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ECONOMIC & SOCIAL RIGHTS REPORT KENYA

Zoom on Decent Work

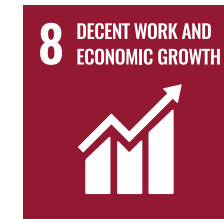


SUMMARY

How can the European Union (EU) better contribute to building an enabling space for Civil Society Organizations (CSOs) in Kenya? How can the EU support the progressive realization of Freedom of Association and the Right to Organise, Decent Work and the Right to Social Protection for all in connection with the implementation of the 2030 Agenda for Sustainable Development?

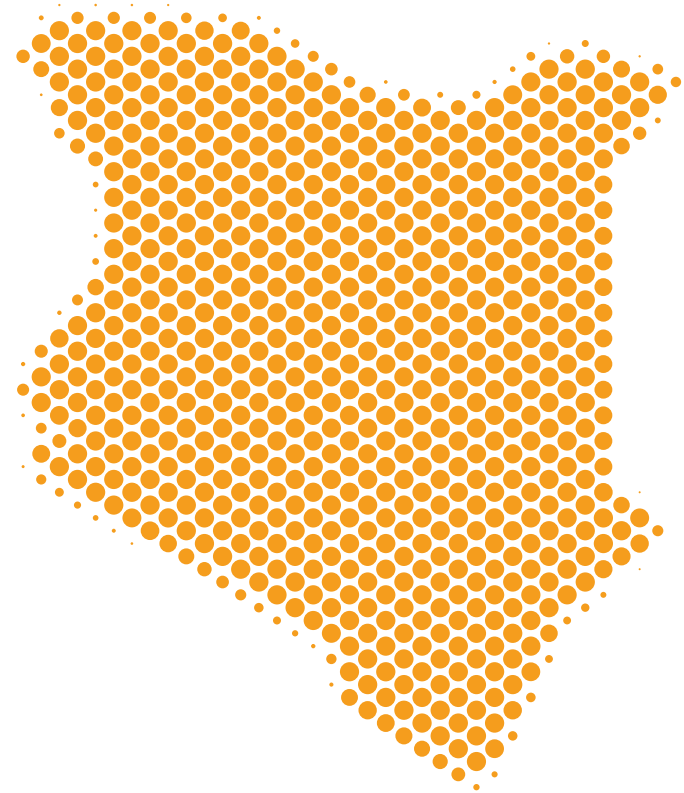
The SOLIDAR Network is active in Kenya through its member, **Forum for International Cooperation** (FIC), and its partner organisations. Its first Economic and Social Rights Report on the country, published in early 2020, provided an overview of the challenges faced by Kenyans in respect to matters such as Decent Work, Social Protection as well as enabling space for civil society. Building on that report, the current one, realised under the leadership of FIC, takes a closer look at the main challenges faced by the country regarding the achievement of the rights of Decent Work and Social Protection for Kenyans. The report concludes with recommendations for the EU and its Delegation to Kenya on how to support the country in achieving the full realisation of these rights for its people and workers.

FOCUS ON SUSTAINABLE DEVELOPMENT GOALS



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1. ABOUT THE SOLIDAR SOCIAL AND ECONOMIC RIGHTS MONITOR

In 2015, all United Nations member states signed up to the 2030 Agenda for Sustainable Development: a global commitment to transform our current model of economic development into one based on respect for human rights and the environment. In 2017 - with the aim of promoting policy coherence for development - the new European Consensus on Development announced the alignment of the development policies and operations of the EU and its member states with the 2030 Agenda.

According to SOLIDAR, the 2030 Agenda constitutes a powerful framework to:

1. Promote a model of sustainable development at the service of the greatest number and not of the few, making the full realization of human and environmental rights its main objective;
2. Ensure the progressive realization of economic and social rights, namely decent work, social protection and freedom of association.

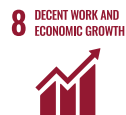
The Economic and Social Rights Monitoring Report (ESRM) is a tool developed by SOLIDAR members and partners within the framework of the EU-funded program “Organizing International Solidarity” (OIS).¹ The scope of the ESRM is to engage in a structured dialogue with the EU, and to contribute to the EU Programming for the period 2021-2027, by collecting the views and recommendations of civil society organizations (CSOs) on the contribution of national and European policies and programs to the achievement of the Sustainable Development Goal, and especially of:



SDG 3: Good health and Wellbeing



SDG 4: Quality Education



SDG 8: Decent Work and economic growth



SDG 17: Partnership for the Goals

The ESRM pay special attention to EU and national contributions to the promotion of (1) an enabling environment for CSOs and Human Rights Defenders and (2) Decent Work and Social Protection for all.

In February 2020, the SOLIDAR Network presented its first Economic and Social Rights Report on Kenya,² covering both of these priority axes. The aim of the current report, on the other hand, is to take a closer look at the challenges that Kenya is currently facing in regard to guaranteeing the right to Decent Work and Social Protection for all, while also paying attention to the impact caused by COVID-19 on people’s working conditions and ability to work. The report concludes with recommendations for the EU and its Delegation to Kenya on how to support the country towards the achievement of the full realisation of these rights for all.

¹ A presentation of the OIS programme is available at: <https://prezi.com/view/9zuxuivoqUSD3w1pGJSz>.

² SOLIDAR (2020). Economic and Social Rights Monitor – Kenya: <https://www.solidar.org/en/publications/economic-and-social-rights-monitor-kenya>.



2. DECENT WORK FOR ALL IN KENYA – AN OVERVIEW OF THE CURRENT REALITY

Kenya is a lower-middle income country with well organised industrial relations, but with structural challenges affecting its labour market. Its economic growth has been robust in recent years, and has been accompanied by increasing wages, although a majority of the workforce still operates in the informal economy (83%),³ where non-compliance with labour regulations is the norm.

In recent years, **the country has been making progress in consolidating its national social protection system.** Yet, just around one out of ten (10%) of the population is covered by at least one social protection benefit while only one out of four (25%) above retirement age receives a pension.⁴ No specific protection directly addressing unemployment is available.

The low coverage of social protection mirrors the vulnerable employment conditions present in Kenya, which are also a consequence of the troubled industrial relations ambience that has led to a decrease in workers' affiliations to Trade Unions in recent times. Indeed, the increase in precarious and non-standard working conditions has resulted in a reduction in the number of workers in formal employment. Affiliation to labour unions has in fact become more and more of a risk for workers, as the **right to freedom of peaceful assembly is yet to be sufficiently protected in Kenyan law, and this right is routinely violated by law enforcement authorities responding to protests.** For instance, the ITUC 2020 Global Rights Index gives Kenya a rating of 4 (5+ representing the worst rating) for violation of labour rights, due to the government and companies being engaged in systematic efforts to silence workers' voices.

³ (2018) Estimates of the Kenya National Bureau of Statistics.

⁴ K4D (2018). Jobs in Kenya: Opportunities and Challenges: https://assets.publishing.service.gov.uk/media/5afacd43ed915d0df4e8ce4d/Jobs_in_Kenya.pdf.

Beside the systematic violation of workers' rights, one of the biggest challenges of the Kenyan job market remains youth unemployment. Approximately 800,000 young Kenyans enter the labour market every year and youth unemployment is estimated to be as high as 35%, compared to the overall national unemployment rate of 10%. Furthermore, the young average age of the Kenyan population also means that most unemployed Kenyans (80%) are relatively young, that is less than 35 years old. Insufficient formal job creation and lack of prospect also results in a high percentage of NEET, that is young Kenyans being neither in education, training or employment (according to the latest available data from the World bank, dating 2016, the NEET correspond to almost 14% of the youth).⁵ Moreover, it must be noticed that despite the 2010 Constitution providing a framework for gender equality, women remain discriminated in the job market, majority in more vulnerable employment conditions and receiving less pay for equal work compared to their male counterparts.

Finally, **the lack of economic opportunities also results in Kenya having a high degree of out-migration compared to in-migration,** with Kenyan migrants often reaching the Middle East and Gulf States to work mostly as domestic workers: according to 2015 data, their number reaches 57,000 to 100,000 every year.⁶ At the same time, the country hosts some of Africa's largest refugee camps inhabited mostly by South-Sudanese and Somalis, which represent 6.4% of the population.⁷ Refugees, however, have limited opportunities for economic inclusion due to insufficient legislation to allow free movement, education, and employment in the country.

⁵ World Bank Data: <https://data.worldbank.org/indicator/SL.UEM.NEET.ZS?locations=KE->

⁶ Migration Policy Institute (2016). *Kenyan Migration to the Gulf Countries: Balancing Economic Interests and Worker Protection*: <https://www.migrationpolicy.org/article/kenyan-migration-gulf-countries-balancing-economic-interests-and-worker-protection>.

⁷ IOM (2018). *Migration in Kenya: A Country Profile 2018*: https://publications.iom.int/system/files/pdf/mp_kenya_2018.pdf.





2.1 Decent work

2.1.1 Labour law: current landscape and attempts at reform

While non-compliance with labour regulation is generally typical of the informal economy in Kenya, the SOLIDAR Network points out that this remains also widespread in **the formal economy**, both in the public and private sector. In recent years, an increase of precarious jobs, casual contracts and outsourcing has been in fact recorded, which in turn has prompted massive layoffs of workers. This has triggered rising disputes related to noncompliance with collective bargaining provisions and to the breakdown of Collective Bargaining Agreements (CBAs) at companies' level,⁸ followed by an upsurge in systematic violations of labour rights.

One of the elements that has enabled the occurrence of these violations has been the **lack of resources and slow reaction of public institutions concerned with enforcement of labour law provisions**, such as those governing minimum wages and employer-employee relationships, in the face of labour law breaches by companies. For example, the Employment and Labour Relations Court (ELRC), which was recently established, does not have a sufficient number of judges to efficiently look through cases. Furthermore, the Ministry of Labour which is in charge of conducting inspection of workplaces to ensure compliance with labour laws suffer from limited number of staff compared to the number of workplaces that need to be inspected on a regular basis, and this has caused a delay in the

⁸ Owidhi G. (nd). *Analysis of Wages and Collective Bargaining Situation in Kenya*: <https://alrei.org/education/analysis-of-wages-and-collective-bargaining-situation-in-kenya-by-george-owidhi>.





resolution of outstanding disputes. The lack of credibility and resources of public institutions to enforce the law has also resulted in employers failing to follow rulings and reinstatement orders of the courts. **Failure by employers to fully implement existing legal provisions is thus a key deficiency of the Kenyan legal system.**

When it comes to **labour legislation** itself, moreover, it must be noticed that **despite attempts at reform towards more progressive provisions, most proposals for legal amendments have been rejected or have been stalled in Parliament** in recent years. For instance, the proposal for the introduction of the Employment Act (Amendment) Bill 2019, which would have brought substantial positive changes to existing legislation - including, for instance, revising provisions related to night work, flexible working time, maternity, paternity, sick and study leaves⁹ is still in Parliament and has not yet been enacted into law.

In 2020, the advent of COVID-19 and its impact on employees led to a flurry of proposed changes in the employment legal systems to support some of the pandemic recovery measures.

Some of these include a revision of the income tax laws with an amendment introduced in March 2020 allowing the institution of a tax break. On the other hand, the Pandemic Management and Response Bill (2020) was introduced in Parliament and it sought to enhance the protection of the rights of the employees in instances where the employer is incapable of paying their wages, protecting them from forced salary cuts, summary dismissal or contract termination, and leave with or without pay (notwithstanding the provisions of the Employment Act). **However, while the tax amendments sailed**

through Parliament, the Pandemic Management and Response Bill was shot down in its initial stages.

2.1.2 Discrimination at work: legislative framework and practice

When it comes to discrimination at work, it should be noticed that employment laws in Kenya have made great strides in ensuring that employees are protected from discriminatory acts by the employer, with the onus being on employers to ensure that they set out proper policies and principles to govern their engagement with employees, to avoid falling into the pitfalls of workplace discrimination. The 2010 Constitution, Employment Act and ILO Conventions provide powerful frameworks for addressing various forms of discrimination. The law prohibits discrimination based on gender and bills to improve conditions for breastfeeding mothers were adopted in 2017. The laws also prohibit an employer from discriminating directly or indirectly against, or harassing, an employee or prospective employee, on grounds of sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy or health status. It also prohibits discrimination in respect to recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of employment.

Despite the concrete legal structures laid out in the Kenyan employment industry, however, workplace discrimination still persists, starting from the recruitment process itself, with many employers not strictly adhering to the hiring of employees based on the above-mentioned characteristics, and in the majority of cases based on

⁹ MWC Legal. *Employment Act Amendment Bill*: <https://mwc.legal/employment-act-amendment-bill-2019/>.



Author: Seth Michael, Shutterstock.com

ethnicity.¹⁰ The level of discrimination is even higher beyond the hiring process, within the course of employment, where employees face discrimination in form of: remuneration disparities (where given employees in the same position get less remuneration for the same amount of work - the most prevalent form of discrimination); promotions and distribution of roles (for instance, a Korean national who has little experience and little understanding of English being employed to supervise more highly qualified Kenyan employees);¹¹ training, benefits and leave days (i.e. conceding certain allowances to an employee, like the use of a company's car, but not to others of the same rank). Finally, employees' discrimination extends also beyond the course of employment to the 'after employment' period, where ex-workers face unfair treatment when it comes to receiving their terminal dues and exit benefits.

All in all, **in Kenya discrimination at work is thus still widespread, due to a variety of reasons, including: high levels of corruption**

(i.e. where employers are able to pay their way out of the legal proceedings for a discrimination case, or receive lenient punishments); lack of awareness among discrimination victims on how to get assistance and to seek redress; very expensive legal process in the country which precludes access to justice to many; and very lenient consequences laid out in the Employment Act for violators of anti-discrimination provisions.

2.1.3 Forced Labour in Kenya

In Kenya, forced or compulsory labour is defined under the Employment Act as any work or service that a person does under threat of any penalty, or work that a person does involuntarily. A threat in this case includes the loss of one's rights or privileges. Human trafficking is defined as the recruitment and exploitation of a person often involving deception or coercion. It falls into this definition as a form of forced labour depending on the activities the trafficked person

¹⁰ EqualRightsTrust (2016). *Addressing discrimination and inequalities in Kenya*: https://www.equalrightstrust.org/ertdocumentbank/In_the_Spirit_of_Harambee.pdf.

¹¹ ELA, (2019). *Legal Underpinnings against Workplace Discrimination – the Kenyan Story*. Employment Law Alliance: https://www.ela.law/Templates/media/files/Newsletter_Articles_Clients/2019%20Client%20Newsletter/January/MEA/Kenya%20-%202027%2004%2018%20ELA%20article%20on%20laws%20against%20workplace%20discrimination%20in%20Kenya.pdf.

undertakes. All forms of forced labour are prohibited in Kenya under section 4 of Employment Act, 2007, with contraventions of this rule attracting a fine not exceeding KES 500,000 (little more than €3800) or not more than a two-year jail term, or both.¹² Considering the gravity of the matter and its impact on the victims of forced labour, the SOLIDAR Network highlights that the penalties for contravening the ban on forced labour are very lenient and are not able to efficiently deter forced labour practices.

One of the worst and highly publicized form of **forced labour in Kenya involves young men and women seeking work opportunities in the Middle East and falling into the trap of human trafficking and into forced labour situations.** The victims of trafficking (VoT) are motivated to migrate for work due to the high unemployment rate in Kenya and low wages, which prevents them from being able to support themselves and their families. The VoTs are initially engaged in the migration decision - some making the decision to migrate either by themselves or with their family, and some going even as far as to fundraise for their airfare - unaware of being exposed to a trafficking ring. Although the VoTs make the decision to migrate, they don't consent to being trafficked or being dragged into a forced labour situation but are usually deceived by recruiters to accept offers of work, the recruiters using the VoTs lack of knowledge to lure them. VoTs are most commonly deceived about the amount of salary they will receive, but at times also about the type of work, conditions and location of work.

The key form of exploitation occurs where it is the employer who takes and keeps the employees' passports, so that if they want to leave before the contract terminates the employer can use the passport as leverage or as a way to coerce the person to leave without being paid. The VoTs also suffer other types of exploitation once trafficked, including lack of food and rest, being overworked, coercion and threats, and physical and sexual violence. There is some evidence that those with higher education levels, especially women, are more likely to be deceived about the type of work available, and thus to fall into the trap of forced labour. Female VoTs have been confirmed likelier to face sexual harassment and violence than male VoTs, with instances of both being reported from Kenyans working in Middle East, and some even facing death.

In recent years, the government of Kenya introduced some policy interventions to counter the trafficking of persons into the Middle East. In 2018, it launched a campaign on Human Trafficking Awareness Day using highway billboards and community outreach programs. The government also partnered with the IOM to assess human trafficking in the coastal counties of Mombasa, Kwale and Kilifi. Also, it created legal provisions requiring employment agencies involved in labour connections abroad to be registered with a central agency – the National Employment Authority (NEA) - to minimize cases of rogue employment agencies taking part in human trafficking. The NEA is mandated to provide a comprehensive institutional framework for employment management, enhancement of employment promotion interventions, and increasing access to employment by the youth, minorities and marginalized groups.

¹² My Wage Kenya (nd). Kenya Labour Laws: Forced Labour: <https://mywage.org/kenya/labour-laws/fair-treatment-at-work/forced-labour>.

Despite these interventions, however, **the SOLIDAR Network highlights that Kenya has so far failed the victims of human trafficking due to the approach it has adopted towards the issue, regarding it solely as a human right concern while diverting resources away from its criminal dimension.** Reassessing the problem as one of human trafficking, a criminal activity with both local and foreign criminal networks, could instead help Kenya protect its workers abroad while also combating transnational crime.¹³



2.1.4 Child Labour in Kenya

Child labour is widespread in Kenya. Data from the Kenya National Bureau of Statistics (KNBS) shows that 8.5% of children, or 1.3 million, are engaged in child labour. In the arid and semi-arid land (ASAL) counties, this percentage goes up to 30% as many boys are sent out to herd livestock or harvest sand, while girls are married early or engaged in domestic work.¹⁴

The gap between the compulsory education age and minimum age for work also leaves children aged 14–16 vulnerable to the worst forms of child labour. Children are exploited for domestic work, agricultural work, fishing, begging, and street vending, with both boys and girls (5-17) being victims of commercial sexual exploitation, especially as a consequence of human trafficking, in tourism-heavy areas on the

Kenyan coast, and in Nairobi and Kisumu.¹⁵ Moreover, children also work at informal gold mining sites in western Kenya, using pickaxes and other dangerous tools, working underground, and carrying heavy loads. In addition, they have been reported to participate in the harvesting and processing of khat (miraa), an addictive stimulant.

In recent years, the Kenyan government has made some advancements for the elimination of child labour in the country. In 2016, the National Policy on the Elimination of Child Labour was adopted, and the Kenyan police established a new Child Protection Unit to investigate cases of child exploitation such as commercial sexual exploitation.¹⁶ In 2019, the National Police also launched a cyber-centre to respond to crimes involving online exploitation of children, including child trafficking, and the government expanded an information system for collecting and aggregating data related to child protection, including cases related to the worst forms of child labour, and drafted new procedures and guidelines for law enforcement's handling of cases involving children.¹⁷

Nonetheless, the government has not yet committed sufficient resources to child labor law enforcement, and also Kenya is yet to ratify the UN Convention on the Rights of the Child Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.¹⁸

¹³ Relief Web (2020). *Kenya's reforms aren't protecting its people from trafficking*: <https://reliefweb.int/report/kenya/kenya-s-reforms-aren-t-protecting-its-people-trafficking>.

¹⁴ <https://www.unicef.org/kenya/stories/lets-end-child-labour-kenya>.

¹⁵ USDL (2020). *Child Labor and Forced Labor Reports – Kenya*. United States Department of Labour: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/kenya>.

¹⁶ USDL (2017). *2016 Findings on the Worst Forms of Child Labour – Kenya*: <https://www.refworld.org/docid/5a0021fd2.html>.

¹⁷ USDL (2019). *Child Labour and Forced Labour Reports – Kenya*: <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/kenya>.

¹⁸ *Ibidem*.



PROMOTING WORKERS' RIGHTS AND DECENT WORK

FIC has been implementing the Decent Work Labour Rights in East Africa program from 2014. It aims at enhancing working conditions and increasing youth access to decent work. The program, implemented together with the Trade Unions and youth organisations, has contributed to enhanced jobs' creation, to improvement of the working conditions and to revision of certain legislation on jobs' creation.

Fortuntus Kingori, a shop steward at White Sands Beach Hotel and Spa, shared his story about the impact that the program had on him and his colleagues, during a review workshop held at Castel Royal Hotel by FIC in partnership with the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA), in December 2019:

*“At the beginning, occupational safety and health rights at the place of work and Collective Bargaining Agreement (CBA) implementation seemed unreal to me and my colleagues. We used to have long working hours and no overtime, we suffered injuries and we were not compensated. **We were unlawfully terminated for joining unions, we lacked uniforms and shoes to perform our daily duties appropriately and on top of that we were poorly paid compared to the work done.**”*



The decent work program has helped us in identifying our workers' rights, we finally work for 6 days and have 1 day off, and the Human resource manager engages shop stewards before employing any union worker, something that was not possible before. Courtesy of FIC and KUDHEIHA, over 400 staff have been given shoes and uniforms, which before was difficult to be provided with, unless the uniforms were extremely tattered. On top of that, salaries have been increased by 18%, something that keeps us motivated and have a continuous zeal to work even harder.

I can confidently say that so far we are heading towards the road of success, there has been tremendous positive change since FIC and KUDHEIHA joined hands to advocate for decent work.”



Author: Joseph Sohm, Shutterstock.com

3 GOOD HEALTH AND WELL-BEING



4 QUALITY EDUCATION



3. SOCIAL PROTECTION FOR ALL: ACCESS TO HEALTH AND EDUCATION

3.1 Access to healthcare

The availability, affordability and quality of the health services in Kenya is still a challenge. The majority of people spend a lot of resources under the burden of communicable diseases, though recent research shows a large and fast increasing prevalence of non-communicable diseases such as cancers, diabetes and cardiovascular diseases, mainly attributed to lifestyle changes among Kenyans.

Kenya has a three-tier healthcare system, with the public sector, commercial private sector, and Faith Based Organisations (FBOs) subsystems working hand in hand to deliver services to society. The Public Sector is the largest in terms of the number of healthcare facilities and therefore it has the highest availability – especially in the rural areas where it is almost always the only option – followed by the Commercial Private Sector (whose availability is very high in urban areas but very low in the rural areas) and the FBOs whose availability is mostly felt in the remote and highly marginalised rural areas. The **availability of healthcare thus differs regionally, with high accessibility in urban areas, followed by peri-urban areas and**

high-density rural areas, with the least availability level being reported among the marginalized rural areas, especially the ASAL Northern Kenya region.¹⁹ The rural areas are also characterised by a shortage of medical personnel, with many doctors being employed in the private sector in urban areas.

The Kenyan health sub-system financing is mixed and receives funds from taxation (Public and some FBOs), the National Health Insurance Fund (NHIF), private health insurances, employer schemes, Community Based Health Financing (CBHF), user fees (out of pocket expenses), development partners and Non-Governmental Organisations (NGOs). **There is a large disparity in affordability among the health facilities, with public and FBOs being considered relatively affordable as they are operated on a ‘not for profit basis’, unlike the commercial private healthcare that is operated under ‘profit making’ status – hence highly unaffordable to many.** The low affordability of these services has been linked to the relatively large and growing informal economy, the relatively large poor population (with overall poverty being estimated at 36.1% or about 16 million individuals in 2015/16), and the low levels of penetration of private insurance (about 7%), while only over 50% Kenyans are covered by the NHIF, the National Hospital Insurance Fund.²⁰ The Universal Healthcare Plan introduced in Kenya in 2018 (as part of the ‘Big Four’ objectives to achieve by 2022) sought ways of healing the existing disparity in affordability of healthcare, but the system is yet to be implemented in the whole country, only having been applied so far to the ‘trial’ counties.

¹⁹ KIPPRA (2018). *An Assessment of Healthcare Delivery in Kenya under the Devolved System. Special Paper No. 19/2018*: <https://kippra.or.ke/index.php/publications?task=download.send&id=100&-catid=10&m=0>.

²⁰ KIPPRA (2018). *Achieving Universal Healthcare Coverage: Lessons to Consider. A Policy Brief No. 6/2017-2018*: <https://kippra.or.ke/index.php/publications?task=download.send&id=86&catid=9&m=0>.



3 GOOD HEALTH AND WELL-BEING



4 QUALITY EDUCATION



When it comes to the **quality of healthcare**, this is **significantly high in the country**, with a 2018 survey finding that 96.7% of the population who had visited health facilities were satisfied with services rendered by the health administrators, nurses and doctors, an approval rating which was observed to be generally greater in rural areas than urban areas.²¹ The satisfaction rating dwelt on the quality of technical and social treatment by medical attendants, waiting time and the quality of the waiting area, availability and adequacy of human resources, usable diagnostic tools and equipment, drugs and other materials, and charges (notwithstanding information asymmetry). Despite the high satisfaction rating, **nonetheless, the country still faces instances of the general public complaining of poor services**, such as various highly publicized cases of negligence at Pumwani Maternity Hospital, cases of negligence at Kenyatta National Hospital (KNH), overcharging of services at Nairobi Hospital, instances where lack of some facilities within various public hospitals in the rural areas led to patients being transported to the bigger health facilities in the country, i.e. KNH; and instances of unavailability of medicine.

3.2 Access to education

Kenya identifies education as a fundamental human right enshrined in the Constitution, in recognition of the important role it plays in uplifting the welfare of the citizens by enhancing employment opportunities, promoting gender equality and enabling realization of social development such as improved health and survival rates

of children. The country has made great strides towards realization of the Universal Access to Education (UAE), having introduced free (and compulsory) primary education as far back as in 2003, and later introduced free (but not compulsory) secondary education in 2013. These reforms have led to a significant increase in enrolment in primary and secondary schools over the years, although low enrolment remains for tertiary and higher levels of schooling, due to the unavailability as well as unaffordability of tertiary education institutions. To bridge this gap, the government of Kenya has prioritised vocational education and training²².

The Kenyan education sector integrates both the private and public institutions, with the former playing a key role in the delivery of education to Kenyan children. However, the programmes that Kenya implemented in a bid to ratify the UAE plans only involved the public institutions.²³ There have been talks of integrating private schools in the 'free education' plan to ease pressure from the overcrowded public schools, but this has not materialised so far due to families of children going to private schools generally being able to afford their fees, as well as the institutions themselves having varying fees structures which are hard to streamline.²⁴

The experience in Kenya joins a growing body of evidence which shows that **education public-private partnerships (PPPs) which support private schooling are too often failing the most vulnerable children and risk deepening inequalities.**²⁵

21 KIPPRRA (2018). *An Assessment of Healthcare Delivery in Kenya under the Devolved System. Special Paper No. 19/2018*: <https://kippra.or.ke/index.php/publications?task=download.send&id=100&catid=10&m=0>.

22 Technical and Vocational Education and Training Authority, *strategic plan 2018-2020*: http://tveta.go.ke/wp-content/uploads/2019/06/TIVETA-STRATEGIC-PLAN-2-e-pub_2-Compressed.pdf.

23 Kenya London News (n.d). *Public Private Partnerships Model in Kenya: Opportunities and Challenges*: <https://www.kenyalondonnews.org/public-private-partnerships-model-in-kenya-opportunities-and-challenges/>.

24 Obosi J., (2018). *Public Private Partnerships as a Redistributive Strategy in University Education in Kenya*. University of Nairobi: https://www.researchgate.net/publication/328416236_PUBLIC_PRIVATE_PARTNERSHIPS_AS_A_REDISTRIBUTIVE_STRATEGY_IN_UNIVERSITY_EDUCATION_IN_KENYA.

25 Monaza A. & Rawal S. (2018). *Public-Private Partnerships and Private Actors in Secondary Education in Sub-Saharan Africa*. Mastercard Foundation: <https://mastercardfdn.org/wp-content/uploads/2019/07/Public-Private-Partnerships-FINAL-1.pdf>.



4. THE IMPACT OF COVID-19 ON DECENT WORK AND SOCIAL PROTECTION IN KENYA

The emergence of COVID-19 caused far reaching impacts on Decent work and Social Protection in Kenya. The SOLIDAR Network reports that the majority of the businesses were negatively impacted by the pandemic, most having to lay off employees and others having lost their revenues. A small proportion of the organizations have integrated various strategic interventions and infrastructural investments relevant to decentralised working systems in the country.

Early in 2020, the Kenyan government provided directives to curb the spread of the virus, including an international travel ban, curfew, inter-county movement restrictions and instruction for workers to work from home where possible. Though necessary to reduce the threat to public health, these directives have greatly affected the majority of workers who live paycheck to paycheck, and especially many gig workers, and thousands of Kenyans have been rendered jobless. Gig services such as plumbing, electrical repairs, hair and beauty services and office cleaning have all experienced a significant drop in operations. Car-hiring services like Uber and Bolt have also been greatly affected, as the nationwide curfew and cessation of movement in the Nairobi





area have resulted in fewer ride requests and, consequently, reduced earnings for drivers.²⁶

Gig work in Kenya is – by nature – temporary, task-based and independent. While these qualities are attractive for workers who enjoy the flexibility attached to such jobs, the downside is that employing platforms do not have an obligation to provide gig workers with social security benefits. Given that gig workers are not permanent employees of the platforms or companies that dispatch them, they do not qualify for additional benefits such as medical insurance, paid time off, sick time, retirement benefits and other employee support provided in permanent and formal jobs. This crisis has thus exposed the vulnerability and lack of a social safety net for gig workers, who thus remain one of the most vulnerable group of workers in Kenya. On the other hand, the government froze salary increments for civil servants with the private sector following suite. The government also placed a temporary halt on negotiation of new CBAs during the COVID-19 pandemic especially those that involved demand for pay rise. This has had the effect of denying low paid workers the privilege of earning salary increments in response to the rising cost of living. The COVID-19 pandemic is also having an impact – in April 2020, KNBS reported that around 1.72 million people in Kenya had lost their jobs since the start of the pandemic. With this significant loss of income, a growing number of families may resort to sending their children to work.²⁷

²⁶ Mercy Corps (2020). *Who is responsible for supporting gig workers left vulnerable by COVID-19?*

²⁷ <https://www.unicef.org/kenya/stories/lets-end-child-labour-kenya>.

5. CONCLUSIONS

Decent work and the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work and social dialogue – are integral elements of the 2030 Agenda for Sustainable Development.

While Kenya is committed to the achievement of these objectives, the present report has shown that several challenges still remain in the country for their full realisation, including youth unemployment, lack of adequate guarantees to Trade Union freedoms, violations of collective bargaining agreements, as well as the persistence of forced and child labour also involving human trafficking. A large part of the population also remains uncovered by social protection mechanisms due to many working in the informal economy, and access to health and education is often hampered by the prohibitive costs of services offered especially by private providers. The outbreak of the COVID-19 epidemic has further exacerbated existing challenges, affecting especially vulnerable workers in the gig economy.



28 https://ec.europa.eu/international-partnerships/where-we-work/kenya_en.

In this context, the SOLIDAR Network is confident the EU can play a significant role in supporting Kenya in achieving the full realisation of Decent Work and Social Protection rights for all. More particularly, the EU-Kenya development policy and operations should concentrate its efforts to:

- Collaborate with the government, educational institutions and civil society organisations to devise programs for youth empowerment, skills training and integration in the labour market. **As the EU has acknowledged**, “given its young population (most people are younger than 35 years old), any strategy that Kenya undertakes must focus on reinforcing **young people’s socioeconomic rights**”²⁸.
- Support the government in investing in **public school and education infrastructure**, as well as in the employment and training of teachers and medical personnel, especially in rural areas, so as to guarantee all Kenyans access to universal quality healthcare and education.
- **Combat forced and child labour**, including human trafficking, by setting up control mechanisms such as multi-partner observatories (institutions, CSOs, cooperation agencies) to monitor and report of cases of violation of children, human and labour rights and keep institutions and employers accountable. Moreover, the EU should pressure the government to increase resources for child labour law



enforcement, and ratify the UN Convention on the Rights of the Child Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

- Support and advise the government in transforming and regularising the **informal economy**, by ensuring access to a social protection for to all.
- Raise awareness and campaign for **gender equality** and non-discrimination at work, advocating for a reinforcement of existing anti-discrimination provisions and their enforcement, and stricter penalties for non-compliant employers.
- Monitor and report on the **implementation of ILO Conventions** and national legislation on the protection of the rights and freedoms of Trade Unions, as well as on the respect of collective bargaining agreements, and provide capacity building opportunities and resources for the strengthening and empowerment of workers' organisations.
- Promote active **partnerships with and among NGOs and Trade Unions** to actively promote decent work in the country.

AUTHORS AND CONTRIBUTING ORGANISATIONS

The following organizations, under the lead of SOLIDAR Member Forum for International Cooperation (FIC), have contributed to this Report. With their long-standing work to promote decent work and social protection for all, they contribute to build a true partnership for Sustainable Development and Decent Jobs envisaged by the Africa-EU Strategy.



Forum For International Cooperation (FIC)

Association of Women In Agriculture Kenya

Africa Youth Transformation

Africa Youth Trust

Emerging Leaders Foundation

HAKI Africa

Horn of Africa Youth Network

International Solidarity Foundation

Institute of Public Finance

Kenya Shipping, Clearing & Warehouses Workers' Union (KSCWWU)

Kenya Union of Domestic Hotels, Educational Institutions, Hospitals & Allied Workers (KUDHEIHA)

Kenyatta University Department of External

Kisumu Progressive Youth

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Usitawi Africa

Youth Agenda

Youth Alive! Kenya



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Organising International Solidarity (OIS)

A presentation of the OIS programme can be found at the following link:

<https://prezi.com/view/9zuxuivoqUSD3w1pGJSz/>