

SOCIAL DIALOGUE TO ACHIEVE THE SUSTAINABLE DEVELOPMENT GOALS



FORMALISING
THE
INFORMAL
ECONOMY

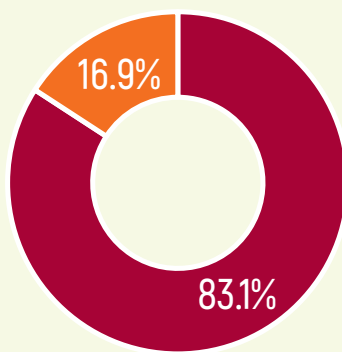
COUNTRY BRIEF



K E N Y A



In its bid to progress towards achieving middle-income status, Kenya has adopted a liberalised approach to development. It has relied quite heavily on loans, including by the IMF, which have resulted in a constrained policy space. This in turn has limited the coverage of social protection and applied downward pressure on labour standards. The informal economy has been growing and social partners have been involved in initiatives to reverse this trend.



In 2016, **83.1 %** (13.3 million) of all jobs were **informal** while only **16.9 %** (2.7 million) of workers were in **formal employment**.



Furthermore, the **informal economy** is growing, accounting for **89.7 %** of all new jobs created in 2016.

The impact of social dialogue on sustainable development in Kenya, and on the transition from informality to formality, has shown several successes. This is particularly the case for domestic workers, street vendors and the tea and flower picking sectors.

There are several institutions in Kenya through which social dialogue is central to shaping the world of work, be it tripartite or bipartite in manner:

- The National Labour Board: advises the Minister of Labour on all matters relating to employment and labour.
- The Wages Councils: The General Wages Council, Agricultural Wages Council and Sectorial Wages Councils were established by the Minister of Labour in accordance with the Labour Institutions Act of 2007 and advise the minister on minimum remuneration and conditions of employment in the sectors where wages councils have been established.
- The Micro and Small Enterprises Authority (MSEA): The Micro and Small Enterprises Act No. 55 of 2012 established the MSEA and it meets on a quarterly basis to foresee the development of micro and small enterprises and their contributions to economic growth. A strategic plan for the period 2013-2017 was developed, however, the plan remains unimplemented due to underfunding.
- The National Social Security Fund: aims to set up policies for social protection for both formal and informal workers.

- The National Hospital Insurance Fund (NHIF): the board engages in social dialogue to set up policies for the proper management of the fund for effective health care.
- The National Economic and Social Council (NESC): is formed of 49 members comprising the government, trade unions, development partners, private sector associations, the media, research institutions, academia, professional groups and associations, as well as the general public, to discuss policy issues focusing on the promotion of economic growth, social equity and employment creation.



Workers in the **informal economy** can contribute to the National Hospital Insurance Fund (**NHIF**) for a monthly **contribution of Kshs.500** (US\$5). In 2015/16, the number of **informal economy workers** registered for the NHIF **increased by 26.5%**.

THE CENTRAL ORGANISATION OF TRADE UNIONS KENYA COTU (K) AND SOCIAL DIALOGUE

The Central Organisation of Trade Unions Kenya COTU (K), which represents 44 affiliate trade unions and two million public and private sector workers from across the country, is increasingly engaged with informal economy workers and is representing their interests through social dialogue.

One example of this is COTU (K)'s engagement with the government and employers through Wage Councils to review minimum wages. Through these consultations, the General Wages



2 MILLION

The Central Organisation of Trade Unions Kenya **COTU (K)** represents over two million members from both the **private** and **public** sectors.

(Amendment) Order 2017 increased the minimum wage by 18 per cent, thereby entitling domestic workers in the cities of Nairobi, Mombasa and Kisumu to a monthly salary of about US\$130. Previously, many were earning as little as US\$30 a month. Furthermore, COTU (K)'s involvement has helped put most informal economy workers earnings at more than US\$1.25 a day, putting them above the international poverty line and thereby contributing to the eradication of extreme poverty (SDG Target 1.1).



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Prior to 2007, Kenya had punitive labour laws, but social dialogue spearheaded the formulation of five new labour laws that apply to all workers, be they informal or formal. In this regard, both sets of workers have equal rights under the law and should receive equal pay for work of equal value (SDG Target 8.5). However, the informal economy is so fragmented that effective representation by COTU (K) remains a huge challenge.

DOMESTIC WORKERS

While pursuing the rights and fundamental freedoms of domestic workers in Kenya through social dialogue, the efforts of the Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA), affiliated to COTU (K), have been hampered by the challenge of recognition. Kenya has not yet ratified the International Labour Organization (ILO) Convention 189 on decent work for domestic workers. The negative social perception of domestic work seems to hinder this, although KUDHEIHA has been advocating for its ratification, as well as the establishment of a Wages Council for domestic workers. KUDHEIHA reports that abusive and uncooperative employers are an obstacle to social dialogue, as are the limited resources KUDHEIHA can mobilise for capacity building.



Following the minimum wage increase, **domestic workers** saw their monthly salary **increase to US\$130**. Previously, some domestic workers had been earning as little as US\$30 a month.

To address these challenges, KUDHEIHA mostly engages in bipartite social dialogue with the employers of domestic workers, while organising weekly meetings for domestic workers to share their experiences and learn how to protect and safeguard their rights.

However, through COTU (K), KUDHEIHA engages in tripartite consultations on policy issues with the government and the Federation of Kenyan Employers. As a result, it has achieved several milestones that support the recognition and value of domestic work (SDG Target 5.4) and the protection of their labour rights (SDG Target 8.8). For example, through KUDHEIHA's engagement with employers in cases of termination, many domestic workers have had their severance dues paid. In addition, individual consultations with the employers of domestic workers has led to improvements in contractual engagements.

STREET VENDORS

The Kenya National Alliance of Street Vendors and Informal Traders (KENASVIT) lists the constant harassment of its members (including sexual harassment) by local and municipal authorities, punitive taxation and poor working conditions as some of its main concerns. Social dialogue between KENASVIT and local authorities has led to several initiatives to promote equal access to economic resources, basic services and financial services, including microfinance for the poor and the vulnerable (SDG Target 1.4). Social dialogue has also promoted policies that support productive activities, decent job creation, entrepreneurship and encourages the formalisation and growth of micro- and small-sized enterprises, including through access to financial services (SDG Target 8.3).

For example, KENASVIT engaged several county governments (former municipalities, city and town councils) in consultations towards improving the market infrastructure for the traders, resulting in the construction of several modern markets across the country. Discussion on the punitive taxation and rents endured by street vendors led to a

reduction in rent collected from the modern markets. Ongoing education and campaigns on labour rights and fundamental freedoms have improved working conditions for informal economy traders. These efforts have also significantly reduced child labour in the informal economy (SDG target 8.7). Further internal consultations by KENASVIT led to the institutionalisation of gender mainstreaming, youth participation and the participation of people living with disabilities.

However, numerous challenges remain. Limited resources (street vendors can rarely afford regular subscription fees) and the limited participation of trade unions in its activities inhibit the positive impacts of KENASVIT's work. Patriarchal structures prevent women, who form the majority of informal economy traders, from taking up leadership roles. During negotiations, institutions rarely send the relevant representatives, which means that most negotiations fail to bear fruit or the resolutions are never implemented.

TEA AND FLOWER PICKERS

The Kenya Plantation and Agricultural Workers Union (KPAWU), affiliated to COTU (K), covers tea and flower pickers and engages in negotiations with the Agricultural Employers Association (AEA) on their behalf. The latest Collective Bargaining Agreement (CBA), signed on 9 November 2017, gave these workers a 23 per cent pay rise in addition to an increased House Allowance of 28 per cent. However, the unwillingness of employers to reward their workers with pay increases remains a major obstacle to social dialogue. Resulting court cases mean that the union incurs significant costs in these protracted negotiations.

CONCLUSIONS

There have been several milestones in the contribution of social dialogue to the transition from informality to formality in Kenya. It has led to improvements in the protection and promotion of the basic rights and fundamental freedoms of workers (SDG 8); enhanced social protection (SDGs 1 and 10); access to decent work (SDG 8); as well as the reduction of inequalities (SDG 10).

More support is needed to strengthen social dialogue processes, to enhance the outcomes and to build the capacity of informal economy representatives for effective representation during social dialogue. Trade unions are being encouraged to scale up the organising of informal economy workers, either through existing informal economy associations or direct organising, as in the case of KUDHEIHA.

The National Social Security Fund (NSSF) should facilitate informal economy representatives to input into their policies, in particular on how to better incorporate informal economy workers into its saving schemes. Similarly, to promote equal access to healthcare services, the National Hospital Insurance Fund (NHIF) would benefit from further informal economy consultation. Finally, the government should formulate meaningful informal economy policy in Kenya, in line with ILO Recommendation 204 on transitioning from informality to formality. In order to ensure that this policy is based on the experience and interests of working people in the informal economy, it should ensure that sufficient provisions are put in place for an effective representation and consultation.

This summary is based on in-depth country research, the full research document is available at www.ituc-csi.org/social-dialogue-informality

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