

MAINSTREAMING
GIG WORK IN THE
LABOUR LAWS IN KENYA



ALEXANDER VON HUMBOLDT INSTITUTE FOR INTERNET AND SOCIETY

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Policy brief

Alexander von Humboldt Institute for Internet and Society

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Berlin, April 2023



INTRODUCTION

The gig economy is an economic model where people use digital platforms to find work. A 2021 report by the Federation of Kenya Employers notes that employment in the informal sector has been steadily increasing from 10% in 1974 to 83% in 2018 (Federation of Kenya Employers, 2021). The inverse is true for employment in the formal sector where employment rates have reduced from 90% in 1974 to 18% in 2018. Furthermore, data from Statista indicates that in 2019, for instance, 768,000 new informal jobs were created in the country compared to 78,600 new formal jobs (Statista, 2023). Therefore, the present and future of work in Kenya is one where workers will be engaged in multiple gig-work undertakings with varied levels of formality and high levels of flexibility.

Most gig platforms fashion themselves as mediators whose only role is matching labour supply and client demand. This allows them to evade employment regulations that would otherwise apply to them. The situation is exacerbated by the fact that most countries have no labour laws for gig work. For instance, Kenya has no law that specifically protects its gig workers, who are treated as independent contractors with no entitlement to any long-term benefits. The International Labour Office acknowledges that existing laws in most countries do not adequately address labour issues in the gig economy because they are often incomplete, too vague, out of date or lacking in clear definitions of the players in the industry.

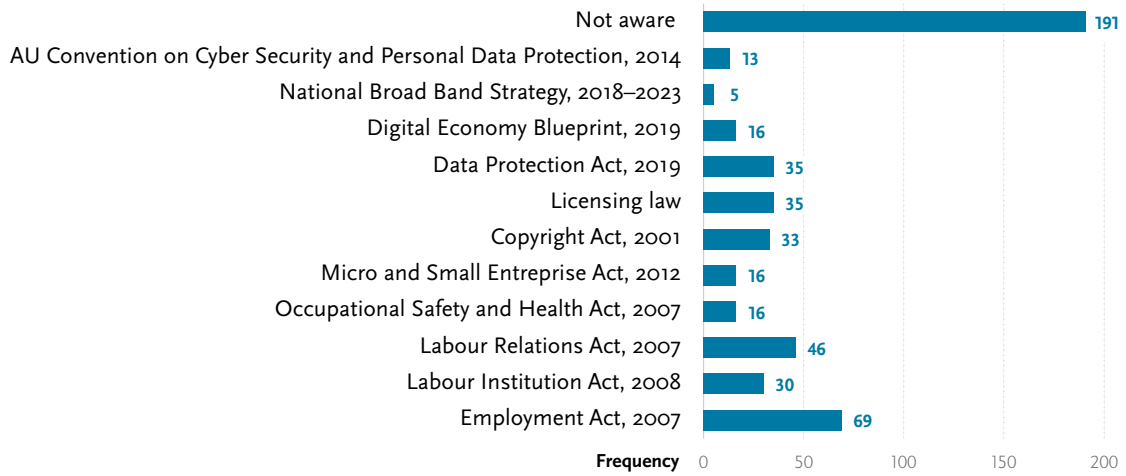
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LEGAL CHALLENGES TO THE GIG ECONOMY IN KENYA

A number of laws, policies and strategies which may have relevance to the regulation of gig work in Kenya have been enacted and are in force. These include the Employment Act, 2007; Labour Institutions Act, 2008; Labour Relations Act, 2007; Occupation Safety and Health Act, 2007; Micro and Small Enterprise Act, 2012; licensing laws; Copyright Act, 2001; Digital Economy Blueprint – Kenya; National Broadband Strategy (2018-2023); Kenya Data Protection Act 2019; and the African Union Convention on Cyber Security and Personal Data Protection.

Evidence from a recent study of 314 online gig workers by the Alexander von Humboldt Institute for Internet and Society in cooperation with the Digital Centre Kenya of the Gesellschaft für Internationale Zusammenarbeit (GIZ) revealed that the provisions of these laws, policies and strategies are not being applied to gig work because they were tailor-made for the traditional work environment (Wakunuma & Kwanya, 2023). Similarly, 191 (60.8%) of the 314 gig workers were unaware of them. The study also revealed that while the majority or 256 (81.5%) of the respondents had a contract, 58 (18.5%) had none. Furthermore, 22 (7%) of the respondents did not know their terms of engagement. Similarly, there was generally a low awareness of labour unions and welfare societies among gig workers, with only 79 (25%) of the workers naming the Central Organisation of Trade Unions (COTU) as the union of which they are aware.

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Awareness of platform regulation instruments in Kenya among 314 Kenyan gig workers (Wakunuma & Kwanya, 2023)

CONCLUSION

The lack of laws specific to the gig economy is also a challenge to effective regulation of gig platforms. Existing laws in Kenya do not recognise gig workers as employees. Lack of awareness of the legislative and policy frameworks for regulating gig work in the country presented another challenge. Therefore, most of the gig workers are unaware of their rights. Without this knowledge, the workers are vulnerable to exploitation.

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POLICY RECOMMENDATIONS

- The Government of Kenya should recognise gig work as employment and gig workers as employees whose rights need to be protected legally.
- The Government of Kenya, in collaboration with the other stakeholders, should review, revise and/or update legal and policy frameworks governing terms of employment, workers' rights and welfare to include the interests of gig workers.
- Gig workers in Kenya should be informed about their rights as employees and should be encouraged to join unions that can lobby for their rights.
- Civil society organisations as well as unions should provide affordable or free legal advice or representation to gig workers whose rights are violated but who have no means of seeking legal redress.

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IMPRINT

A policy brief published by the Alexander von Humboldt Institute for Internet and Society.

PUBLISHED

April 2023

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PUBLISHER

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DESIGN

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KEYWORDS

Gig Work, Kenya, Regulation, Labour Legislation

CITATION

Kwanya, T. & Wakunuma, K. (2023). Mainstreaming Gig Work in the Labour Laws in Kenya.

HIIG Impact Publication Series. DOI: <https://doi.org/10.5281/zenodo.7572506>