

# Kenya: transitioning from **informality** to **formality** through **social dialogue**

Draft – March 2018



Owidhi George Otieno



## *Contents*

Acronyms.....	3
Executive summary .....	4
1. Introduction.....	5
2. Nature and Extent of the Informal Economy in Kenya .....	5
3. The National Regulatory Frameworks and Social Dialogue Institutions .....	6
3.1 Regulatory Frameworks.....	6
3.2 Representation of the Informal Economy workers in Social Dialogue Institutions .....	10
4. Outcomes of Social Dialogue Processes.....	11
4.1 The Case of the Central Organisation of Trade Unions (COTU (K)).....	11
4.2 The Case of Domestic Workers .....	13
4.3 The Case of Informal Economy Traders.....	14
4.4 The Case of Tea and Flower Pickers .....	16
5. Summary, Recommendations and Conclusion .....	18
5.1 Summary .....	18
5.2 Recommendations.....	18
5.3 Conclusion .....	18
8. References .....	19

Owidhi George Otieno, School of Economic, University of Nairobi.



This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of TUDCN/ITUC and can in no way be taken to reflect the views of the European Union.

This publication is available for download from: [www.ituc-csi.org/social-dialogue-informality](http://www.ituc-csi.org/social-dialogue-informality)

## *Acronyms*

ACILS	American Center for International Labour Solidarity
AEA	Agricultural Employers Association
AIDS	Acquired Immuno Deficiency Syndrome
AWC	Agricultural Wages Council
CBA	Collective Bargaining Agreement
COTU (K)	Central Organisation of Trade Unions, Kenya
EATUC	East Africa Trade Union Confederation
FES	Friedrich Ebert Stiftung
FKE	Federation of Kenya Employers
GDP	Gross Domestic Product
GWC	General Wages Council
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
KENASVIT	Kenya National Alliance of Street Vendors and Informal Traders
KPAWU	Kenya Plantation and Agricultural Workers Union
KUDHEIHA	Kenya Union of Domestic, Hotels, Educational Institutions Hospitals and Allied Workers
MSEA	Micro and Small Enterprises Authority
MSMEs	Micro, Small and Medium Enterprises
NEMA	National Environment Management Authority
NHIF	National Hospital Insurance Fund
NLB	National Labour Board
NSSF	National Social Security Fund
PWDs	People living With Disabilities
SDGs	Sustainable Development Goals
TUDCN	Trade Union Development Cooperation Network



## *Executive summary*

This paper is an initiative of the International Labour Organization's (ILO) Social Dialogue and Tripartism Unit (DIALOGUE) and the International Trade Union Confederation's (ITUC) Trade Union Development Cooperation Network (TUDCN). The paper seeks to assess the contributions of social dialogue to sustainable development. It focusses on areas in which social dialogue has enhanced transition from informality to formality. Kenya's perspective was drawn through an in-depth research that involved secondary and primary data collection.

Secondary data was collected through desktop research, while primary data was collected through questionnaires to tripartite partners who engage in social dialogue, as well as informal economy associations.

The study findings revealed several milestones through which social dialogue contributed to transitioning from informality to formality in Kenya and the linkages to sustainable development.

Based on the study findings, four recommendations were put forward to enhance the transition from informality to formality through social dialogue and the linkages to the 2030 Sustainable Development Goals (SDGs):

1. More support is needed to strengthen social dialogue processes and enhance the outcomes as well as enhance the capacity of informal economy representatives for effective representation during social dialogue.
2. Trade unions should scale up the organising of informal economy workers, through either existing informal economy associations or direct organising as the case of KUDHEIHA. Moreover, the employers' associations should mobilise the informal economy employers to create room for social dialogue.
3. Lobby for the National Social Security Fund (NSSF) to incorporate the informal economy workers in its savings schemes as the sector hosts majority of the workers with poor savings culture. Moreover, informal economy representatives should lobby for equal access to healthcare insurance services for informal economy workers as offered by the National Hospital Insurance Fund (NHIF) to formal sector workers.
4. The formulation of informal economy policy in Kenya in line with ILO Recommendation 204 on transitioning from informality to formality.

## 1. Introduction

This paper is a case study of the contributions of social dialogue to the transition from the informal to the formal economy in Kenya. The study looks into how this process contributes to the 2030 Agenda for Sustainable Development's Sustainable Development Goals (SDGs). Special emphasis is placed on: Ending poverty in all its form everywhere (SDG 1); Achieving gender equality and empowering all women and girls (SDG 5); Promoting inclusive and Sustainable economic growth, employment and decent work for all (SDG 8); and Reducing inequality within and among countries (SDG 10).

Specifically, the study intended to:

- i. Analyse how the informal economy units and workers are represented in social dialogue processes;
- ii. Describe social dialogue outcomes in the informal economy;
- iii. Illustrate the social dialogue contributions to achieving the Sustainable Development Goals;
- iv. Suggest policy recommendations that would enhance the transition from informality to formality through social dialogue.

For this, the study specifically focused on two particular cases, that of Domestic Workers and that of Street Vendors and looked into the Tea and Flower Picking Sector. Data was collected through detailed desktop research as well as questionnaire administration. Questionnaires were administered to informal economy associations as well as trade unions organising the informal economy and the tripartite partners (Federation of Kenya Employers (FKE), Central Organisation of Trade Unions Kenya (COTU (K), and the Ministry of East African Community, Labour and Social Protection). Data collected was analysed qualitatively and quantitatively.

## 2. Nature and Extent of the Informal Economy in Kenya

The International Labour Organization (ILO) defines the informal economy as “*all economic activities by workers and economic units that are - in law or in practice - not covered or insufficiently covered by formal arrangements; and does not cover illicit activities*” (ILO, 2015). The informal economy has made up a significant part of employment in Kenya. In 2016, the informal economy employment was about 83.1 per cent (13.3 million) while the formal sector only had a total employment of about 16.9 per cent (2.7 million) of the total employment in the economy (Republic of Kenya, 2017). Furthermore, the informal economy is growing and accounted for 89.7 per cent of new jobs created by the economy in 2016 (747.3 thousand out of the total 832.9 thousand).

The informal economy's contribution to the Gross Domestic Product remains low relative to the proportion of the labour force that works within it (about 20 per cent). This is due to low productivity in the unregulated sector prone to low payment of tax revenues to the government.

From 2012 to 2016, the informal economy recorded employment levels of 10.5, 11.2, 11.8, 12.6 and 13.3 million respectively. Over this period, over 80 per cent of total employment in Kenya originated from the informal economy (Republic of Kenya, 2017).

Wholesale, retail trade, hotels and restaurants industry accounts for approximately 59.7 per cent of the total informal economy employment. The manufacturing industry accounts for an additional 20.4 per cent. Other key industries in the informal economy include construction, transport and communication, including community, social and personal services (Republic of Kenya, 2017). The sector is however mainly concentrated in the rural areas. Informal economy employment in the urban areas in 2015 and 2016 was estimated at 4.4 and 4.7 million respectively. On the other hand, the rural informal economy employment under the same period was estimated at 8.1 and 8.6 million in 2015 and 2016 respectively (Republic of Kenya, 2017).

### *3. The National Regulatory Frameworks and Social Dialogue Institutions*

#### **3.1 Regulatory Frameworks**

The Constitution of Kenya (2010) is the supreme legal document upon which regulatory frameworks are supported. The informal economy therefore rely on the Constitution and the five sets of labour laws in Kenya as the guiding principles. The labour laws include the Employment Act (2007); Labour Relations Act (2007); Labour Institutions Act (2007); Occupational Safety and Health Act (2007) and the Work Injury and Benefits Act (2007).

In this regard, the Employment Act (2007) defines the fundamental rights, principles, terms and conditions of work guiding the relationship between employers and workers in the informal economy. It provides for the hours of work, leave days, termination as well as appointment requirements that the informal economy players ought to adopt. The Work Injury and Benefits Act (2007) provides for compensation measures in case of injuries sustained in the cause of duty. The Occupational Safety and Health Act sets up the safety and health requirements and policies that employers must adhere to for the safety and good health of workers during the working period. These policy requirements are geared towards protecting workers against work-related injuries.

Social dialogue occurs in line with the established social dialogue institutions under the Labour Institutions Act. Under such social dialogue institutions, negotiations occur as defined by the Labour Relations Act that establishes tripartite and bipartite parties to social dialogue in general and in the informal sector as defined in this study.

Other legal frameworks for social dialogue that apply to the informal economy are the National Social Security Fund (NSSF) Act No. 45 of 2013 and the National Hospital Insurance Fund (NHIF) Act of 2012. The NSSF Act aims to enhance social protection coverage to both the informal and formal economies through financial inclusion (Republic of Kenya, 2013), while the NHIF Act seeks to provide for effective social protection through hospital insurance to both the informal and formal economy (Republic of Kenya, 2012).

The Micro and Small Enterprises Act No. 55 of 2012 establishes the Micro and Small Enterprises Authority (MSEA) to foresee the development of micro and small enterprises and their contributions to economic growth (Republic of Kenya, 2012). The formulation of these Acts was based on tripartite social dialogue as their operations mostly affected workers. For instance, the NHIF and the NSSF Acts were geared towards enhancing social protection while the MSEA Act was meant to create employment opportunities through enterprise development. As such, consultations by the employers', the workers' representatives and the government were very instrumental. In this regard, the boards of NSSF, NHIF and MSEA are constituted in a tripartite manner.

### **Box 1: Social dialogue institutions in Kenya**

Social dialogue institutions in Kenya are drawn from the Labour Institutions Act (2007), which establishes and provides for the functions of labour institutions. These include the National Labour Board and the Wage Councils. Other tripartite institutions are the Micro and Small Enterprises Authority (MSEA), the National Social Security Fund (NSSF), the National Hospital Insurance Fund (NHIF) and the National Economic and Social Council. These institutions support both tripartite and bipartite consultations for effective industrial harmony.

#### **i. The National Labour Board**

The National Labour Board (NLB) is established under the Labour Institutions Act 2007. The NLB is composed of appointees of the Minister in charge of labour including: a chairperson, Secretary General of COTU (K) and other two representatives, Executive Director of FKE and another two representatives, at most two independent members, Director of Employment, Director of MSEA, Director of Occupational Safety and Health (OSH), Director of Industrial Training, Registrar of Employment and Labour Relations Court and the Registrar of Trade Unions.

The NLB, through social dialogue, advises the Minister on all matters relating to employment and labour. To facilitate consultations, the NLB establishes committees such as work permits, National Manpower Development, Trade Disputes and Productivity committees.

#### **ii. The Wages Councils**

Wages Councils (General Wages Council (GWC) and Agricultural Wages Council (AWC), Sectorial Wages Councils (SWC)) are established by the Minister of labour in accordance to the Labour Institutions Act 2007. The members of the Wages Council are appointees of the minister of labour including: a chairperson, at most three representatives of COTU (K), at most three representatives of the FKE and at most three independent members.

The Wages Councils, through social dialogue advise the minister on minimum remuneration and conditions of employment of employees covered in such sectors where the wages councils have been established.

#### **iii. The Micro and Small Enterprises Authority**

The Micro and Small Enterprises Act No. 55 of 2012 established MSEA. MSEA is composed of a chairperson, Five Principal Secretaries (responsible for micro and small enterprises development; finance; industrialisation; trade and youth) or their representatives, four persons appointed by the Cabinet Secretary from four national sectorial associations (manufacturing; traders; services; and agri-business), one representative of each of the most representative association (of women; youth, persons with disabilities) engaged in micro and small enterprises, one representative of each of the most representative (private sector organisation; umbrella micro finance institution; association of workers), one expert and the Chief Executive Officer.



Through social dialogue, MSEA formulates and reviews policies and programs for micro and small enterprises in Kenya. The MSEA meets on a quarterly basis. Over the last four years, a strategic plan for the period 2013/2017 was developed. The strategic plan has not however been implemented due to minimal funds.

#### **iv. The National Social Security Fund**

The NSSF was established under cap 258 of the labour laws of Kenya. The NSSF Act No. 45 of 2013 transformed it into a pension scheme and covers the provisions of the Retirement Benefits Act No. 7 of 1971. NSSF is managed by a Board of Trustees composed of the Government (two Principal Secretaries, one from the ministry of finance and the other from the ministry of labour); two representatives each of employers and labour unions, three expert appointees by the government, the chairperson and the Managing Trustee. The Board of Trustees are engaged in social dialogue aimed at setting up policies for social protection for both the formal and informal economy workers.

#### **v. The National Hospital Insurance Fund**

NHIF is managed by a board composed of the chairperson appointed by the Presidency, three principal secretaries (Treasury, Health and Personnel Management), one representative from the Federation of Kenya Employers, two representatives of the labour unions, the Director of medical services, one representative of the Kenya Medical Association and one representative of faith-based healthcare organisations.

The board engages in social dialogue aimed at setting up policies for proper management of the fund for effective health care. For example, NHIF covers informal economy workers' outpatient and inpatient services at a monthly premium contribution of Kshs. 500.00 (USD 5)

#### **vi. The National Economic and Social Council (NESC)**

NESC comprises of 49 members composed of the Government, Development partners, Private Sector Associations, the Media, Research Institutions, Academia, Professional Groups and Associations and the General Public.

The NESC provides a social dialogue forum for the Government, Private Sector, Academia, Labour Unions and the public to discuss policy issues focusing on the promotion of economic growth, social equity and employment creation.

The NESC enhances social dialogue through taskforces, Sub-Committees, working groups as well as consultative forums (J. Muia, 2011)

### **3.2 Representation of the Informal Economy workers in Social Dialogue Institutions**

Social dialogue may be set up in either a tripartite or a bipartite manner as discussed hereunder:

#### **3.2.1 Representation in Tripartite Institutions**

The informal economy workers are represented directly or indirectly in the social dialogue institutions described in Box 1. For instance, at the National Labour Board, the interests of the informal economy workers are represented by the Secretary General of COTU (K) and the Director of MSEA indirectly since informal economy workers are members of COTU (K) affiliate unions while informal economy representatives are members of MSEA.

In the Wages Councils, the informal economy workers are indirectly represented by COTU (K) while at MSEA, informal economy units are directly represented by the four national sectorial association representatives, that is, manufacturing, traders, services and agri-business.

At NSSF and NHIF, the informal economy workers are indirectly represented by COTU (K). At the National Economic and Social Council, informal economy workers are represented by COTU (K). Other economic units are represented by the Private Sector Groups and Associations.

#### **3.2.2 Representation in Bipartite Social dialogue**

The study established that due to the lack of a legal framework that supports tripartite social dialogue in the informal economy; most of the dialogue is bipartite. This way, either the union engages the informal economy employers (e.g. in the case of domestic workers) under the Kenya Union of Domestic, Hotels, Education Institutions, Hospitals and Allied Workers (KUDHEIHA) or the informal economy associations engage government agencies directly (e.g. in the case of Street vendors and informal traders) under the Kenya National Alliance of Street Vendors and Informal Traders (KENASVIT). For the tea and flower pickers, the Kenya Plantation and Agricultural Workers Union (KPAWU) represents the tea and flower workers during such dialogue.

In such set up, KUDHEIHA consults with domestic work employers on the terms and conditions of employment of the domestic workers. In case social dialogue does not bear fruit, KUDHEIHA reverts to legal redress from the Employment and Labour Relations Court. Similarly, KPAWU engages the employers' associations in negotiation for their collective agreements.

On the other hand, KENASVIT engages in adhoc bipartite social dialogue with the County Governments and other local authorities on policy issues that affect the trading activities of the informal economy traders. Chapter representatives engage national and county government agencies during such negotiations. Negotiations may be on the construction of modern markets, review of license and other fees as well as harassment by local authority officers.

## 4. *Outcomes of Social Dialogue Processes*

This section highlights key achievements through social dialogue that contributed to the SDGs.

### **4.1 *The Case of the Central Organisation of Trade Unions (COTU (K))***

#### **4.1.1 *Introduction***

The Central Organisation of Trade Unions Kenya (COTU (K)) was formed in 1965 upon the dissolution of the Kenya Federation of Labour and the African Workers' Congress through the recommendations of a presidential task force. COTU (K) is the most representative trade union in Kenya with about 44 affiliate trade unions spread across several sectors. COTU (K) unites over 2 million members drawn from public and private sectors across the country.

COTU (K) has been organising informal economy workers while also running relevant programs for them through its affiliate unions such as KUDHEIHA. Currently, COTU (K) faces the challenge of massive shift of its members from the formal economy to the informal economy through retrenchment and redundancy declarations. Some of the workers also shift to start their own businesses while others retire to the informal economy. As such, trade union coverage continues to decline in the formal economy as workers shift to the informal economy. COTU (K) has therefore increasingly engaged informal economy workers and is representing their interests through social dialogue.

#### **4.1.2 *Social Dialogue Processes and Achievements***

First, COTU (K) engages with the government and the employers through the General Wages Council and the Agricultural Wages Council to review minimum wages. Through these consultations, the General Wages (Amendment) Order 2017 gave an increase of 18 per cent to the minimum wage earners thereby entitling the domestic workers (in the cities of Nairobi, Mombasa and Kisumu) to a monthly salary of about USD 130 (Republic of Kenya, 2017). This represents much progress, putting them above the poverty line, since domestic workers had been earning as low as USD 30 a month. Furthermore, COTU (K)'s involvement in minimum wages review processes through social dialogue has put most informal economy workers earnings at more than 1.25 USD a day, putting them above the international poverty line and in this way contributing to the eradication of extreme poverty (SDG target 1.1). A special application of the minimum wages in the informal economy was confirmed in a landmark ruling by the High Court in 2012 that the Minimum Wages apply equally to the domestic workers. This ruling created a precedence that social partners use to lobby for access to minimum wages provisions by domestic workers through social dialogue without necessarily going to the courts.

Secondly, COTU (K)'s engagement at the NHIF board has improved health insurance especially in the informal economy, contributing to increase the coverage of nationally appropriate social protection systems for the poor and the vulnerable (SDG target 1.3). For instance, the informal economy workers are currently covered by NHIF at a monthly premium contribution of Kshs. 500 (USD 5) paid by the informal economy workers individually. Official government statistics showed that the informal economy registered a 26.5 per cent increase in registration to NHIF for the year 2015/16. An estimated membership of 2,520,089 people was drawn from the informal economy (Republic of Kenya, 2017).



Moreover, it was also established that by advocating for access to NHIF, inequalities in social protection benefits were reduced. For instance, in November 2017, COTU (K) intervened when NHIF sought to discriminately limit access to health care to only four visits per year for informal economy workers. Through such intervention, the policy was withdrawn pending consultations by tripartite partners through social dialogue.

Through COTU (K)'s work with the International Trade Union Confederation (ITUC), the East Africa Trade Union Confederation (EATUC), as well as collaboration with FNV (Netherlands), the American Centre for International Labour Solidarity in Kenya (ACILS) and the Friedrich Ebert Stiftung (FES), several social dialogue forums have been organised for informal economy workers. Such forums have enabled the informal economy workers to build the capacity necessary to fight for their rights and fundamental freedoms, seek for social protection, and embrace social dialogue while seeking the right to decent work opportunities. These workers are therefore being empowered and their social, economic and political inclusion is being promoted (SDG target 10.2).

Domestically, before 2007, Kenya had punitive labour laws. Through social dialogue, COTU (K) in consultation with the government and the Federation of Kenya Employers (FKE) spearheaded the formulation of five sets of labour laws that are currently operational: Employment Act, Labour Relations Act, Labour Institutions Act, Work Injury and Benefits Act, and the Occupational Safety and Health Act. These labour laws apply indiscriminately to both male and female in the informal and formal economies. In this regard, both have equal rights, under the law, and should receive equal pay for work of equal value (SDG target 8.5).

Moreover, COTU (K), through social dialogue lobbied for the adoption of the 30 per cent public procurement policy. The Public Procurement and Disposal Preference and Reservations Amendments Regulations, 2013 was meant to preserve 30 per cent of government tenders for women, youth and persons with disabilities (Republic of Kenya, 2013). These groups are mainly found in the informal economy and such policies have therefore contributed to their inclusion in the formal economy.

Furthermore, as currently constituted, stakeholder consultations must be undertaken by the government before the implementation of any social, economic or political policy. The informal economy units are therefore represented in such consultations either by COTU (K) or by other representatives from informal economy associations or both.

Finally, COTU (K) and its affiliate (KUDHEIHA) have been in the forefront advocating for the rights of migrant domestic workers especially in the Gulf regions. Such campaigns led to the banning of such labour migration. Currently, the Ministry of Labour has put in place measures aimed at facilitating the regulated employment of about 1000-trained domestic workers in the Gulf region after lifting the ban as well as registering Labour agents who officially engage in domestic work migration (SDG target 10.7).

### **4.1.3 Obstacles to social dialogue**

While engaging social partners in social dialogue, the study revealed that COTU (K) experienced some obstacles. For instance, given that Kenya has not yet ratified Convention 189 and that the Employment Act 2007 does not expressly touch on informal economy workers, the trade unions affiliated to COTU (K) find it too difficult to get recognition by the national and county governments as well as other informal economy employers. In fact, for the domestic workers, recognition of trade unions organising them did not come until December 19th 2012 when the High Court made a landmark ruling recognising “verbal contracts” as “contracts” that can confer rights and can be enforced. The judge ruled that the National Minimum wages and other provisions of the employment laws covered domestic workers.

The study established as well that the informal economy is so fragmented that its representation remained a challenge. So many informal economy associations and groups existed limiting the ability of the trade unions to organise them for effective engagement in social dialogue. In this regard, social dialogue is compromised based on limited coverage of the informal economy.

## **4.2 The Case of Domestic Workers**

### **4.2.1 Introduction**

While pursuing the rights and fundamental freedoms of domestic workers in Kenya through social dialogue, KUDHEIHA’s efforts have been faced with the main challenge of recognition. This has been mainly because Kenya has not yet ratified the ILO Convention 189 on decent work for domestic workers. The negative social perception of domestic work seems to hinder this. In some cases, the employers were very hostile when approached on issues of their domestic employees. In addition, and as raised by KUDHEIHA, some of the employers even dismissed their domestic employees and relocated their residential places to avoid contact with the union once such employees reported cases of abuse of rights to the union. Moreover, KUDHEIHA’s plea to intervene to massive abuse of Kenya’s domestic workers in the Gulf region remained tortuous since even with the ban on such labour migration; some domestic workers still went to the Gulf informally.

In order to address these myriad social dialogue challenges, KUDHEIHA mostly engaged in bipartite social dialogue with the domestic work employers. However, on policy concerns, KUDHEIHA engages in tripartite consultations with the government and the Federation of Kenya Employers through COTU (K).

### **4.2.2 Social Dialogue Processes and Achievements**

Through Social Dialogue, KUDHEIHA has achieved several milestones that support the recognition and value of domestic work (SDG target 5.4) and protect their labour rights (SDG target 8.8). First, it is worth noting that before KUDHEIHA began engaging the domestic workers’ employers in social dialogue, most of the workers were paid less than Kshs. 6000 (USD 60). However, KUDHEIHA indicated that most of the domestic workers who were members of the union were being paid between Kshs. 6000 (USD 60) and 8000 (USD 80) on intervention by the union with the employers through consultations. Nonetheless, although not all domestic workers were paid the minimum wage, the study revealed that most of the employers who had been engaged by KUDHEIHA embraced the minimum wage requirements. In fact, KUDHEIHA reported that some of the employers contributed to the NHIF for the health insurance of their domestic on a voluntary basis.

Secondly, through KUDHEIHA’s engagement with the domestic workers employers in cases of termination, many of the domestic workers have had their severance dues paid.



Thirdly, one on one engagement with the employers of domestic workers has led to improvements in the contractual engagements. In some cases, some of the employers sought the intervention of KUDHEIHA to have in place “formal contracts” for the domestic workers. To this extent, KUDHEIHA witnessed enhanced working conditions for the domestic workers.

Fourthly, KUDHEIHA engages domestic workers every Sunday on social dialogue to share experiences and learn on better ways of protecting and safeguarding their rights as domestic workers. Some employers were invited to such consultations to engage on their obligation to protect the rights of the domestic workers.

Fifthly, faster and more efficient dispute resolution processes have led to conclusion of several disputes among informal economy players without getting into the lengthy legal procedures at the Employment and Labour Relations Court. In most cases, KUDHEIHA reported to have invited the employers of domestic workers and resolved pending issues amicably through social dialogue.

Furthermore, KUDHEIHA has been pushing for the ratification of convention 189 on decent work for domestic workers. Such advocacy has as well been on the need for the formation of a Wages Council for domestic workers.

#### ***4.2.3 Obstacles to Social Dialogue***

KUDHEIHA reported that hostile environments from abusive and uncooperative employers who have a negative attitude towards the domestic workers and fail to recognise them as workers remained the main obstacle to social dialogue. In some cases, some employers fail to recognise invitations by KUDHEIHA for consultations on issues raised by their domestic workers.

Representativity presents another notable challenge to social dialogue. Since domestic workers are in small groups, their scope of influence become minimal thereby limiting their freedom of association and bargaining power

Moreover, the KUDHEIHA has reiterated that limited resources mainly limited its involvement in constructive social dialogue and capacity building.

### ***4.3 The Case of Informal Economy Traders***

#### ***4.3.1 Introduction***

KENASVIT reported several cases of constant harassment and victimisation by the former local and municipal authorities as their main concern. In some cases, the Informal Economy traders were subjected to punitive taxation. Moreover, poor market conditions also added up to the myriad of the problems the traders faced as they did their business. In fact, KENASVIT reiterated that some of their members even faced sexual harassment by the local authorities.

Given the magnitude of these concerns and the negative impact that arose thereof, affecting the businesses of the informal economy traders, KENASVIT sought audience with the local authorities through social dialogue.



#### **4.3.2 Social Dialogue Processes and Achievements**

KENASVIT has led 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). It has also promoted policies that support productive activities, decent job creation, entrepreneurship, and encourage the formalisation and growth of micro- and small-sized enterprises, including through access to financial services (SDG target 8.3).

KENASVIT engaged several county governments (former municipalities, city and town councils) in consultations towards improving the market infrastructure for the traders. Following such constructive social dialogue, several modern markets and shades have been constructed across the country for the informal traders such as in Mombasa (Likoni Ferry, Kongowea); Kakamega; Bondo; Kisumu; and Nyeri.

Secondly, consultations regarding the punitive taxation and rent led to the reduction in rent collected from the modern markets, the case of Likoni Ferry.

Thirdly, KENASVIT reported reduction in harassment and intimidation of the traders by the municipal (county) authorities. Cases of corruption and extortion of money fraudulently have been on the decrease as KENASVIT engages the local authorities through social dialogue.

Fourthly, through social dialogue with the CIC insurance on behalf of the informal economy traders, there was increased access to microfinance through the CIC insurance for the informal traders' loans. In this regard, loans sought from the banks were guaranteed by the CIC insurance on behalf of the traders. Under such partnership, informal economy traders borrow loans to start and improve their businesses. Such Micro, Small and Medium enterprises (MSMEs) create more employment opportunities for the informal economy units. In fact, KENASVIT as well lobbies the county governments to give access to funds as well as tenders to the informal economy traders especially women.

Fifthly, KENASVIT reported constant consultations with NHIF on health insurance for the informal economy traders. These engagements were geared towards enhancing better health insurance to the traders through NHIF.

Sixthly, KENASVIT reported of on-going consultations with NSSF towards covering the informal economy traders. These negotiations are based on the NSSF Act No. 45 of 2013 that seeks to provide basic financial security to both formal and informal economy workers (Republic of Kenya, 2013);

Further consultations reported by KENASVIT were with the National Environment Management Authority (NEMA) on programs that would reduce exposure and vulnerability by the informal economy traders to environmental threats.

Participation and continuous engagement by informal economy representatives in the Micro and Small Enterprises Authority Board has enabled the informal economy to lobby for training on relevant entrepreneurial and industry based skills that enable the youth gain skills that lead to gainful employment. In fact, several beneficiaries of vocational training institutions contribute positively to economic growth through active engagement in economic activities. Continuous education and campaigns on labour rights and fundamental freedoms including the rights to occupational safety and health at work have enabled informal economy workers to have access to improved working conditions. These efforts have as well significantly reduced child labour in the informal economy (SDG target 8.7).



Further internal consultations by KENASVIT led to institutionalisation of gender mainstreaming, youth participation as well as the participation of people living with disabilities. For instance, KENASVIT embraces the two thirds gender rule (the rule requires that not more than two thirds of the same gender hold elective as well as appointive positions for connected purposes) (Republic of Kenya, 2015) in its leadership structures. Moreover, KENASVIT encourages active participation of people living with disabilities in its decision-making processes as well as in entrepreneurial activities.

#### **4.3.3 *Obstacles to Social Dialogue***

While engaging in social dialogue, KENASVIT pointed out that more engagement by the trade unions in their activities would have positive impacts on their social dialogue.

Secondly, during negotiations, most of the institutions they engage with do not give them appropriate consideration and in most cases do not send relevant representatives. As a result, either most of the negotiations do not bear fruit or the resolutions are never implemented.

KENASVIT as well observed that the National Social Security Fund (NSSF) had not modelled the informal economy within its coverage mechanisms. Lack of such framework exposed the informal economy to limited social security.

The other challenge identified by the study was the existence of numerous informal economy 'briefcase' associations. These associations had no membership and therefore no representation. The result was a disorganised informal economy fuelled by leadership wrangles and political interference that spelled doom to social dialogue processes.

The study further established that the youth and people living with disabilities had negative attitudes towards the sector. On the other hand, women in the informal economy rarely took up leadership positions as they consider the sector male dominated, yet they are the majority. These obstacles impacted negatively on their social dialogue processes.

Finally, in some cases, social dialogue processes failed due to limited resources as the informal economy players rarely contributed financially to their subscriptions, unless they faced turbulence with the authorities. Otherwise, under calm environments, the informal economy workers remained adamant to calls for continuous engagement in social dialogue.

### **4.4 *The Case of Tea and Flower Pickers***

#### **4.4.1 *Introduction***

The Kenya Plantation and Agricultural Workers Union (KPAWU) cover tea and flower pickers. KPAWU therefore engages in social dialogue on their behalf.

#### **4.4.2 *Social Dialogue Processes and Achievements***

KPAWU engages in negotiations with the Agricultural Employers Association (AEA) on the terms and conditions of employment. During such negotiations, the shop stewards and other union officials engage on negotiations with the representatives of AEA on behalf of the workers. The latest Collective Bargaining Agreement (CBA) was signed in November 9 2017 that gave the tea and flower workers a 23 per cent pay rise. The House Allowance was increased by 28 per cent. This CBA was the highest signed in 2017 given the political situation.



#### **4.4.3 *Obstacles to Social Dialogue***

The main obstacle to social dialogue is unwillingness by the employers through their association to reward the workers' pay increases. In fact, the 2013-2015 CBA went through several court battles until the Employment and Labour Relations Court awarded a 30 per cent pay rise. This decision was again appealed by the Agricultural Employers Association culminating to fresh negotiations. A final agreement led to the current CBA that awarded 23 per cent pay increase. In this regard, the union incurs many costs in handling court cases regarding these negotiations.

## 5. *Summary, Recommendations and Conclusion*

### 5.1 *Summary*

This paper provides an overview of the major contributions of social dialogue to the formalisation of the informal economy in Kenya, thereby leading to the Sustainable Development Goals.

The results show several milestones made in the informal economy that greatly contribute to the formalisation of the sector. In essence, the study has revealed that social dialogue in the informal economy 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). Through such milestones, the informal economy formalisation agenda is realised. Most importantly, these developments contribute immensely to the realisation of the Sustainable Development Goals.

### 5.2 *Recommendations*

Having shown how social dialogue contributes to the formalisation of the informal economy as well as the linkages to the SDGs, the study recommends the following to enhance sustainable development through social dialogue on the informal economy:

Firstly, more support from social and development partners is needed for social dialogue processes and outcomes as well as to enhance capacity of informal economy representatives to effectively engage in productive social dialogue. For instance, financial support is key for the case of informal economy organising for social dialogue.

Secondly, trade unions need to scale up their organising work with more informal economy workers. In addition, informal economy associations should join trade unions in solidarity. Such solidarity is critical when advocating for the rights and fundamental freedoms of informal economy workers, social protection and decent work for all through social dialogue.

Thirdly, informal economy representatives should lobby the National Social Security Fund to cover informal economy workers as stipulated in the NSSF Act No. 45 of 2013. On the other hand, advocacy should be on the National Hospital Insurance Fund to provide equal access to healthcare for both informal and formal economic units without bias. As currently constituted, informal economy workers get limited access to healthcare provision compared to their counterparts in the formal sector

Fourthly, advocacy should be mounted on the government towards the formulation of informal economy policy aligned to the ILO Recommendation 204 on transitioning from informality to formality.

### 5.3 *Conclusion*

This study has made actionable recommendations towards formalising the informal economy through social dialogue and its linkages to sustainable development. In this regard, stakeholders including governments, employers and their associations, trade unions and their federations, as well as informal economy units should enhance their advocacy in line with the study recommendations to enhance sustainable transitioning from informality to formality through social dialogue.

## 8. References

- ILO (2011).The Domestic Workers Convention, 2011 (No. 189) and Recommendation (No. 201). Geneva
- ILO (2015).Recommendation 204 concerning the transition from informal to the formal economy. International Labour Office, Geneva 2015
- ILO-ITUC (2017).Social Dialogue as a driver and governance instrument for sustainable development. ILO-ITUC Issue Paper. Downloaded from [http://www.ituc-csi.org/issue paper-social-dialogue-development](http://www.ituc-csi.org/issue-paper-social-dialogue-development)
- KU Leuven (2016). Social Dialogue as a Driver and Governance Instrument for Sustainable Development. ILO-ITUC Discussion Note.
- Republic of Kenya (2010).The Constitution of Kenya, 2010.Government printer. Nairobi
- Republic of Kenya (2012). Micro and Small Enterprises Act No. 55 of 2012. National Council for Law.
- Republic of Kenya (2012).National Hospital Insurance Fund Act. Revised edition. Laws of Kenya. National Council for Law Reporting with the Authority of the Attorney General
- Republic of Kenya (2013). National Social Security Fund Act No. 45 of 2013.
- Republic of Kenya (2013): The Public Procurement and Disposal Preference and Reservation Amendment Regulations, 2013
- Republic of Kenya (2013).National Social Security Fund Act, No. 45 of 2013.Laws of Kenya. National Council for Law Reporting with the Authority of the Attorney-General. Nairobi
- Republic of Kenya (2015). The Kenya Gazette Supplement No. 52. National Assembly Bills No. 20, 2015. The Two-Thirds Gender Rule Laws (Amendment) Bill, 2015
- Republic of Kenya (2017).Economic Survey 2017.Kenya National Bureau of Statistics. Government printer. Nairobi
- Republic of Kenya (2017). Labour Institution Act (No. 2 of 2007). The Regulations of Wages (General) Amendment Order, 2017
- Julius M. Muia (2011). Managing Economic and Social Councils as a Driving Force of the National Dialogue on Economic and Social Policies” paper presented during a capacity building workshop of the National Economic and Social Council at the Intercontinental Hotel, Nairobi Kenya on 7<sup>th</sup> March 2011.

**The Trade Union Development Cooperation Network (TUDCN)** is an initiative of the International Trade Union Confederation (ITUC), bringing together affiliated trade union organisations, solidarity support organisations, regional ITUC organisations, the Global Union Federations (GUFs), the European Trade Union Confederation (ETUC) and the Trade Union Advisory Committee to the OECD (TUAC). TUDCN's objective is to bring the trade union perspective into the international development policy debates and improve the coordination and effectiveness of trade union development cooperation activities.

Le **Réseau syndical de coopération au développement (RSCD)** est une initiative de la Confédération syndicale internationale (CSI) réunissant des organisations syndicales affiliées, des organisations de solidarité, les organisations régionales de la CSI, ainsi que les Fédérations syndicales internationales (les fédérations sectorielles - FSI), la Confédération européenne des syndicats (CES) et la Commission syndicale consultative auprès de l'OCDE (TUAC). Le RSCD a pour but de traduire la perspective syndicale dans les débats sur la politique en matière de développement international et d'améliorer la coordination et l'efficacité des activités syndicales dans le domaine de la coopération au développement.

La **Red Sindical de Cooperación al Desarrollo (RSCD)** es una iniciativa de la Confederación Sindical Internacional (CSI), que agrupa a diversas organizaciones sindicales afiliadas, organizaciones solidarias (OS), organizaciones regionales de la CSI, las Federaciones Sindicales Internacionales (FSI), la Confederación Europea de Sindicatos (CES) y la Comisión Sindical Consultiva ante la OCDE (TUAC). El objetivo de la red es aportar la perspectiva sindical a los debates políticos y mejorar la coordinación y la eficacia de las actividades sindicales relacionadas con la cooperación al desarrollo.



dce@ituc-csi.org

+32 (0) 2 224 02 25



@TUDCN\_RSCD



/TUDCN.RSCD