social Security Fund
SDG	Sustainable Development Goals
HR	Human Resources

EXECUTIVE SUMMARY

This legal digest is the product of research conducted on employment laws and policies in Kenya. The research sought to analyze employment laws and policies from a legal perspective and ultimately identify gaps, and provide recommendations on how to make employment laws WEE-responsive for women employed in all sectors of the economy.

Dr. Naomi Njuguna conducted the research with the help of Dr. Nkatha Kabira, a leading researcher at the University of Nairobi's Women's Economic Empowerment (UON WEE) Hub. The WEE Hub is a program supported by the Bill and Melinda Gates Foundation, with the aim of fully realizing women's economic empowerment. The mission of the hub is to produce cutting-edge research that will impact policy formulation, implementation, and upscaling to achieve women's empowerment. Its vision is to be a thought leader in this field, providing rigorous and accessible evidence for the benefit of all. The study, which extensively reviewed the best practice literature revealed the following:

1. Kenya's legal framework has focused on employment rather than work and for employment laws to be WEE-responsive, there is a need for a radical paradigm shift that includes both work and employment.
2. Historically, the focus was on work and not on employment, but the introduction of capitalism and other liberal market constructions led to a shift in both scholarship and legal discourse from work to employment. Given that majority of women are in the "informal sector", the focus on employment greatly disenfranchised women.
3. Article 27 of the Constitution of Kenya is key in advocating for equal pay for equal work in Kenya.
4. Laws and policies should be introduced to tackle questions surrounding discrimination in the workplace, empowering women in the labour

market, cushioning women in the informal sector who do not have contracts, investing in health care, social protection, compensation of injuries at work, maternal and workplace policies among others.

5. The Employment Act of 2007 and the Employment (Amendment) Act, 2019, have significant gaps that contribute to payment inequalities and fail to adequately recognize women's contributions. The women who are employed under precarious work are not fully recognized or protected by the Act. There is a need to further amend the Act to ensure that it covers informal employment and increase social protection coverage as well as increase financial inclusion to facilitate women's economic empowerment.

The Employment Act of 2007 and the Employment (Amendment) Act, 2019, have significant gaps that contribute to payment inequalities and fail to adequately recognize women's contributions.

1.0 INTRODUCTION

In Kenya, almost half of the workforce is made up of women, accounting for 48.7%. However, there is a significant gap in the labor participation rate between men and women. According to the United Nations Development Program (2019), only 63.6% of women participate in the labor force compared to 69.1% of men. This is notably lower than Tanzania's rates of 79.4% for women and 87.2% for men. The Kenya National Bureau of Statistics (KNBS) (2018) reports that 64% of female workers are employed full-time, with 26% of them working between 40 to 48 hours per week. Part-time work is more common among women, with female workers representing 62% of all part-time workers. Furthermore, there is still a substantial wage gap in Kenya, with women earning only 70% of what men make for similar work. Employment in Kenya is governed by the following policies, regulations, and legislative frameworks: The Employment Act 2007 and amended in 2019 (Employment Act (Amendment) Act, 2019); and the Law of contract Cap 23 of the laws of Kenya, 1961, Rev. 2002, 2012 and amended in 2019 (The Law of Contract (Amendment) Act, 2019). In Kenya, the relationship between employers and employees is regulated by the country's labour laws. These laws are categorized into two types: collective labour laws that address the interaction between unions, employers, and employees, and individual labour laws that focus on the relationship between employers and employees without the involvement of trade unions. The Labour Laws of 2007 are comprised of five Acts, which are The Employment Act, Labour Institutions Act, Labour Relations Act, Occupational Safety and Health Act (OSHA), and the Work Injury Benefits Act (WIBA). However, Kenya lacks a wage policy and attempts in 2013 to have an employment policy failed. Therefore, the implementation of the Employment Act has been left to the employers under different pieces of law. Employment relations are regulated by constitutional rights, statutory rights and rights dictated by collective bargaining agreements as

well as extension orders of collective agreements. The Employment Act of 2007, revised in 2012 has provisions for maternity leave for working women and Employment Act (Amendment) 2019 provides for the number of hours an employee is supposed to work and flexible working time for employees, hence this Act provides for decent, flexible, and dignified employment for employees in Kenya. The Law of Contract Act 1961, Revised in 2002, 2012 and amended in 2019 provides that agreements between parties in which there are monetary considerations should be recorded in written form. It also provides that in all forms of contracts, consideration is necessary to enable either party to compel the other to do that to which they have agreed.

Despite the enactment of the Employment Act, its implementation has been left to employers to interpret as there is no employment policy in place. Kenya also lacks a comprehensive wage policy and

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employees are left at the mercy of different players such as trade unions, collective bargaining, minimum wage laws and many other pieces of laws that have not been harmonized. It is also not known how the Law of Contract has impacted women operating in the informal and gig economy. It is therefore important to analyze these laws and their provisions and how they have impacted women working in formal employment and in the gig economy. This socio-legal digest, through social, gender and legal analysis, seeks to identify areas of the laws and policies that need to be changed to facilitate WEE and advocate for their amendments to promote WEE.

2.0 BACKGROUND AND CONTEXT

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 participation in the paid labour market was relatively low due to various structural, social, cultural, and historical factors (Zezeza, 1988). This does not mean that women did not work. But the kind of work that they engaged in domestically was not given an economic value (Stiftung, 2012). 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. 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 women, who contribute significantly through their work despite not being formally employed. It is crucial to acknowledge and appreciate the value they bring.

These foregoing inequalities and inequities facing women in the labour sector have led to the dichotomization of women in formal and informal work.

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.

3.0 REVIEW OF EXISTING LITERATURE

Several scholars have throughout history studied the place of women in formal and informal employment. This section highlights some of the key examples of literature in the field. The literature reveals that there is indeed a gap in knowledge about women in formal and informal employment in Kenya and hence the need to critically interrogate the laws and policies to make them more gender-responsive.

The following are some of the key texts that focus on women in formal and informal labour sectors.

The first text of importance is ***"A Comparative Study of Women in Formal and Informal Business in Jigjiga City, Ethiopia: Characteristics, Linkage, Challenges and Way Forwards"*** by Demiessie, Habtamu Jigjiga University, Ethiopia published on 16 December 2020.

Biases, prejudice and misconceptions in the labour market also affect gender inequalities in the labour market by designing and implementing policies based on stereotypes and reinforcing gender inequalities.

This study documents the experiences of women in formal and informal businesses in an area dominated by the informal sector where women are the key drivers of the economy (Demiessie, 2020). Specifically, women play a role in the urban informal sector. This is evident in March 2012 where women in the informal sector made up 68.5% of the labour force in the urban areas. In contrast, the men in the same sector made up 42.2% (Demiessie, 2020). Furthermore, in April 2014, women aged 16 and above who were involved in the informal sector made up 57.2% whereas the men made up 32.7% of the total workforce in the Somali region (Demiessie, 2020). In terms of the specific cities that were dominated by women in the informal sector, we find Bonnet et al., (2019)

The second text is titled, ***“Organisation for Economic Co-operation and Development. (2019). Protecting Informal Economy Workers and Their Dependents. Tackling Vulnerability in the Informal Economy”***

This study demonstrates that informal employment is a greater source of employment for men rather than women where men make up 63% and women make up 58% (Organisation for Economic Co-operation and Development, 2019). Women comprise approximately 740 million of the 2 billion informal workers worldwide, accounting for around 36.5%. Men constitute the

remaining 63.5% (Organisation for Economic Co-operation and Development, 2019).. This clearly expresses the gender gap in the employment-population ratio which remains significant and stable in developed countries (Organisation for Economic Co-operation and Development, 2019).When we zero in on women we find that certain factors have influenced their over-representation in low-paid, less secure informal jobs. This may be directly linked to gender or increased gender inequalities and discrimination. First, gender-specific constraints where women are viewed as caregivers and men as breadwinners thus the high rate of unpaid household jobs done by women (Organisation for Economic Co-operation and Development, 2019).Second, gender-intensified inequalities among household members based on religion, ethnicity and class (Organisation for Economic Co-operation and Development, 2019). Biases, prejudice and misconceptions in the labour market also affect gender inequalities in the labour market by designing and implementing policies based on stereotypes and reinforcing gender inequalities. These constraints lead to gender segregation in the labour market (Organisation for Economic Co-operation and Development, 2019). Women’s needs in the informal sector are often neglected in their design and implementation. However, there are a few remedies to this problem (Organisation for Economic Co-operation and Development, 2019).They include social assistance which can ensure basic protection for women but still uphold traditional gender roles. Social insurance programmes for informal workers with the intention of addressing women’s needs and work patterns. Extension of pension and maternity coverage which has protected women in the informal economy.

The third text is titled, ***“Women and Men in the Informal Economy: A Statistical Brief” by Florence Bonnet, Joann Vaneek and Martha Chen which was published in 2019***

This study reveals that men have greatly benefitted from informal employment compared to women where men make up 63% and women make up 58%.



In developed countries, men make up 19% while women make up 18% of the informal sector. In emerging countries, men make up 69% while women make up 64% (Bonnet et al., 2019). In general, for a majority of countries, According to Bonnet et al. (2019), women constitute a higher portion of the workforce than men. However, the ratio of women's and men's participation in the informal sector varies based on their employment status. In most regions, women are employed at a younger age than men, with 15% in the Middle East and North Africa and 61% in Sub-Saharan Africa, excluding Southern Africa. In Southern Asia, informal employment is a more significant source of employment for women than for men (Bonnet et al., 2019, p. 11). Nonetheless, women's lower employment-to-population ratios limit the impact of their high rates of informality on global estimates and among emerging countries. Women in the Middle East and North Africa have low labor force participation, with most of their employment in public sector jobs that are primarily formal. This, coupled with the low rates of women in informal employment relative to men in the informal sector in China and Russia, countries with significant populations, affects the global average (Bonnet et al., 2019, p. 11)..

The fourth text is titled, ***Informality and Gender Gaps Going Hand in Hand*** by Vivian Malta, Lisa Kolovich, Angelica Martinez Leyva, Marina Mendes Tavares and was published in 2019

This research highlights the disproportionate representation of women in the informal economy in over 90% of sub-Saharan African countries. Women make up 83% of informal employment in the non-agricultural sector, while men comprise 72%. In the agricultural sector, women account for 94% of the workforce, while men make up 89% (Malta et al., 2019, p. 4) . The informal sector is characterized by instability, lack of social protection, lower earnings, and wider gender gaps. In 2016, the UN Women found that the gender wage gap in the informal sector of sub-Saharan Africa is 28%, much higher than the 6% in the formal sector (Malta et al., 2019, p. 4). This wage gap can be attributed to observable differences such as job characteristics, working hours, acquired skills, and gender discrimination. The gender pay gap is linked to the overrepresentation of women in the informal sector, which is caused by gender-biased laws, discrimination, and traditional gender roles. Women's lower education levels and insufficient fulfillment of family planning needs also contribute to this issue. Informal jobs are more attractive than formal ones because they offer greater flexibility and proximity to home. However, they can create a poverty trap for women who are limited to low-skilled, low-paying work, perpetuating inequality and restricting access to resources and opportunities, including education for young girls. These persistent gender gaps hinder overall economic growth. (Malta et al., 2019, p. 4-5).

The fifth text is a ***"Women in the informal economy: Experiments in governance from emerging countries"*** by Shyama V. Ramani, Ajay Thutupalli, Tamias Medovarszki, Sutapa Chattopadhyay and Veena Ravichandran, United Nations University, and was published in 2013

According to this research, women are more likely to work in the informal sector than in the formal sector. The informal sector can provide women with income through self-employment, contract or casual labor, or contributions to their families. The most common types of work for women in the informal sector are street vending or producing goods at home. Despite women's overrepresentation in the informal sector, gender inequalities still exist. For instance, fewer women than men are employed, and wages are lower than in the formal sector, with women earning less than men in the informal sector, as well (Ramani et al., 2013, p. 2). Women tend to turn to the informal economy because it fits their needs better, and they often become entrepreneurs out of necessity rather than opportunity (Ramani et al., 2013, p. 4). To empower women as workers and business owners, it's essential to create spaces where they can access resources, engage in dialogue, build confidence, and learn from successful women role models. Intermediaries can provide mentorship and training, leading to business opportunities that align with local social norms (Ramani et al., 2013, p. 4).

Our literature review indicates that there is a gap in the existing literature and knowledge concerning women in the formal and informal sectors in Kenya. This legal digest seeks to fill this gap.

4.0 CONCEPTUAL AND METHODOLOGICAL APPROACH

a) Definition of Informal Sector and Informal Employment

The Fifteenth International Conference of Labour Statisticians (15th ICLS) (ILO 2000) defines the 'informal sector' based on the following criteria:

1. *The sector is private and unincorporated*
2. *All or at least some of the goods and services produced by the sector are meant for sale*
3. *The Size of employment is below a threshold to be determined by national laws*

The Seventeenth International Conference of Labour Statisticians defines informal employment as "comprising the total number of informal jobs, whether carried out in formal sector enterprises, informal sector enterprises, or households, during a given reference period as listed below (International Labour Organization, 2003) Informal employment includes:

- a. Workers working on their own account in their own informal sector enterprises
- b. Employers working in their own informal sectors
- c. Contributing family workers regardless of whether the family works in the formal or informal sector
- d. Members of informal producers' cooperatives
- e. Employees holding informal jobs
- f. Paid domestic workers

The Seventeenth International Conference of Labour Statisticians further explains that an employee is employed in the informal sector if, "their employment relationship is, in law or practice, not subject to national labour legislation, income taxation, social protection or entitlement to certain employment benefits (advance notice of dismissal, severance

pay, paid annual or sick leave"(International Labour Organization, 2003).

b) Definition of Formal Sector and Formal Employment

The International Labour Organization Defines the formal sector to comprise "all economic activities by workers and economic units that are in law or in practice covered or sufficiently covered by formal arrangements" Formal employment, therefore, refers to all employment arrangements where workers are covered by formal arrangements (ILO, 2015).

c) Definition of Employment

Employment is a form of contract or agreement where an individual, the employee, agrees to undertake work for another, the employer. The agreement is recognized by the government and can be between an individual and another entity that specifies the duties, payment terms, and rules of is an agreement between an individual and another entity that stipulates the responsibilities, rules of the workplace, and payment terms. Employment is recognized as a paid work agreement (Khaemba, 2017).

d) The Concept of work

Work is viewed as having a meaning that relates to a social framework and goes beyond organizational boundaries. Work includes both paid and unpaid engagements. Informal employment formulates work for example domestic work, casual work, part time work. Women are largely employed in these areas (Rotich, 2020).

e) Decent Work

Decent work entails the aspirations of people in their working lives. It includes work opportunities that are productive with a fair income, provides security at



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the workplace and social protection for the family, better projections for personal development that provides social integration, freedom of expression, freedom to organize and make decisions that affect the employees, and equality of opportunity, and treatment for all women and men (Anlesinya et al., 2020).

f) Precarious work

Adu-Gyamfi et al. (2020) define precarious work as a type of work which is poorly paid, unprotected, and insecure. Employment in precarious jobs is associated with higher levels of stress, higher levels of dissatisfaction, and more adverse health outcomes (Adu-Gyamfi et al., 2020).

g. Formal versus Informal Economy

Formal economy refers to all economic activities that operate within the official legal framework that are paying taxes on all generated incomes (Crump, 2022, Chapter 5).

Characteristics of formal economy

1. It has an organized system of employment with clear written rules of recruitment, agreement, and job responsibilities.
2. It has a standardized relationship between the employer and the employee, and it is maintained through a formal contract.
3. The employee is expected to work for fixed hours and receives fixed salaries in addition to incentives and other advantages (fundsforngos, 2009). The employee works in a decent work environment and is entitled to benefits such

as leave, savings, loans and many more. The employee has an organized association or union where his/her official grievances are addressed. Furthermore, the employee is covered under social protection benefits such as life insurance, health insurance, pension and gratuity.

Informal Economy on the other hand is defined as the diversified set of economic activities, enterprises, jobs, and workers that are not regulated or protected by the state (Crump, 2022, Chapter 5).

Characteristics of the informal economy

1. It does not have any written rules or agreements (fundsforngos, 2009).
2. It exists merely on verbal understanding.
3. It does not have fixed wages or fixed hours of work and mostly relies on daily earnings.
4. In most cases, the atmosphere of the work is congested and unhygienic (fundsforngos, 2009).
5. The workers in this type of economy usually fail to come together and address their problems through an association or a group. They have poor awareness levels regarding social protection schemes which makes them unable to make savings and do not see the necessity of insuring themselves.

h. Formal versus Informal Work

Formal work arises when a company hires an employee under an established working agreement which includes health benefits, salary or wages, defined work hours and workdays (The Elements of Formal Work, n.d.).

Informal work on the other hand arises when an employer hires an employee without an established working agreement. In informal work, employees do not receive any health benefits and they are often hired temporarily (The Elements of Formal Work, n.d.). This definition of course completely locks out the world of women where no employers are hiring them, but they are instead creating work opportunities for themselves.

Traditional the Differences between Formal and Informal Work

The differences are highlighted below: -

1. Formal work was considered more stable compared to informal work. This is because companies invest time, training, and education in formal work so that they can gain new skills that will benefit the business. In contrast, companies that provide informal work seek temporary employees to perform short-term tasks that end in a few weeks or months (The Elements of Formal Work, n.d.).
2. Formal work in most cases pays higher wages than informal work. This is because formal work tends to require a higher level of education or training than informal work.
3. Formal workers are taxed under the existing tax guidelines, and they receive paychecks that reflect these taxes. Regularization and documentation of taxes in the informal sector has been difficult.

i. Work versus Employment

Conventionally, work has been defined as the act of exerting oneself physically or mentally in a sustained effort for a purpose or under compulsion or necessity (Pignault & Houssemand, 2021; Rosso et al., 2010). Therefore, work is a general term that involves any level of effort that is applied in any field or anything.

Characteristics of the traditional conception of work

In work, a person may or may not earn a wage because they might have commissioned themselves to do the work e.g., work involving washing dishes in the house will not lead to the payment of a wage if a person has instructed themselves to wash their dishes.

Employment

Employment is defined as the state of having paid work/employment (Schuring et al., 2017). Therefore, the state of employment is expressed where a person is employed. In essence, in employment, the

employee earns a wage because of the work that they have done.

This digest engages the traditional conceptions and seeks to critically interrogate their relevance and applicability in the case of women in formal and informal employment.

4.1 PARAMETERS FOR THE LEGAL REVIEW

This socio-legal digest employed the following tools of analysis in reviewing the various laws and policies: -

1. Definitional/Conceptual Framework

- How do laws and policies define informal and formal employment?
- How is employment defined? What is included and what is excluded?
- How is the concept of work defined? What is included and what is excluded?
- How is the concept of precarious work defined?

2. Historical Foundations

- To what extent are traditional forms of women's employment integrated into concepts of work?

3. Social Protection

- How does the law define social protection?
- What are the different forms of social protection recognized under the law?
- To what extent do social protection laws consider strategic gender needs and practical needs?

4. Gender Earning Gap/Payment Inequality/ Unpaid work

- To what extent do laws consider gender needs – strategic and practical needs?
- Does the law consider gender earning gaps?
- Does the law consider payment inequality?
- Does the law consider unpaid work?

5. Financial Inclusion

- To what extent do employment and labour laws consider financial inclusion?



6. Access, control, and ownership of resources/ infrastructure

- To what extent do employment and labour laws consider questions of access, control, and ownership of resources/infrastructure by women?

7. Legal Protection/Access to Justice/Fundamental Rights

- Do employment laws and policies consider legal protection, access to justice and fundamental rights of women in the workplace?

8. Conscientization/Enablers/Education

- What efforts are in place through legislative, administrative and policies to conscientize and educate women on their employment and labour rights?

9. Response Strategies

- What response strategies have been put in place through law and institutional frameworks to deal with gender strategic and practical needs?

6.0 LAWS AND POLICIES ON WOMEN IN FORMAL AND INFORMAL EMPLOYMENT

This section of the digest focuses on the extent to which the Employment Act of 2007 and the Amendment Act of 2021 as well as other labour-related laws have promoted women's participation in the formal and informal economy. In Kenya, as of 2023, 80% of the employment opportunities are in the informal sector. Women contribute 70% of the employees in the informal sector. Women are underemployed since they work for a few hours than is necessary for a full-time job in formal employment. The reduction in working hours makes women have two or more part-time jobs

The Employment Act of 2007 has many gaps since it has not addressed the informal sector and the various types of jobs that exist in this sector of the economy. The amended version also pays attention to the formal sector. The Act and its amended version are not gendered thus, women's employment is not promoted. Decent work is highlighted in the Act but there are no well-defined frameworks and strategies to promote its implementation.

6.1 LEGAL REVIEW OF THE LAWS: PARAMETERS

a) Social Protection

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

"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.

Social protection is important to enable people to rise above the poverty line or even eradicate poverty. It is also about offering security in the face of vulnerabilities and contingencies and having access to healthcare as well as working in safety and dignity.

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 (International Labour Organization, n.d.)” 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 (International Labour Organization, n.d.). This is despite the fact that 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 government (2017–2022) 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 own healthcare, converge to create significant barriers to healthcare (Vijayasingham et al., 2020).” Indeed as an example, in low to middle-income countries, 45 million (37%) pregnant women have either no or inadequate access to antenatal care.

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. 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. Employment-based health financing suggests that healthcare is an employment benefit rather than the human right that it is. 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 informal sector.

In Africa and South Asia, women represent 90% of those who work in the informal sector. Therefore a significant proportion of women are not getting health-related social protection. As mentioned earlier in this report, socio-economic and cultural barriers impede the implementation of the 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. For a country with severe financial constraints, the question then becomes what kind of social protection strategy would be useful for women in the formal and informal labour sectors. Perhaps a consideration of the key risks that women face in the workplace in which they need social protection cushioning may be able to assist to identify the gaps and the areas for strategic interventions

1. Maternity

Section 29 of the Employment Act 2007 provides for maternity (and paternity) leave with full pay for the female employee. A woman is entitled to three months of maternity leave. The Amendment Act of 2021 provides for one-month pre-adoptive leave for those who wish to become parents by way of adoption. The initial proposal in the Bill also envisaged parentage by way of surrogacy but this was not approved. The female employee shall be entitled to return to the job that she held immediately before maternity leave or to a reasonably suitable job on terms and conditions that are not less favourable than those which would have applied had she not gone on maternity leave. The female employee shall not be entitled to forfeit her annual leave on account of her taking her

maternity leave. This is a common practice with some employers who require that the annual leave be part of the duration of maternity leave.

The Employment Act however does put a condition to the enjoyment of these rights by the female employee. The condition is that she must give not less than seven days' notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave and this notice must be in writing.

The length of the maternity leave is still an issue in contention. The contention is whether three months is sufficient enough for the woman and newborn before she has to return to work. To support particularly women in the formal employment sector who have to return to work but still take care of their maternal responsibilities, the Health Act 2017 introduced requirements for employers to have lactation stations in the workplace.

Section 72 of the Health Act 2017 requires that employers are to grant all nursing employees break intervals for nursing in addition to the regular times off for meals to breastfeed or express milk. The nursing break includes the time it takes an employee to get to and from the lactation station and is counted as paid working hours provided that such interval is not more than a total of one hour for every eight-hour working period.

Employers are further required, under section 71 of the Health Act, to establish lactation stations in the workplace which shall be adequately provided with necessary equipment and facilities including hand washing equipment, refrigerates or appropriate cooling facilities, electrical outlets for breast pumps, a small table, and comfortable seats. The lactation station must not be located in the restrooms. Employers are further required to take strict action to prevent any direct or indirect form of promotion, marketing and or selling of infant formula and or breast substitutes within the lactation stations.

Whereas these provisions may be ideal for formal sector employees, the same benefits and investments are not available for informal sector female workers, who may have to either stop working or take their babies to do informal work in precarious situations.

2. SICKNESS

The question is – what income security measures have been put in place currently for employees who fall sick? The Employment Act in Section 30 provides that after two consecutive months of service with their employer, an employee shall be entitled to sick leave of not less than seven (7) days with full pay and thereafter sick leave of seven days with half pay in each period of 12 consecutive months.

The rationale behind sick leave pay is that work should not threaten health and ill health should not lead to loss of income and work. However, it should be noted that in the Employment Act section 45, termination of employment related to the employee's capacity is a fair termination. However, the provision is available for employees in the formal sector. Informal sector workers are not covered by this provision.

a. Occupational Safety and Health and Workplace Injuries

Occupational safety and health in Kenya is underpinned by the National Occupational Safety and Health Policy 2012. Its main objective is to 'establish national safety and health systems and programmes geared towards the improvement of the work environment.' Gender is not an issue that is considered in the current policy framework. The policy is largely gender-neutral and does not specifically address the risks and hazards that women face in the workplace whether in the formal or informal settings. This is even though there are unique occupational safety and health risks and hazards that are gender-specific and need gender-specific responses. The Policy also does not specifically address the hazards and risks that are faced in the informal sector where many women work. This gender-neutrality of the policies and laws may exacerbate gender inequalities when it comes to workplace safety and health. Recognizing gender differences at the workplace ensures that there is enhanced safety and health at work. Due to the different gender roles in society (expectations and responsibilities) and even biological differences, men and women are exposed to different physical

and psychological risks and injuries in the workplace. These require different strategies for protection and prevention. There is, therefore, a need to develop national occupational safety and health policies and resource allocation plans that are gender-sensitive as a result of the differences between men and women due to biological makeup, living and social conditions and gender roles. The policy should also give recognition to high-risk sectors that are both male and female-dominated. Female workers are prevalent in certain sectors e.g. the informal sector, agriculture sector, textiles, food production, handicrafts, pharmaceuticals, etc. Risk management and assessment procedures and processes should identify the various risks that women in the workplace both in the formal and informal sector, are exposed to. For example, women who work in the manufacturing sector and also in the health sector, they tend to suffer more from upper back and upper limb skeletal disorders due to repetitive lifting. A woman who is pregnant would be exposed to greater musculoskeletal risks and injuries. Within the health sector, women healthcare workers are subjected to low remuneration, cardiovascular diseases, musculoskeletal disorders, psychosomatic and mental health disorders, cancers, respiratory diseases, etc. The levels of stress and burnout are high as they seek to balance their workload and their family responsibilities. The ILO Convention on Maternity Protection (No. 183) and its Recommendation (R. 191). The Convention provides that pregnant women should not be obliged to carry out work that is a significant risk to their health and safety or that of their child and it also provides for the elimination of the risks that the woman would be subjected to.

The Convention provides for additional paid leave for the pregnant woman to avoid exposure to the risk if it cannot be eliminated immediately. The Recommendation sets out the various risks that should be assessed when it comes to pregnant women. The arduous work involving manual lifting, carrying etc; exposure to biological, and chemical agents (e.g. the exposure of women at the Naivasha flower farms to pesticides and herbicides); physical



strain due to prolonged periods of sitting, standing, vibration, extreme temperatures, night work, etc. Unfortunately, Kenya has not ratified this Convention.

The regulatory framework governing occupational safety and health is found in the Occupational Safety and Health Act 2007 (OSHA) and the Work Injury Benefits Act 2007 (WIBA). The OSHA has the aim of providing for the safety, health and welfare of workers and all persons who are lawfully present at the workplace.

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. 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, including the OSHA, does not provide any specific protections. It is worth noting, however, that within the Occupational Safety and Health Act of Kenya, workers have the right to refuse unsafe working conditions. Section 14(1) of the OSHA provides that 'every employee shall report to the immediate supervisor any situation which the employee has reasonable grounds to believe presents an imminent or serious danger to the safety or health of that employee or of other employees on the same premises, and until the occupier has taken remedial action, the occupier shall not require the employee to return to a workplace where there is a continuing, imminent or serious danger to safety or health.' This provision is little known and many employees, particularly pregnant women, have not been sensitized to it.

Another little-known provision is section 76(2) which deals with ergonomics (work design) in the workplace. The OSHA provides that 'every employer shall take necessary steps to ensure that workstations, equipment and work tasks are

adapted to fit the employee and the employee's ability including protection against mental strain.' This provision can be used to enforce the protection of women in the workplace who are facing unique hazards and risks. The provision is not couched in a gender-sensitive manner, and indeed one perhaps would not immediately see the manner it would protect women. The lack of sensitization and awareness of this provision hampers its enforcement in protecting the rights of women in the workplace.

The Work Injury Benefits Act 2007 aims at providing compensation for employees for work-related injuries and diseases that are contracted in the course of employment. The language of the preamble shows that the Act only focuses on workers who are formally employed. Informal sector workers are excluded from this regime. 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. Sexual harassment and gender-based violence are a significant part of the occupational safety and health discourse. The ILO Violence and Harassment Convention recognizes that gender-based violence and harassment, even if it affects both men and women, disproportionately affects women and girls. It also recognizes that an integrated and gender-responsive approach which tackles the underlying causes and risk factors and intersecting forms of discrimination and unequal gender-based power relations, is essential in ending violence and harassment in the world of work. Kenya has unfortunately not ratified this Convention.

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.

It is worth noting that taking a biomedical model approach that focuses on the causal relationship between the hazard and the injury or disease focuses on the curative rather than on the socio-environmental approach which focuses on prevention.

b. The Care Economy (Unpaid and Paid Care Work)

The International Labor Organization has defined care work as those “activities and relations involved in meeting the physical, psychological and emotional needs of adults, children, old and young, frail and able-bodied (Addati et al., 2018, p. 6).” It consists on the one hand of ‘direct, personal and relational care activities’ and on the other, ‘indirect care activities such as cooking and cleaning (Addati et al., 2018, p. 6).”

Care work can be either unpaid or paid. Unpaid care work is done without receiving any monetary compensation or reward, while paid care work is performed for pay or profit. Most of the care work worldwide is unpaid and is carried out by women, while paid care work is done by a range of workers, such as personal care workers, doctors, nurses, teachers, and domestic workers. Women and girls perform the majority of unpaid care work in household settings. It is crucial to examine the working conditions of women in both paid and unpaid care work to identify any inequalities and inequities they face. Additionally, it is vital to acknowledge the social, political, and economic value of care work, especially unpaid care work, to empower women who work in these settings. The care economy is greatly expanding globally and also in Kenya due to the number of people who now need care. The COVID-19 pandemic also increased the number of people who need care in home settings where the care is largely unpaid when it is being done by relatives. Two main sectors that have attracted the attention of regulators and policymakers globally are the health sector and the domestic work sector. In the health sector globally, 70% of the healthcare workforce are women and nursing is the most feminized of the health sector. The challenges that women face in these sectors (healthcare and domestic) are ‘gender segregation and segmentation, poor working conditions, low remuneration, gender pay gaps as well as an increased risk of violence and harassment (International Labour Organization, 2022).’

In Kenya, unpaid work is a common feature in many households. It is done in the form of caring for sick and elderly relatives, children, household chores such as shopping, cooking, fetching water, firewood, etc. The COVID-19 pandemic brought this largely unnoticed economy to the fore. What the pandemic revealed in a greater measure is that due to cultural patriarchal norms, the agency of women and girls has not been fully realized and therefore unfair work has been normalized. There is an unconscious bias towards assigning certain roles to women and girls which are highly disadvantageous to them socially, politically and economically. Women are often denied access to well-paying jobs, education, political participation, and even self-care activities, resulting in exclusion. The pandemic has further increased the amount of unpaid care work done by women and girls. Currently, women are responsible for over three-quarters of unpaid work, and they make up more than two-thirds of the paid care workforce.

The government has not invested sufficiently in public services that would enable women to spend less time doing unpaid work. These services are in education, social services and health. Access to time-saving utilities, facilities and technologies is very limited e.g. clean running water, energy (e.g. electricity or solar), washing equipment, quality and safe childcare services, affordable healthcare, etc. This means that women have to make up for the shortfall of these services through unpaid care work. Statistics provided by Oxfam from a

study they conducted in Kenya before the COVID-19 Pandemic showed that women spent around five (5) hours a day on care activities. If time spent on other activities such as supervising children while cooking are counted, women spend around 11 hours a day on care activities. The COVID-19 pandemic exacerbated the situation.

There have been some positive actions taken to address the issue. One example is Tharaka Nithi County in Kenya launching a low-cost crèche in September 2020 at the Chuka open-air market. This crèche allows female traders to conduct their business without worrying about their children. Additionally, in 2020, the Ministry of Labour and Social Protection allocated Kshs. 10 billion to provide unconditional cash transfers of Kshs. 8,000 per month to support vulnerable households. While this second intervention may not be sustainable in the long term, funding low-cost crèches, like the first intervention, would be a sustainable and welcome solution that could be included in social and economic plans and budgets at the county level. In Kenya, there are over one million domestic workers. The 2019 census revealed that women make up 50.2% of the working population (9.89 million). The fact that domestic work (both paid and unpaid) primarily occurs within private household settings means that workers, particularly women and girls, are vulnerable to abusive, exploitative, undignified, and inhumane treatment.

They are also in some cases overworked or subjected to excessive hours of work with no rest or leisure, underpayment, forced confinement, inadequate accommodation, physical and sexual assault and no social protection (in terms of health insurance or maternity protection). Another issue about domestic work (particularly unpaid domestic work) is that the time and effort that is spent are not normally given an economic value.

What legal protection is given to women in the formal and informal sectors of the care economy?

Domestic workers are often victims of forced labour, as they may be denied rest time or kept confined to their workplace. Employers who violate this right can face a fine of up to 500,000 Kenyan shillings, a maximum prison term of two years, or both.

On the Domestic front, the following laws and policies apply:

- a. The Constitution of Kenya 2010
- b. The Employment Act 2007 (EA)

Section 3(1) of the EA provides that the Act applies to all employees who are employed under a contract of service. There are no gendered aspects of the Act. It is mostly gender-neutral legislation.

The Act also applies to both oral and written contracts of service. Many domestic workers do not have written contracts of service. The EA however requires that if a contract of service is for a period of working days which amounts aggregately to three months or more then that contract needs to be in writing (The Employment Act, 2007 (Ke)). The Act also has provisions as to the terms and conditions that should be contained in the contract of service

and requires that there be clear consent that is signified by the employee either through signing or imprinting the thumb or one of the fingers if they are unable to sign (The Employment Act, 2007 (Ke)). To ensure that real consent is obtained and thus protect the autonomy of the employee, the EA requires that if an employee is illiterate and they cannot read the written contract, it must be explained to them in a language that they understand.

Protection against forced labour is outlined in Section 4 of the Act. Forced or compulsory labour is defined as work or service that is extracted from someone under the threat of penalty, including loss of rights or privileges, and is not offered voluntarily by the worker (The Employment Act, 2007 (Ke)). Domestic workers are often victims of forced labour, as they may be denied rest time or kept confined to their workplace. Employers who violate this right can face a fine of up to 500,000 Kenyan shillings, a maximum prison term of two years, or both.

Section 5 of the EA gives protection against direct and indirect discrimination within the workplace and section 6 prohibits sexual harassment in the forms of quid pro quo and the creation of a hostile working environment. Sexual abuse and violence against domestic workers are rampant in Kenya. However, these exact statistics are difficult to compile because many cases are not reported. Most domestic workers are not aware of their rights and are not unionized. They may have the perception that the costs of commencing litigation against the employer are prohibitive and they would thus opt to either quit their jobs (even without being paid their terminal dues) or persevere in their circumstances so that they can keep earning a living.

The EA provides for a reporting system for sexual harassment in the workplace through the requirement for a sexual harassment policy. However, the requirement for the policy is only when there are 20 or more employees in the workplace. This type of environment is more geared to organization based where there are many employees. However domestic workers normally work in private households where

the law has not made provisions for any formal reporting mechanisms in such cases. Sexual harassment incidents are therefore likely to remain unreported.

The Sexual Offences Act includes measures to safeguard individuals from sexual harassment. According to Section 23(1) of the Act, any individual in a position of authority or holding a public office who repeatedly makes unwanted sexual advances or requests is committing the crime of sexual harassment, even if they have reasonable grounds to suspect that their behavior is not welcome.

Concerning remuneration and the protection of their wages, the EA provides in section 17(1) that every employer shall pay the entire amount of wages earned or payable to an employee in respect of the work done by the employee. The highest minimum wage that a domestic worker is to be paid within Nairobi, Mombasa and Kisumu is Kshs. 13,572.90 (The Regulation Of Wages (General) (Amendment) Order, 2018). However, many domestic workers are being underpaid and sometimes their wages are withheld or subjected to unlawful deductions. Enforcement of these provisions is a major challenge, especially in an economy which is in crisis such as the Kenyan one. Strict enforcement of these provisions may lead to many employers being unable to employ domestic workers as they cannot afford the minimum wages. This will in turn lead to a cycle of poverty with many women having no jobs or steady source of income.

By virtue of the Bill of rights in the Constitution of Kenya, domestic workers have several rights including, the right to leave, the right to rest and leisure, the right to fair treatment including fair dismissal, the right to social protection, freedom of association and even the right to collective bargaining.

According to Section 4 of the Labour Relations Act, all employees have the right to participate in creating a trade union and to join or leave one. Section 5 prohibits employers from discriminating against employees who exercise their rights under the Act. This includes not forcing employees or job seekers



to avoid joining or leaving a trade union, preventing them from exercising their rights, or punishing them for participating in trade union activities. For domestic workers to effectively advocate for their rights in the workplace, they need to have a collective voice. However, many domestic workers fear joining unions because they may not get employed or may be dismissed if their employer finds out that they are members of a trade union. Many also do not know of their rights to join and participate in a trade union, and they do not have information as to how trade unions can represent them in advocating for their rights in the workplace. In Kenya, the KUDHEIHA (Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied Workers) union has been the only trade union that domestic workers can join.

On the international level, the ILO formulated the Domestic Workers Convention (The Domestic Workers Convention No.189, 2011). The Convention was put in place in recognition that domestic work is invisible and undervalued and mainly carried out by women and girls who are vulnerable to discrimination and abuses of human rights. There was also the recognition that in developing countries where there are limited resources, the employment opportunities are limited and therefore domestic work constitutes a significant proportion of the workforce, even if it is marginalized.

The Convention requires member states to take measures to promote and protect the human rights of domestic workers particularly on issues such as the right of freedom of association and the right to collective bargaining, the protection against forced and compulsory labour, worst forms of child labour, discrimination, sexual harassment and violence. The Convention also requires Member states to put in measures to ensure that factors such as age, time spent at work, remuneration, terms of the contract, accommodation, etc are taken into account and laws put in place to protect domestic workers on these fronts.

The Convention is a good move towards the enhanced protection of domestic workers and its ratification would mean that in Kenya, it would automatically form part of domestic law. However, Kenya has to date, not ratified this important Convention. This leaves domestic workers, particularly women, under the general protection provisions of the Employment Act and other labour laws, without recognition of the specific needs and interests of domestic workers that need to be addressed legally.

Other ILO Conventions that are relevant to the issue of domestic work are the Minimum Age Convention and the Worst Forms of Child Labour Convention. These are important in terms of setting out the minimum age of work for children and for the protection of children against exploitative and abusive forms of labour that breach their fundamental and human rights.

c) Financial Inclusion and Access to Control and Ownership of Resources

As the statistics show, the majority of workers in the informal labour sector are women. Informal enterprises are hampered in their growth and one of the reasons could be the challenges faced by women in accessing financial services. One of the main goals of any policies and laws that are formulated with respect to the financial inclusion of women is to accelerate their participation in the labour market to enhance their social economic and even political empowerment. In SDG Target 5A states are called upon to 'undertake reforms to give women equal rights to economic resources as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources under national laws.'

Women are limited in their access to formal financial services e.g. loans from the bank. This is due to various factors, including the inability to provide the appropriate collateral that is needed to take out the credit facilities.

Most banks would seek collateral in the form of title deeds to property which women may not have, or not have in their names (perhaps the titles are in the names of spouses or partners). Women would then be disadvantaged because of social stigma and exclusion as a result of widowhood, separation and divorce from their spouses. Commercial banks are also biased towards formal businesses which are predominantly male-dominated leaving out informal businesses which are female-dominated.

The benefits of financial inclusion for women are that they can accumulate assets that they can use to generate income to manage various financial risks and fully participate in the economy of the country. In Kenya, most women are asset poor and therefore leverage social networks as assets.

On its own, however, financial inclusion will not necessarily result in gender equality in the labour sector. There need to be equal access to needs-based financial services e.g. insurance, credit, payments, savings, and financial education.

Financial inclusion and inclusive finance are both ways that women get access, control and ownership of resources which is critical for the achievement of gender equality. Access to work (and decent work at that) whether in the formal or informal sector gives a pathway to financial inclusion and resources. Decent and reasonable work enables women to get remuneration that would enable them to obtain assets. The access to a steady source of income enables them to get access to credit and financial services. There is an intersectionality between access to financial services and access to assets such as land, inherited resources, secure housing and control of resources.

The current labour regulatory framework does not seem to specifically target the financial inclusion of women and their access to resources. However, the argument is that access to decent working conditions where there is decent pay for work done is an enabler to get a decent income; and where discrimination is eliminated and there are provisions that give social protection to women is a pathway to enhancing financial inclusion for women.

The Ministry of Public Service and Gender, under the State Department of Gender, formulated the 'Women Economic Empowerment Strategy: 2020-2025'. The Strategy recognizes the place of fair labour practices as one of the interventions needed to enhance the economic empowerment of women. Focus is given to women in the informal sector who are undervalued and face difficult working conditions. Other strategic interventions that are highlighted in the strategy that will enhance access to resources and financial inclusion include the following:

d. Access to Labour Justice

When it comes to labour justice, women must have an enabling environment for them to access justice without discrimination and other socio-economic hindrances. They also need legal empowerment to access justice. There need to be gender-responsive justice institutions. This means examining parameters such as gender representation in the Employment and Labour Relations Court and whether there is an awareness of the unique needs and interests of women when making judgements in labour disputes pitting women employees against their employers and other employees. For example, their predisposition and vulnerability to sexual and gender-based violence and harassment in the workplace, maternity and occupational health, etc. It also entails examining whether there has been government investment in capacity building and sensitization activities to train employment and labour judges on the gender issues that they should be aware of when listening and making judgements on disputes.



Even though the Employment and Labour Relations Court, its processes and procedures for dispute resolution are largely gender neutral, nevertheless, the Court has made some rulings on various issues that have indicated that some judges are sensitive to the gender-nuanced issues that certain cases present.

The following are some of the cases where gender issues came up within the rulings of the Employment and Labour Court.

1. Women and Sexual Harassment

a. P O v Board of Trustees, A F & 2 others [2014]eKLR

Brief facts of the case

The claimant was an employee of the first respondent. Her duties included travelling around and talking to women farmers. The events leading to this case were that; the 2nd respondent asked the claimant to accompany him to Cape Town to see some seedlings. While in Cape Town he started making sexual approaches towards the claimant. Receiving no positive response from the claimant, the 2nd respondent was angered and made claims of spending a lot of money on the claimant only for her to rebuff his approaches. He hit the claimant. The respondent instead of booking two separate rooms booked only one room forcing the claimant to sleep on the floor while he used the bed. The next day the claimant received an air ticket from the agency and came back to Kenya. The respondent on arriving back from the conference started sending threatening messages to the claimant. The claimant's contract was later terminated through an email.

Issues for determination

- a) Whether the claimant was employed by the respondent
- b) Whether the termination was fair and lawful
- c) Whether the claimant is entitled to the prayers sought

The rule

- Sexual harassment negates gender equality

Held

- The termination of the claimant was unlawful, unfair and discriminative

b. NML v Peter Petraush (2015) eKLR (see paras 27 – 35)

Brief Facts of the Case

The respondent, a German national, unlawfully terminated the employment of the claimant, a domestic worker, on May 10, 2013 after eight months of working together. The claimant claimed that on several occasions the respondent sexually harassed her. She claimed that the respondent sexually harassed her by requesting sexual acts with the threat of employment termination, unwelcome physical touches such as touching her buttocks, touching her breast, forcing her to watch pornographic films and retrieving a coffee cup which was placed on the respondent's genitalia. The claimant reported the respondent's sexual harassment to the police and used the charge sheet as evidence in the civil case. Issues for determination.

a) Whether the claimant was sexually harassed by the respondent

b) Whether claimant is entitled to the reliefs sought

Rule

An employee is deemed as sexually harassed if the employer or that employee or a representative of that employer or a co-worker:

- (a) directly or indirectly requests that the employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express: -
 - (i) promise of preferential treatment in employment
 - (ii) threat of detrimental treatment in employmentor
 - (iii) threat about the present or future employment status of the employee

- (b) uses language, whether written or spoken, of sexual nature
- (c) uses visual material of a sexual nature or
- (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.

Conclusion

The court found the Respondent liable for sexual harassment and ordered him to pay general damages of Kshs. 1,200,000. The court further explained that gender-based violence cannot be adequately addressed by the 12 monthly salary ceiling given for unfair termination as provided by the 2007 Employment Act. The court was of the view that gender violence entails multiple rights violations that should not be summed up as unfair termination of employment.

See also: *GMV v Bank Of Africa (2013) Eklr* – this case also demonstrates the kind of compensation that should be given in sexual harassment cases – the court emphasized that gender-based violence in the workplace cannot adequately be redressed through the ceiling of 12 months' salary that is given for unfair termination. It includes a violation of multiple rights i.e., Articles 27, 28 and 41 of the Constitution of Kenya

c. MWM v MFS V (2014) eKLR

Brief Facts of the Case

Here are the details of the situation: The individual in question began working for the employer on March 1st, 2011, under a five-year contract that was ultimately altered to become a permanent and pensionable position on August 12th, 2012. The claimant received a promotion to branch manager at a later point in time. However, a customer complaint arose, which eventually led to disciplinary measures being taken against her. She was allowed to defend herself by answering structured questions. The disciplinary panel reached a verdict and redeployed her as a recovery officer. The claimant responded to the

verdict as follows, "disrespectful, contemptuous of staff, putting staff at security risk and compromising the core value of the company". The Claimant was later summarily dismissed in a letter that asserted, "for the claimant's disrespectful conduct exhibited during and after the disciplinary action taken against her between 28/5/13 and 18/6/13, following the altercation between her and a customer". Further, the claimant claimed the MD also sexually harassed her by severally hugging her.

Issues for Determination

- a) Whether the summary dismissal of the claimant amounted to a breach of the contract of employment
- b) Whether the claimant was sexually harassed by the respondent's MD
- c) Whether the claimant is entitled to the reliefs sought.

Conclusion

The court concluded that the summary dismissal of the claimant breached her employment contract. The court further explained that without a mechanism for reporting sexual harassment, the claimant could not be faulted for not reporting. It was held that the respondent would not benefit from the claimant not reporting the case as there was no reporting mechanism put in place

d. SRM v GSS(K) Limited & Ano (2017) eKLR

Brief Facts of the Case

From 1985 to 1994, and then again from February 1996, the plaintiff worked for the 1st defendant in its Information Technology Department. The plaintiff alleged that between 2005 and 2006, the first respondent made unwanted sexual advances towards her. She reported the sexual harassment to the Human Resources manager using the employer's internal reporting procedure, which was outlined in the sexual harassment policy. However, the HR manager was also the perpetrator of the harassment and retaliated against the plaintiff by excluding her



from training and denying her permission to use company transportation to attend evening classes at the university, despite a prior agreement. Since the plaintiff did not receive any internal remedy, she sought the help of the court. Issues for determination

- a) Did the 1st respondent handle the claimant's sexual harassment complaint appropriately and effectively?
- b) Was there any truth to the claimant's allegations of sexual harassment?
- c) If the sexual harassment allegations are proven, are both respondents responsible for compensating the claimant, or is only one of them liable?
- d) If the claimant is entitled to damages, what is the appropriate amount to award? *Rule*

An employee is sexually harassed if the employer or a co-worker directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains or implies the promise of preferential treatment in employment or threat of detrimental treatment.

Conclusion

The court acknowledged that sexual harassment at the place of work amounts to gender-based violence. The court further recognized that only a few cases of sexual harassment are reported and litigated in court. The court also appreciated the presence of a power imbalance in the relationship between the claimant and the alleged offender. On the issue of standard of proof, the court explained that sexual harassment cases are scaled on a balance of probabilities.

e. JWN v Securex Agencies (K) Ltd (2018) eKLR

Brief Facts of the Case

The facts of the case were that the claimant was employed as a guard by the respondent and assigned Nakumatt Junction Mall as the premise of work. During a routine morning parade, a respondent's supervisor confronted the claimant asserting that the previous night's CCTV indicated that she had been

having sex while on duty. He publicly confronted the Claimant. The action resulted in the Claimant breaking down and sobbing. The statement was later retracted as it was based on falsehood. The claimant further explained that the respondent had no sexual harassment policy and such, she could not report the issue. Drained emotionally, the claimant left the parade and subsequently failed to show up at work.

Issues for determination

Did the employer have a valid reason for constructive termination? If not, is the claimant entitled to remedies? *Rule of law* relied upon by the Judge

Every person has inherent dignity and the right to have that dignity respected and protected.

Conclusion

The court determined that the respondent's actions, specifically the public humiliation of the claimant by their supervisor, had a severe and negative impact on the claimant. The claimant testified that as a result of the incident, she experienced emotional exhaustion and broke down in tears. The court further asserted that the respondent's offensive conduct is "aggravated by the respondent's failure to institute or invoke a policy statement on sexual harassment and which would have protected the claimant as envisaged in section 6 of the Act. Second, the humiliation and harassment had a serious effect leading to the unfair constructive loss of employment as well as anxiety between the claimant and her husband."

f. Lydia Mongina Mokaya v St Leonards Maternity Nursing Home

Brief Facts of the Case

The facts of the case were that the claimant was employed as a clinical officer by the respondent and was posted at Nyansiongo. Despite being employed, she was not offered an employment contract. The Claimant worked from Sunday to Sunday. Further, the Claimant asserts that the respondent's manager continuously asked her for sexual favours. She was later transferred to Chepilat, 20 kilometres

from Nyansiongo where she resided. The daily commuting caused her inconvenience. Through a letter dated 1st December 2014, the Respondent asked their employees to reapply for their positions. The Claimant was the only person who failed to retain her post. The Claimant further asserted that her situation was a result of her sexual harassment escapades with the respondent's manager.

Issues for determination

Was the claimant wrongfully, unfairly, and unlawfully terminated? Is the relief sought entitled to the claimant? Who bears the claim costs? Rules

"An employee is sexually harassed if the employer of that employee or a co-worker-

- a) Directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express-
 - i) Promise of preferential treatment in employment;
 - ii) Threat of detrimental treatment in employment;
 - iii) Threat about the present or future employment status of the employee.
- b) Uses language whether written or spoken of a sexual nature.

Conclusion

The court concluded as follows, "Cases and instances of sexual harassment are extremely personalized and difficult to prove. More often than not, these would not be documented but comprise overt and covert overtures by the offending party. It is therefore expected that when this arises, action should be taken towards reporting or raising the same with the powers that be, the employer or his agents." The court believed that the respondent's manager's actions amounted to sexual harassment and that the Claimant was entitled to the relief she sought.

2. WOMEN AND PAYMENT INEQUALITY

a. VMK v CUEA [2013] eKLR

Brief Facts of the Case

The facts of the case were that the Claimant was an employee of the Respondent from the year 2000



when she joined as a casual employee holding the post of a telephone operator. She was earning Kshs. 7000 as basic pay without benefits. There were two male employees in the same position employed on permanent and pensionable terms. In the year 2003, the claimant responded to an internal advert and was later told that she was successful, but was also made aware that the position depended on her medical conditions. She was tested and after a few days were informed that she was HIV positive. She had not consented to the HIV test and was not counselled. The respondent failed to inform the claimant about the permanent post. The claimant continued working on a casual basis. She received no allowances or health benefits, in contrast to her male colleagues, who were earning up to 4.2 more than the applicant. At some point, the claimant asked to be employed permanently but the respondent refused. The claimant later learned that the respondent refused to offer her a permanent contract because of her HIV status. Further, when she became pregnant, she was not offered a paid leave and when she returned to work, she was given a termination letter.

Issues

- a) Whether the Claimant was discriminated against and denied fair and equal employment terms and conditions on the basis of gender by denying her permanent and pensionable employment terms as enjoyed by her two male counterparts in the same position.
- b) Whether the Claimant was discriminated against, denied fair and equal employment terms and conditions and terminated from her employment due to her HIV status.

- c) Whether the Claimant was discriminated against based on pregnancy by denying her paid maternity leave contrary to the express provision of Section 29 (1) of the Employment Act.

Rule Relied Upon by the Judge

"No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee

- a) On grounds of...sex...pregnancy...or HIV status"

Conclusion

The Court found that the claimant had initially been discriminated against based on her sex, in that she did not receive equal remuneration for work of equal value. She had also been subjected to pregnancy discrimination. The Court also found that the claimant had been discriminated against based on her HIV status.

3. WOMEN AND SOCIAL PROTECTION

a. G M V v Bank of Africa Kenya Limited [2013] eKLR

Brief Facts of the Case

The facts of the case were that the claimant was an employee of the respondent for five years. In the last two years of her employment, she was blessed with two issues. While the first pregnancy had a few difficulties, the second pregnancy was not smooth, forcing the claimant to take sick leave. The respondent later terminated the contract of the claimant, an action that the claimant asserted was a result of her pregnancy and not her performance. The claimant, aggrieved, instituted the suit claiming unfair discrimination under Section 5 of the Employment Act of 2007.

Issues

- Whether the dismissal of the claimant amounts to discrimination under Section 5 of the Employment Act

Rule Relied Upon by the Judge

In any proceedings where a contravention of Section

5 (3) is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged and that the discriminatory act or omission is not based on any grounds specified in this Section. The court further explained that gender violence cannot be adequately redressed through the ceiling of 12 months' salary given for unfair termination under the Employment Act. The court must therefore be careful not to see sexual harassment as just another unfair termination.

Conclusion

The court declared that the respondent's actions discriminated against and violated the claimant's constitutional rights.

b. Mercy Gakii Nabea v Malindi Management Strategy Ltd (2019) eKLR

Brief Facts of the Case

On 1st December 2007, the Claimant was employed by the Respondent as a security guard. On 12th December 2017, she applied for maternity leave which was granted. While still on maternity she received a letter terminating her employment contract on account of redundancy and a sum of Kshs. 65,159, which she declined, was offered to her, leading to the institution of this case.

Issues

- a) Whether the termination of the Claimant's employment was lawful and fair;
- b) Whether the Claimant is entitled to the remedies sought.

Rule

(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions -

- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of reasons for, and the extent of, the intended redundancy not less than a month prior

to the date of the intended date of termination on account of redundancy;

- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
- (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave-in cash;
- (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- (g) the employer has paid an employee declared redundant severance pay at the rate of not less than fifteen days pays for each completed year of service.

Conclusion

The court concluded that the Respondent's actions amounted to unlawful and unfair termination of employment. Further, the court explained that the actions of the respondent amounted to discrimination based on pregnancy.

c. Tracy Wangechi Mugambi v Windsor Golf Hotel and Country Club [2019] eKLR

Brief Facts of the Case

The facts of the case were that the Petitioner was employed by the respondent as a hostess on 4th September 2009, and was later promoted to the position of supervisor in 2011. She held the supervisor

position until 18th January 2016 when the Respondent terminated her services from employment. In October 2014, the petitioner became pregnant, a situation that she informed the Respondent about, but continued to perform her duties diligently. On 4th February 2015, the Petitioner received a phone call from the Banqueting Manager, enquiring when she was due and that the director had requested that she proceeds on leave as she seems to be tired and that she should return to work upon delivering. The Petitioner proceeded on leave as directed despite not being issued with leave forms from the Respondent's human resource department, though the leave was paid. She delivered in July 2015 and thereafter, proceeded on leave, until December 2015. The petitioner received her termination letter on 18th January 2016. The Petitioner contends that the termination of her employment services was unlawful, wrongful, unfair, arbitrary, in bad faith, discriminatory, unconstitutional and occasioned by factors other than those within the terms and conditions of her contract of employment.

Issues

Whether the dismissal of the claimant amounts to discrimination under Section 5 of the Employment Act

Rule

A person shall not discriminate directly or indirectly against another person based on pregnancy

Conclusion

Employment and Labour Court directed the Windsor Hotel and Country Club to pay Ms Tracy Wangechi Mugambi Kshs. 2.5 million (approx. USD 25000) for sacking her over a pregnancy. The Court held that Ms Tracy Wangechi Mugambi was discriminated against when she was sacked just after resuming duty from maternity leave. The Judge relied on Article 27(4) of the Constitution, which is explicit that no one should be discriminated against on account of pregnancy. A person shall not discriminate directly or indirectly against another person based on pregnancy.



ON DISABILITY

a. Juliet Mwangela Muema v Smollan Kenya Ltd (Cause No 104 of 2017)

Brief Facts of the Case

"The claimant suffered low vision and requested screen reader software. The employer rejected the request and transferred her to another division. The court found that failure to provide the claimant with a screen-reader and subsequent transfer which amounted to demotion was discrimination. That it was a contravention of Articles 10, 27, 28, 41 and 54 of the Constitution."

UNPAID WORK/CARE ECONOMY

Care Economy

Domestic Workers

a. Robai Musinzi v Sadfar Mohamed Khan (2012) eKLR

Brief Facts of the Case

The Plaintiff sued for wrongful dismissal and refusal by the employer to pay terminal dues. She claimed that she was employed as a domestic worker in August 2007 on a monthly salary of Kshs. 11,000. She worked from 8.30am to 7:00pm without break or overtime for seven days a week. Her duties were cleaning, babysitting, taking care of 5 children and other duties as assigned to her. There was no written contract of employment issued to her and there were no statutory contributions deducted from her salary e.g. NHIF, NSSF. She was not given accommodation and had to commute every day without being given any transport allowance. She was summarily dismissed on 11th October 2011.

The Court held:

That the lack of a written contract of service did not disprove the fact that she was not an employee. Oral contracts sufficed. It was found that she was unfairly dismissed and compensated accordingly.

b. National Union of Domestic Workers v Registrar of Trade Unions (2019) eKLR

Brief Facts of the Case

On 26th March 2016, the Appellants made an application vide Section 12(1) of the Labour Relations Act to have the Kenya National Union of Domestic Workers registered. The appellants made the application arguing that the general union did not capture the unique services rendered by domestic workers. The respondent denied the application. The appellants believed that the denial was discriminatory against domestic workers.

Issues

- Whether the registrar of trade unions, the respondent was justified to refuse the Appellant union registration.
- Whether the Appellant is entitled to the reliefs sought.

Rule

"Any treaty or convention ratified by Kenya shall form part of the law of Kenya under the constitution"

Conclusion

The court asserted that through Article 2(6) of the 2010 constitution, international laws apply to Kenya. The court went further to state that the denial of registration does not have any reasonable justification.

c. Mebo Ambogo Lundu v Moses Nderitu (2014) eKLR

Brief Facts of the Case

The person who filed the claim was hired by the Respondent as both a loader and domestic servant in August 2002. They continued to work in that position until their contract was unexpectedly terminated in April 2012 without any explanation. Feeling mistreated, the claimant decided to take the matter to court. However, the Respondent did not respond to the suit or attend court proceedings. Issues for Determination

- a) Whether the termination was unlawful
- b) Whether the Claimant is entitled to the prayers sought

Rule

Every person has the right to fair labour practices

Conclusion

The Respondent has not entered appearance and having not defended the suit, the court found in favour of the claimant.

d. Khobesh Agencies Ltd & 32 others v Minister of Foreign Affairs & International Relations & 4 others (2013) eKLR–

Brief Facts of the Case

The government suspended the recruitment and export of domestic workers to the Middle East in a press release sent to media houses by its Political and Diplomatic Secretary on July 22, 2012. The government asserted that the conditions of work to which the Kenyans in the country worked were deplorable and inhuman. The applicant’s business of taking Kenyan workers to the Middle East was greatly affected forcing it to apply to the court to quash the government directive.

Issues

Whether the applicant is entitled to the prayers sought.

Rule of law

“Judicial review is about fair treatment and for it to remain relevant now and in the future, it must reach out to enhance democracy and public morality – it has a glorious role and future and in this role, it has a partner in the Constitution and as partners, the two must keep almost the same pace.”

Conclusion

The court sided with the government on a directive on the suspension of recruitment and export of domestic workers to the Middle East until protective regulations had been put in place by those countries to protect the well-being and human rights of Kenyan domestic workers.

UNPAID WORK

MW v AN (2021) eKLR

Brief Facts of the Case

The two parties to the suit were married on 1st September 1990 and their marriage was later dissolved in 2011. Plaintiff prayed that the matrimonial property be sold and the proceeds be shared equally. Defendant disagreed with the wife, asserting that he built the matrimonial home himself without the wife’s contribution.

Issue

- a) Is LR Nakuru Municipality Block xxx (Klti Estate) considered matrimonial property?
- b) Did both parties contribute to the purchase of the plot and the construction of the house?
- c) Are the two properties in Kiamunyi and Piave also considered matrimonial?
- d) Did both parties contribute to the purchase of these properties?
- e) Did the defendant deposit any money into the plaintiff’s account to refund the loans the plaintiff took to clear outstanding loan balances?
- f) What orders should be issued in this case?
- g) Who is responsible for bearing the costs?

“... where the disputed property is not registered in the names of the spouses but is registered in the name of one of the spouses, the beneficial share of each spouse would ultimately depend on the proven respective proportions of financial contribution either indirect or direct towards the acquisition of the property. However, in cases where each spouse has made a substantial but unascertainable contribution it may be equitable to apply the maxim equality is equity”

Conclusion

The court eventually held that the property, even though it was registered in the name of the husband, did not belong to the husband alone but was co-owned by the Plaintiff and the Defendant. The court further asserted that “raising children is a full-time job that families pay a person to do. Cooking and cleaning as well”



7.0 RESPONSE STRATEGIES

To promote gender equality in the workplace, it is necessary to take several steps. Firstly, the legal and administrative framework for labour administration should be strengthened to allow women to participate in traditionally male-dominated industries such as construction, mining, and infrastructure development. Secondly, the recruitment, appointment, and promotion of women and men should comply with the 'not more than two-thirds gender principle' to increase inclusivity and visibility. Thirdly, policies should be implemented to support minimum wage guidelines, work hour regulations, and protection for trade union and collective bargaining rights, especially for women, to reduce the disparities in access to economic opportunities, earnings, and productivity gaps.

It is critical to recognize unpaid care and domestic work and ensure shared responsibility within households. Investing in social services, infrastructure provision, and social protection policies can help to reduce the burden on women. A database of employment records for women and men in both the formal and informal sectors should be established to track, evaluate, and improve employment conditions, especially for women. Moreover, skills development programs and projects should be reviewed and targeted towards increasing decent employment for everyone, particularly women.

Building capacities of women's entrepreneurial skills linked with start-up capital and regulating job security for women and men on maternity/paternity leave can help to ensure their protection and safety, especially for women working in the informal sector, including women with disabilities.

8.0 CONCLUSION

The Employment Act of 2007 and its amended version have major gaps that lead to payment inequalities and women's contribution is not recognized. The women who are employed under precarious work are not fully recognized or protected by the Act. There is a need to amend the Act to ensure that it covers informal employment and increase social protection coverage as well as increase financial inclusion to facilitate women's economic empowerment.

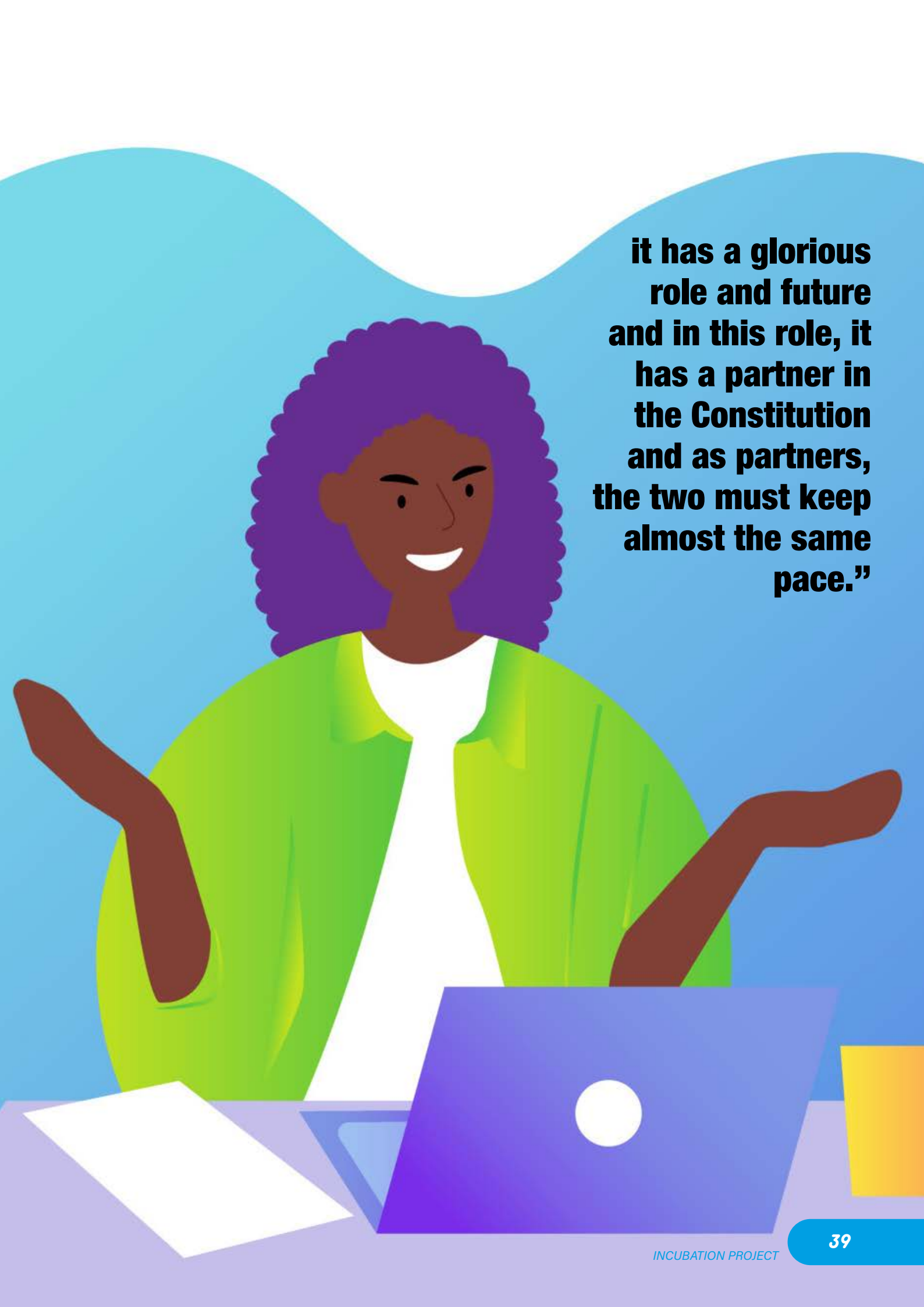
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INITIATIVES FOR WHAT WORKS FOR WOMEN'S
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