REGULATION OF DIGITAL PLATFORMS FOR A SOCIALLY-JUST GIG ECONOMY IN KENYA

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Berlin, April 2023

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SUSTAINABILITY, ENTREPRENEURSHIP AND GLOBAL DIGITAL TRANSFORMATION

EXECUTIVE SUMMARY

The rise of digital platforms has changed the way people live, work and seek employment, giving way to a new economic model referred to as the 'gig economy' in which services such as food delivery, ride-haling but also translation, design work or admin work are available online at the click of a button. In Kenya, this gig economy is growing fast. In 2020, it was estimated that the gig economy in Kenya was employing thousands and valued at 109 million dollars. The 2021 report by the Federation of Kenya Employers notes that the informal sector occupations have been steadily increasing from 10% in 1974 to 83% in 2019 while employment in the formal sector reduced from 90% in 1974 to 18% in the same period. These statistics reflect the reality that the future of work in Africa is one in which workers will be engaged in multiple gigs with somewhat varied levels of formality and high levels of flexibility rather than the rigidity of formal employment. It is clear, therefore, that the gig economy is crucial as it is quickly becoming the main source of livelihood for a majority of the citizens. Despite its great promise, many gig workers experience challenges such as unstable income, high costs of doing business since gig workers often have to buy their own equipment, lack of job security since their platform accounts can be suspended or deactivated without notice, and a poor access to social services such as health care benefits and pensions. The majority of these challenges could be addressed through regulations to protect gig workers. Unfortunately, while Kenya has laws protecting workers, these laws are tailored for the formal employment sector, leaving the gig economy poorly regulated.

The study "Regulation of digital platforms for a socially-just gig economy in Kenya" examines, summarises, and synthesises the academic and policy-related literature that assesses digital platform regulation in terms of, inter alia, market power concentration, workers' rights, and copyright protection in Kenya. The work identifies policy initiatives on digital platform regulation and investigates the role of stakeholders such as civil society, industry, academia and policymakers in academic studies and policy initiatives on platform regulation and the extent to which these efforts have been driven by local researchers and policymakers. Furthermore, the study explores the challenges, concerns and factors affecting effective platform regulation and recommends platform regulation approaches, regimes and frameworks appropriate to nurture, mainstream and sustain a gig economy in Kenya and other sub-Saharan countries.

The study was conducted in the Republic of Kenya, specifically in the Nairobi Metropolitan Service. This is because most gig workers live and work in the metropolis. An explanatory mixed methods research approach was used to conduct the study. The researchers first conducted a quantitative study through which quantitative data was collected using structured questionnaires. The results of the first phase were used to inform the second phase which involved the collection of qualitative data using interviews. The general population of the study included platform developers, platform users, policymakers and implementers, and civil society groups involved directly or indirectly with the gig economy in Kenya. The estimated population of the study was approximately 37,000 gig workers and stakeholders.

The key findings of the study are that: 1) Platform owners wield a lot of power over gig workers. Because of this power concentration, gig workers in Kenya are vulnerable to exploitation by platform

owners. 2) Some laws and policies which could be used to regulate gig work in Kenya exist but they are not being applied to gig work because they were tailor-made for the traditional work environment. 3) Most of the gig workers felt that the stakeholders did not support the gig economy adequately. 4) Several challenges stand in the way of the effective implementation of platform regulations in Kenya. These challenges largely revolve around the non-conducive implementation environment resulting from the ineffective contribution of stakeholders to platform regulation.

The study recommends that: 1) The Government of Kenya should recognise gig work as employment and gig workers as employees whose rights need to be protected legally. 2) The Government of Kenya, in collaboration with the other stakeholders, should review, revise or update legal and policy frameworks governing terms of employment, workers' rights and welfare to include the interests of the burgeoning number of gig workers. 3) Gig workers in Kenya should be sensitised to their rights as employees and should be encouraged to unionise to effectively lobby and advocate for their rights. 4) The State Department of ICT and Digital Economy should be facilitated fully to prioritise the realisation of a lucrative but just gig economy in Kenya. 5) Civil society organisations as well as unions should provide affordable or free legal advice or representation to gig workers whose rights are violated but have no means of seeking legal redress. 6) The Judiciary of Kenya should create a section for gig workers under its Labour and Employment Division to handle disputes from the gig economy. 7) Gig work should be integrated into the Competency Based Curriculum as a critical component of digital literacy and citizenship. 8) The Government of Kenya should make its regulatory intentions clear and work more with the stakeholders to build confidence in its efforts.

ACKNOWLEDGEMENTS

This study is part of the research project Sustainability, entrepreneurship and global digital transformation (SET) at the Alexander von Humboldt Institute for Internet and Society (HIIG). The project was funded by the Deutsche Gesellschaft für internationale Zusammenarbeit (GIZ) on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ). HIIG supports the BMZ's Digital Transformation Centers (DTCs) as a scientific partner and carries out exchange and research formats in eight partner countries.

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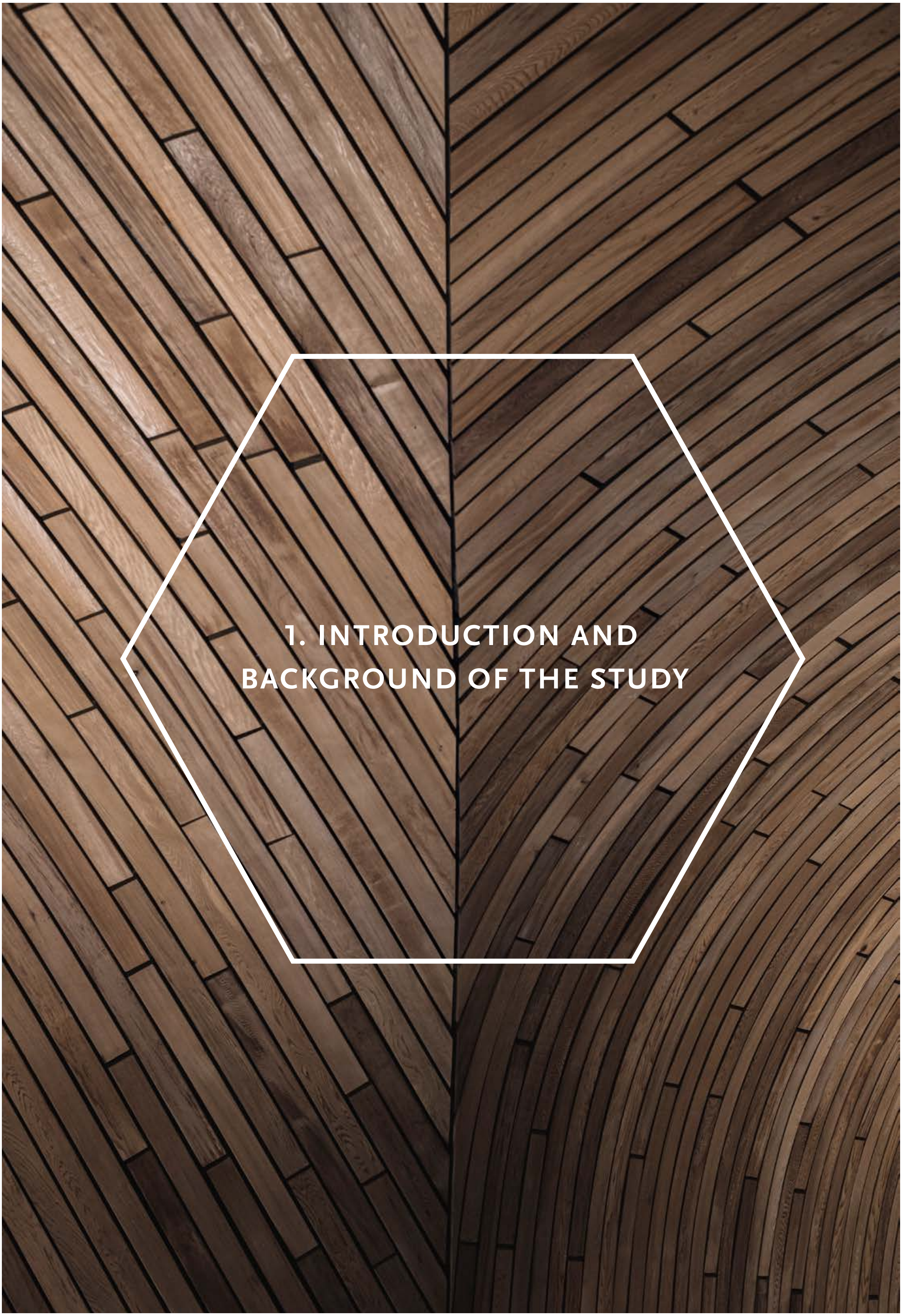


1. INTRODUCTION AND BACKGROUND OF THE STUDY

1.1 INTRODUCTION

About 5 years ago, getting a taxi in Kenya meant either standing on the roadside and waving for one or hovering around the town centre looking for taxi bays. Similarly, food delivery was limited to only hotel residents who could request for room services or else pop into a restaurant and order take-away. Today, these services are available to consumers at the click of a button by using online digital platforms (Dewan et al., 2020). The rise of digital platforms has changed the way people live, work and seek employment. According to Dewan et al. (2020), the influence of digital platforms has morphed the traditional perception of employment as a relationship between employees and employers giving way to the new economic model referred to as the 'gig economy'. Also known by some as platform economy, the gig economy is an economic model where members earn a living through use of technology platforms (Graham et al., 2018). The economy has created new avenues for revenue generation and value creation. The people who work using the digital platforms are known as freelancers or independent contractors. They offer specialised services and products through the platforms. These workers are often independent, self-motivated, innovative and possess unique technical know-how that has seen them engage in self-employment. Their self-reliant career is characterised by high mobility, freelance assignments and short contracts rather than long-term employment (Fullen, 2019; Geschwill & Nieswandt, 2020; Vallas & Schor, 2020).

Globally, countries have begun to view work done through digital platforms as a driver to the future growth in employment (Graham et al., 2018). Some countries have also included such workers in their national policies. For example, the Indian government has developed a partnership with the digital platforms owners for social welfare, job creation strategies and skilling initiatives [4] (Sharma, 2019; India SA Comms Team, 2019). Likewise, the Philippine government supports online workers whose activities are regulated by the national code of conduct (Pamintuan, 2022).

These examples demonstrate the growing promise of the gig economy. In fact, reports indicated that in 2018 alone, the global gig economy had grown immensely with a valuation of two hundred and four billion dollars. This value is projected to grow to four hundred and fifty-five billion dollars by the end of 2023 (Mercy Corps, 2020). A study by MasterCard and Kaiser in 2018 found that, globally, transport platforms for gig economy led to a 50% gross transaction while accommodation platforms led to 30%. The other 20% was from platforms offering services like artisan, professionals and household work.

AFRICA IS AT THE CUSP OF A DIGITAL TRANSFORMATION, WHICH HAS SEEN THE STEADY GROWTH AND USE OF DIGITAL PLATFORMS

Africa is at the cusp of a digital transformation, which has seen the steady growth and use of digital platforms that is opening up vast opportunities for both unskilled labour and knowledge workers to engage in diverse forms of entrepreneurship. Kenya, one of the top African countries to be recognised as a technology leader (Oxford Insights, 2021), is at the forefront of this gig economy, currently exemplified by the diversity of digital platforms

4 https://www.thehindu.com/news/cities/Delhi/ola-drivers-to-get-healthcare-benefits-under-ayushman-bharat/article29463349.ece

and applications operated in the country. These platforms offer the knowledge workers immense opportunities for flexible, cost-effective, and convenient entrepreneurship ventures at both the local and global levels. The total estimate of gig workers in Kenya by 2019 was 36,573 earning approximately one hundred and nine million dollars (Mercy Corps, 2020). The platform that gained the first transactions in the gig economy in Kenya was Uber, which launched in 2015. It was followed by Little Cab and Lynk in 2016. The first two were transportation companies, while Lynk was used to connect clients with skilled labourers. With time other platforms have emerged to deal with the growing demand for services by individuals. Also, the growth of digital infrastructure in the country has facilitated the development of local digital platforms for the gig economy. Currently, Kenya has digital gig platforms that range from transport (Uber, Safeboda, Bolt), micro-task work (Kuhustle, Upwork), artisan work, delivery, accommodation and business process outsourcing (Cloud factory).

Even with the growth of the gig economy in the African countries, little has been done to come up with policies and regulations to protect the gig workers (Porteous & Morawczynski, 2019). Most countries have no labour policies and lack specific licencing regimes for digital gig platforms. Recently, Kenya passed a law that imposes 5% taxation on digital platforms, but the law has not been implemented effectively. Kenya has no law that protects gig workers. They are treated as independent workers who are not entitled to any labour and social security benefits.

EVEN WITH THE GROWTH OF THE GIG ECONOMY IN THE AFRICAN COUNTRIES, LITTLE HAS BEEN DONE TO COME UP WITH POLICIES AND REGULATIONS TO PROTECT THE GIG WORKERS

1.2 STATEMENT OF THE PROBLEM

The gig economy in Kenya is growing fast. According to a report by Mercy Corps youth impact labs (2019), the online gig economy in Kenya was valued at 109 million dollars and employed 36,573 gig workers. These workers were mainly engaged in ride hailing services and online consultancy work. The growth of the informal sector has been gradual. The 2021 report by the Federation of Kenya Employers notes that the informal sector occupations have been steadily increasing from 10% in 1974 to 83% in 2019. The inverse is true for employment in the formal sector where employment rates have reduced from 90% in 1974 to 18% in 2019. Additionally, Ng'weno and Porteous (2018) argue that the present and future of work in Africa is one in which workers will be engaged in multiple gigs with somewhat varied levels of formality and high levels of flexibility rather than the rigidity of formal employment. It is clear, therefore, that the gig economy is crucial as it is quickly becoming the only source of livelihood for a majority of the citizens.

THE GIG ECONOMY IS CRUCIAL AS IT IS QUICKLY BECOMING THE ONLY SOURCE OF LIVELIHOOD FOR A MAJORITY OF THE CITIZENS

A majority of workers are attracted to the gig economy because it is touted to provide them with independence that they would not have in formal employment. Workers can choose whom to work for, set their own hours and even, for a majority on digital platforms, be able to work remotely (Anwar & Graham, 2021). These advantages pale in comparison, however, to the many challenges gig workers face: stiff competition for online jobs in local markets as well as international markets;

lack of stable income, which makes them ineligible to apply for financial services such as loans or insurance; high costs of doing business since gig workers often have to foot costs for their own equipment, transport and other overhead, which would otherwise have been borne by the employer but become personal expenses for the gig worker; lack of job security since their platform accounts can be suspended or deactivated without notice in the event of customer complaints of platform error; and lack of a safety net such as health care benefits and pensions (Rotich, 2022). The majority of these challenges could be addressed through regulations to protect gig workers. Unfortunately, while Kenya has laws protecting workers, these laws are tailored for the formal employment sector, leaving the gig economy poorly regulated.

THE REGULATION OF DIGITAL GIG PLATFORMS IS VITAL IN THE CREATION OF REGULATORY FRAMEWORKS FOR THE GIG ECONOMY

The International Labour Office acknowledges that regulation for informal labour presents a challenge for most countries because existing laws are often incomplete, too vague, out of date or lacking in clear definitions of the industry players, thus creating loopholes for exploitation of workers. According to Mitullah (2006), the lack of appropriate regulatory frameworks for informal workers exposes them to high compliance costs due to multiple licensing demands, opens them up to official harassment, unclear terms of recruitment, punitive dismissals and unfair work environment. A major stakeholder in the gig economy are the digital platforms that act as quasi-employers to gig workers. These platforms enjoy employer level control over their workers but with minimal obligations on their part to support them. Despite reaping benefits from offering clients a flexible, skilled workforce, they themselves do not adequately contribute to the maintenance and development of the said workforce as a traditional employer would. Wood et al. (2021) state that most gig platforms fashion themselves as mediators of the markets with the role of matching labour supply and client demand. This allows them to evade employment regulations that would otherwise apply, despite the reality being that they do more than just match users with business opportunities. They are often in control of the recruitment process, remuneration and setting up of work conditions for gig workers. It is clear, therefore, that the regulation of digital gig platforms is vital in the creation of regulatory frameworks for the gig economy. Consequently, this research examined the existing regulations in Kenya that affect online gig workers, with specific focus on regulation of digital gig platforms. The main aim of the study was to investigate the existing status of gig economy regulation, the challenges faced by stakeholders in the creation and implementation of policies in the industry and recommend a legal framework for regulation of the same.

1.3 OBJECTIVES OF THE STUDY

The specific objectives of this study were to:

1. Examine, summarise, and synthesise the academic and policy-related literature that assess digital platform regulation in terms of, inter alia, market power concentration, workers' rights, and copyright protection in Kenya.

2. Identify policy initiatives on digital platform regulation on the issues identified above in reference to Kenya.

3. Investigate the role of stakeholders such as civil society, industry, academia and policymakers in academic studies and policy initiatives on platform regulation in Kenya and the extent to which these efforts have been driven by local researchers and policymakers.

4. Explore the challenges, concerns and factors affecting effective platform regulation in Kenya.

5. Recommend platform regulation approaches, regimes and frameworks appropriate to nurture, mainstream and sustain a gig economy in Kenya and other sub-Saharan countries.

1.4 RESEARCH QUESTIONS

1. What is the overview of academic and policy-related literature that assesses digital platform regulation in terms of, inter alia, market power concentration, workers' rights, and copyright protection in Kenya?

2. Which policy initiatives on digital platform regulation are set out regarding the issues identified above in reference to Kenya?

3. What are the roles of stakeholders such as civil society, industry, academia and policymakers in academic studies and policy initiatives on platform regulation in Kenya and the extent to which these efforts have been driven by local researchers and policymakers?

4. What challenges, concerns and factors are affecting effective platform regulation in Kenya?

5. What platform regulation approaches, regimes and frameworks are appropriate to nurture, mainstream and sustain a gig economy in Kenya and other sub-Saharan countries?

1.5 SIGNIFICANCE OF THE STUDY

The disruption of employment by digital platforms is occurring and is on the rise. The nature of work and the relationship between employer and employee is being redefined as more companies and individuals choose, or are pushed, to enter the gig economy. As an emerging area of research, there are few clear definitions of concepts such as what characterises gig work and what constitutes a quality work environment and digital work platforms (Montgomery & Baglioni, 2020). This study therefore contributes to the ongoing conversation by providing empirical data on the gig economy and legislation in Kenya.

The findings of this research will be instrumental in guiding the government and other stakeholders in creating appropriate regulations for the gig economy. As part of its investigation, it will explain the context in the gig economy and, additionally, highlight the shortcomings of existing regulatory frameworks for the online gig economy thus providing opportunity to develop solutions on the same.

The importance of protection for gig workers cannot be overstated. Many researchers have pointed out that there is urgent need to create legislative frameworks that protect gig workers from exploitation and improve their working conditions (Banik & Padalkar, 2021; Inversi et al., 2022; Oyer, 2020; Schwellnus et al., 2019; Stewart & Stanford, 2017; Todolí-Signes, 2017). It is not enough that platforms provide jobs. As more people enter the gig economy, the quality of jobs provided should improve as well. Appropriate legislation will enable this to happen.

The creation of a regulation framework for the gig economy will be beneficial to platforms because it will provide a basis for gig workers to build their own work policies and create a fair working environment. Appropriate regulation will translate into fair competition practices as it will create the basic statutory requirements for hiring gig workers, hence reducing the ethical dilemmas caused by race-to-the-bottom competition strategies, which often times negatively affect the workers and lead to high turnover rates (Dong, 2021). Additionally, clear policies will also help to reduce the cost of compliance for platform owners as the need for varied licensing requirements can be streamlined into unified regulations. With guidance of a proper regulatory framework, platforms will be able to offer decent work environments which will improve the lives of their workers as well as improve client satisfaction.

THE CREATION OF A REGULATION FRAMEWORK FOR THE GIG ECONOMY WILL BE BENEFICIAL TO PLATFORMS [...] AND CREATE A FAIR WORKING ENVIRONMENT

1.6 JUSTIFICATION OF THE STUDY

Globalisation is on the verge of providing new opportunities for socioeconomic development through the gig economy (Green, 2018). It stands to be the new source of income for the current generations of professionals. According to Green (2018), employers are currently more inclined to outsource services using online platforms. This is especially so when the skills are only needed for a limited period of time. The platform economy is not limited to certain job types as it spans across industries, from the well-known transport industry to skilled labour platforms (Manyika et al., 2016). Little is known about the regulation put in place to assist gig workers and support them (Karlsson & Wranne, 2019). Although there are studies on gig economy, the platform economy in the context of regulations and policies that govern it is not well researched. This has brought about unclear legal regulation frameworks for the platforms and limited civil society involvement in seeking better labour conditions for gig workers (Busch, 2020; Lytras et al., 2021).

KENYA IS RENOWNED FOR DIGITAL INNOVATIONS WHICH HAVE EARNED ITS CAPITAL, NAIROBI, THE NICKNAME “SILICON SAVANAH”

Kenya is renowned for digital innovations which have earned its capital, Nairobi, the nickname "Silicon Savanah". Many developments in the country's technological landscape demonstrate the country's more rapid adoption of emerging technologies. For instance, Kenya is celebrated globally for its mobile money transfer solution, M-PESA, which has transformed the business environment in the country by creating the foundation for a cashless digital economy. Additionally, Kenya's information and communications technology (ICT) sector is well developed with a fairly reliable electricity supply and one of the best internet connections in sub-Saharan Africa, because of the sizable number of undersea cables which land in it. There is also a dominant presence of multinational ICT companies, implying access to the latest technologies, a growing population of young people amenable to technological developments, a relatively well-educated population (adult literacy is about 78%) and a history of innovation. Statistics from the International Telecommunications Union (ITU) and the Communications Authority of Kenya (CAK) indicate that the penetration rates of the mobile telephony services in Kenya, as measured by subscriptions per 100 inhabitants, surpassed the 100% mark to stand at 106.2% as at December 2018[5]. The Government of Kenya has also developed a digital economy blueprint, whose mission is to transform Kenya into a nation where every citizen, enterprise and organisation has digital access and the capability to participate and thrive in the digital economy. In fact, Kenya was rated among the top five African best performers in the B2C e-commerce 2019 index developed by the United Nations Conference on Trade and Development (UNCTAD)[6]. In spite of this beckoning potential, the platform economy stands on shaky ground. This could partially be linked to inadequate or non-facilitative regulation of digital platforms in the country and the lack of ethical considerations associated with dependence on the foreign provision of the digital platforms, which can lead to unequal asymmetrical power relations and a lack of local innovation in as far as digital platforms are concerned.

KENYA WAS RATED AMONG THE TOP FIVE AFRICAN BEST PERFORMERS IN THE B2C E-COMMERCE 2019 INDEX

1.7 SCOPE AND DELIMITATION OF THE STUDY

This study was conducted in the Republic of Kenya. The study was specifically conducted in the Nairobi Metropolitan Service (NMS). This is because most gig workers live and work in the metropolis. During the African Tech Summit held in Nairobi in May 2022, it emerged that most of the generation Z populace are more inclined to settling in Nairobi from where more than 70% of jobs offer tech-enabled remote work (Appsafrica, 2022).

The study highlighted the concept of regulations available for digital economy platforms in Kenya. The researchers explored the platforms related to transport and delivery, e-commerce, hospitality, education, freelancing and health services and products. It looked into the details of all legal regulations available to support gig workers in these platforms.

5 https://www.ca.go.ke/wp-content/uploads/2019/03/Sector-Statistics-Report-Q2-2018-19.pdf

6 https://unctad.org/system/files/official-document/tn_unctad_ict4d14_en.pdf

The study collected data from platform developers, platform users and stakeholders involved in creating and implementing the regulations that affect the platforms and the platform workers directly or indirectly. Additionally, the study collected data from civil society organisations available in the different sectors where the platform operates in.

1.8 LIMITATION OF THE STUDY

First, the nature of the gig economy is such that it encompasses a wide variety of industries with workers who are drawn from all walks of life. Most platforms try to be a one-stop shop for clients and therefore try to attract and provide a wide range of expert workers ranging from plumbers to academic writers. Given the variety of skills, regulations that would apply to workers on the platforms are likely to be as varied. This introduces a wide range of nuances in the policy and regulatory frameworks that may apply to the workers. While the researchers will do the best they can to be thorough and accurate, they face limitations of time and availability of legal expertise to ensure that all relevant regulations are examined and analysed.

Second, the gig economy allows gig workers to work remotely and perform tasks that are not just locally available. They also operate on the international platforms. Online gig workers can, therefore, bid for and work for multinational companies which are subject to laws and regulations that are outside the jurisdiction of the Government of Kenya. This poses a limitation in that the regulations that the platforms adhere to may be those of the countries in which they are based, despite having workers in Kenya.

Third, given that online gig workers can and often do work remotely, the geographical distribution of users of digital platforms can be significantly wide, as users can work from anywhere in the country. Conducting a survey of such a widespread population is challenging. The researchers may overcome this challenge by conducting data collection using virtual tools such as online web conferences via Zoom or online surveys. However, despite the convenience of these data collection methods, they rely on the respondents having access to a stable internet connection, which may be costly for them leading to a low response rate.

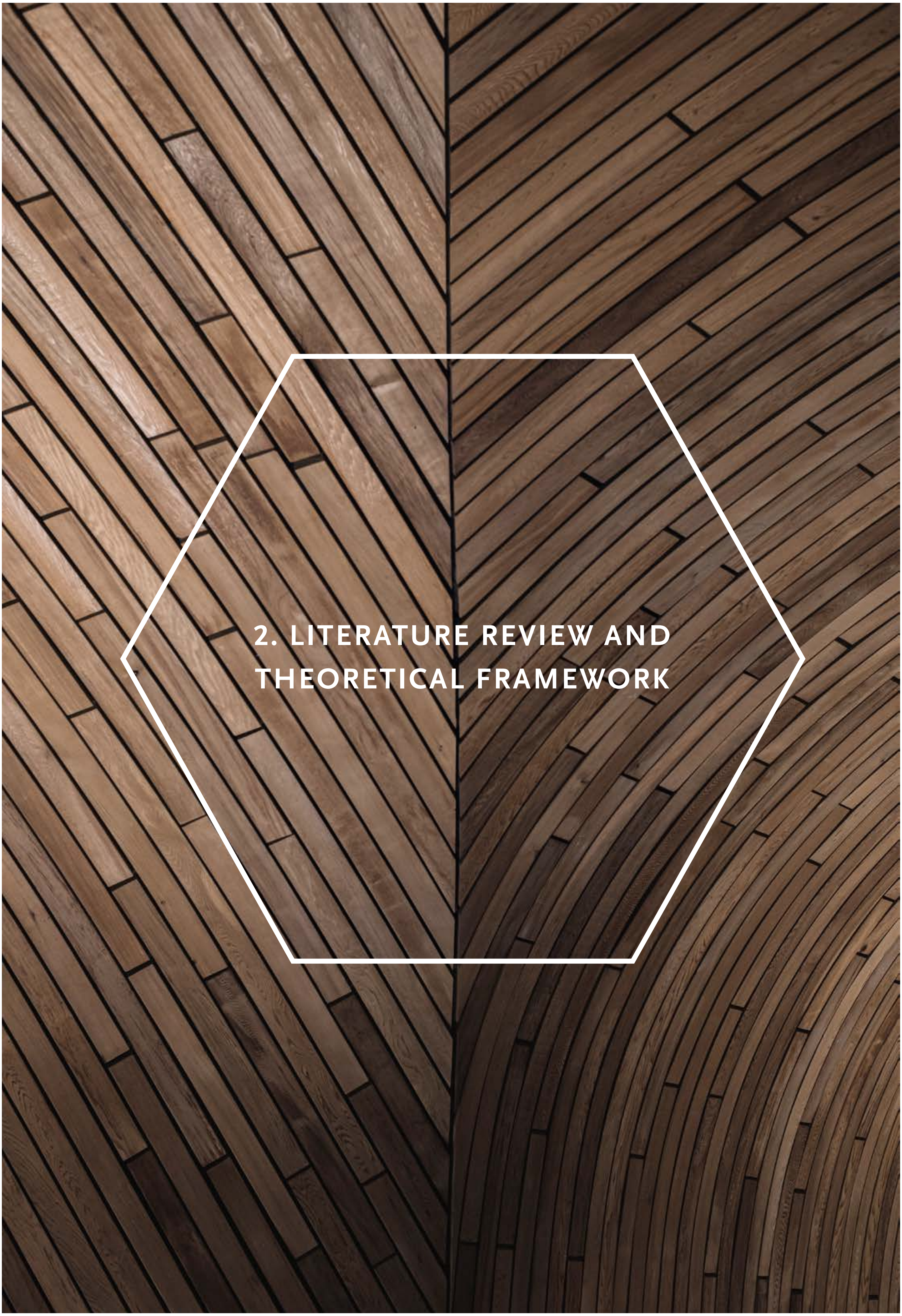
Fourth, the study is likely to face a non-response bias. Groves et al. (2006) note that responses to a survey are affected by three main factors: respondent's interest in the topic of survey, reactions to the survey sponsor and the use of incentives. While conducting their research on the gig economy in academia, Nelson et al. (2020) noted that the response rate was higher for fulltime faculty members than it was for adjunct faculty members. They noted that interest may not be sufficient enough to trigger participation in the study. Additionally, likely respondents will prefer to participate if thinking or discussing the subject of the study is rewarding to them. Therefore, if the topic of study is likely to make the respondents feel embarrassed or generate negative or unpleasant thoughts about the subject, they are less likely to participate. It is likely that the current state of the gig economy industry and the lack of regulation thereof may bring to light the harsh reality of its exploitative status. Thus, it may not be an easy topic for discussion, and consequently may have an impact on the response rate. Additionally, given that gig workers do not have fixed work schedules and often have to be ready to respond to work requests at any given time, it is likely that the data collection exercise will be conducted in an environment with possible disruptions. This may affect the rapport between the investigators and may pose a challenge getting detailed information from respondents who feel rushed.

1.9 STRATEGIES FOR DISSEMINATION OF THE FINDINGS

The findings of this study will be disseminated using:

- A research manuscript that will be published in an open access channel.
- A summary of the findings will be published in HIIG's Digital Society Blog.
- Two two-page policy briefs drawn from each objective of the study. These briefs will be shared digitally with the key policymakers and implementers.
- Participation in the research sprint and the multi-sector stakeholders' dialogue in Kenya in November 2022.

With the above, a review of literature is undertaken below and a theoretical framework presented to help underpin the work at hand.



2. LITERATURE REVIEW AND THEORETICAL FRAMEWORK

2.1 INTRODUCTION

The term 'gig economy' has recently gained popularity to describe the nature of work that is short-term, flexible and often platform-mediated. However, a clear and widely accepted definition of the term is yet to emerge as the parameters of what constitutes a 'gig' or who a 'gig worker' is remain varied. There are three main characteristics of gig work that emerge in current literature. The first is that gig work is temporary (Carney & Stanford, 2018; De Stefano, 2016; Veluchamy et al., 2021). The workers involved in gig work are not considered hired employees but rather as some form of contractors providing a temporary service to a client. A 'gig' is, therefore, a short-term task that once completed the hired party can move on. This implies a temporary relationship between the gig worker and the client, hence introducing a transience to the dynamics of the job unlike the case with traditional full-time employment where there is an expectation of stability, growth and even promotions (Watson, et al., 2021). Secondly, gig work is flexible (Cook et al., 2019; Healy et al., 2020; Spurk & Straub, 2020; Wood et al., 2019). In this context, flexibility refers to the ability of the workers to decide who to work for, where, how and when. Unlike regular employment with fixed hours of work and often with restrictions on what the employees can do or not do during workhours, gig work does not place the same demands on the workers. Thus, they are free to work for multiple employers during the same period (Kaine & Josserand, 2019). Gig workers also have the flexibility to work remotely or only at sites that they choose. As a result, they can refuse to offer service to clients if they find the task at hand inconvenient to them. Thirdly, gig work does not have a consistent remuneration. Instead, payment is made based on task completion or commissions (Bates et al., 2021; Berg, 2015; Brawley, 2017; Hafeez et al., 2022). Therefore, gig workers, unlike their permanently-employed counterparts, do not have a stable income. Conversely, their earnings are dependent on the number of tasks they are able to complete in the allocated time. This form of remuneration has been termed as the 'zero-hour' contract by a number of researchers (Atkinson, 2022; De Ruyter & Brown, 2019; Ginès Fabrellas, 2019; Patel & Waynforth, 2022). The remuneration introduces fiscal uncertainty in the gig economy. Therefore, gig workers are often financially insecure. They have to take on more tasks to be able to earn a decent living (Ginès Fabrellas, 2019).

UNDOUBTEDLY, THE MAJOR PLAYERS IN THE GIG ECONOMY ARE THE GIG PLATFORMS

Undoubtedly, the major players in the gig economy are the gig platforms. These are the places, virtual or offline, where gig workers are able to market their services and get job opportunities. The platforms act as pseudo-employers for the gig workers and mediate the communication between the workers and clients seeking services (Vallas & Schor, 2020). According to Dunn (2020), gig platforms are more than just matchmakers between labour seekers and workers. They are also responsible for vetting the gig workers, setting terms of engagement for the workers, and are either directly or indirectly responsible for their remuneration. Examples of digital gig platforms include rideshare platforms such as Uber, Bolt, InDriver; retail platforms such as Jumia, Jiji; freelance platforms such as Upwork, Truelancer, and Freelancer.com, among others.

Gig work can be categorised into two main types. The International Labour Organisation (ILO) categorises gig work into two main groups: crowd work and work on demand (De Stephano, 2016). Crowd work is the type of gig work in which gig workers are hired to perform digital task or remote tasks. These types of gigs can be done remotely and are often cloud computing enabled. They usually employ highly skilled digital workers with varied expertise. Examples of crowd work include online academic writing, freelance programming or system development, freelance graphic design, and online advertising, among others. These types of work do not require physical interactions with the clients and can all be performed remotely. Gig workers get their assignment on the platforms, work on them in their own offices or homes and upload the completed work to the platforms for evaluation and transfer to the clients. This form of gig work is highly dispersed geographically, and workers can often perform tasks for clients across state boundaries (Berg et al., 2018; Gandini, 2019). Work-on-demand gig work differs from crowd work because it entails real-world interactions (Aloisi, 2015; Kaine & Josserand, 2019). This type of gig work requires to be performed offline rather than being performed purely through digital transactions. These include provision of services such as cleaning, rideshare, food delivery and product delivery, among others. In this case, the tasks are mediated on the apps but are not in themselves digitally-dependent (Kaine & Josserand, 2019). The skill level required for entry into work-on-demand gig work is relatively low. For example, the skill level required for a driver to join a rideshare app such as Uber is minimal compared to the level of expertise required of a designer to join a crowd work platform such as Upwork. Additionally, this form of gig work is not as geographically dispersed as crowd work because the workers have to be in physical proximity to the clients to able to perform the tasks they are being hired for.

2.2 MARKET POWER CONCENTRATION OF GIG ECONOMY

THERE IS A GROWING PREFERENCE TO WORKING IN THE COMFORT OF ONE'S OWN HOME AND FOR A VARIETY OF DIFFERENT COMPANIES

According to Spajic (2022), the gig economy statistics have changed gradually, but drastically. Furthermore, they continue to change with the ongoing advancement of technology. Gone are the days when, as was the norm, people were willing to work in a nine-to-five job. There is a growing preference to working in the comfort of one's own home and for a variety of different companies. This has been brought about by the explosion of freelancing platforms and gig works. According to Steinbaum (2019), the explosion of gig platforms has created independent workers. However, these workers can still be treated unfairly by their employers or customers due to a lack of protection, which is a result of a lack of employment regulations. Paul (2017) asserts that employers of the gig workers operate using the business model that is steeped in making profit. Therefore, the model works asymmetrically to the employer's benefit. For example, Uber drivers are constantly monitored using GPS technology, but the drivers themselves cannot monitor their employer. Also, the platform dictates the terms of transactions for the worker; the worker can hardly influence these terms meaningfully. The gig platforms also allow customer ratings of the workers rather than direct supervision by the employer. Works (2018) indicates that most of the gig workers' employers have more power when it comes to work related issues in the platforms. They have the capacity to set wages, which is influenced by factors like the number of gig workers on the platform, high rate of unemployment and work preferences.

A 2016 law suit in New York between Uber and its drivers exemplifies this power imbalance (Somerville & Wen, 2017). The case was based on issues around drivers' payments and pricing, which according to the drivers was unfair to them. The drivers wanted to know the criteria used to allocate customers to them, determine the prices of services charged and how to equitably share the revenue with the drivers. The law suit was triggered by the determined efforts of the drivers to be recognised as employees rather than contract workers. The suit ended with Uber winning. The company asserted that it is a technology company that provides its services through independent drivers for ease of reaching customers. Hence, the drivers were not employees of Uber nor did Uber offer transport to customers directly. This suit also demonstrated that existing antitrust laws are limited and cannot reliably regulate the imbalances between the platforms and their workers. Most of the laws favour platform owners.

2.3 WORKERS' RIGHTS IN THE GIG ECONOMY

We are living in a world of rapid digital advancement. We are actually living in the fourth industrial revolution, which has opened up vast opportunities for digital work as the boundary between digital and physical realities blur (Li et al., 2017). Thus, the world is increasingly becoming digital with more people working from home than before. People are also able to order groceries digitally through the phone or get around town without driving their own cars (Lublin, 2022). The use of Uber, Uber Eats, Glovo, Jumia and many other platforms has made this possible. However, this growth and complexity of gig platforms has not been matched by relevant policies and regulations to protect the workers worldwide.

RESEARCH INDICATES THAT GIG WORKERS FACE CHALLENGES. THERE IS A NEED TO OFFER DIGITAL WORKERS FORMAL EMPLOYMENT RIGHTS

Research indicates that gig workers face challenges such as low wages, lack of pension, limited access to social protection schemes, limited collective bargaining rights, as well as violation of privacy and discrimination (Codagnone et al., 2016; De-Stefano & Aloisi, 2019; Stuart et al., 2017). There is need for a workers' rights protection to enable easy flow of services and reduce the frequent strikes by gig workers. Additionally, there is a need to offer digital workers formal employment rights. Some countries have developed policies that include gig workers and are also trying to accommodate them in the formal working conditions (Petropoulos, 2021). According to Codagnone et al. (2016), countries like Germany, Italy, Canada and the United Kingdom have included platform workers in their employment and labour protection bills. The gig workers are seen as intermediaries between formal employees and self-employed workers. Similarly, the European Commission is trying to strengthen the concept of social protection of gig workers through the European Pillar of Social Right (Lörcher & Schömann, 2016). This year, Canada has also passed the "Working for Workers Act" which makes several provisions to cushion gig workers from exploitation (Lublin, 2022). For instance, the Act addresses pertinent issues such as the right to information, minimum wage, recurrent pay, notice of termination and conflict resolution. Before the Act, gig workers were paid below minimum wage and worked under insecure conditions. The challenge with the Act, however, is that it is yet to be implemented fully. California also has adopted the Assembly Bill No. 5 of the State of California Legislative Counsel Bureau which classifies the platform workers as employees rather than contractors (Petropoulos, 2021). The bill uses the "ABC" test that shifts the burden to the platform. It indicates that an employer who wants to treat a worker as a contractor rather than an employee needs to show that the work will be done without guidance or control of the employer, that the work will be performed outside of the employer's usual working hours and that the work will be done by someone who has their own independent business doing similar work. In Kenya, policies on gig economy remain vague and ineffective.

2.4 REGULATORY FRAMEWORK FOR EMPLOYMENT IN KENYA AND THE GIG ECONOMY

The status of regulation of gig work in Kenya is largely unclear, as the existing laws are tailored towards traditional employment and therefore only indirectly apply to the gig economy (Federation of Kenya Employers, 2021). There are seven main laws that directly and indirectly affect gig workers in Kenya. These are:

THE STATUS OF REGULATION OF GIG WORK IN KENYA IS LARGELY UNCLEAR, AS THE EXISTING LAWS ARE TAILORED TOWARDS TRADITIONAL EMPLOYMENT

i. *Employment Act, 2007*

This Act is a detailed legislation that covers a wide range of issues that are pertinent to employment in Kenya. The key areas addressed by the law include definitions and operationalisation of terms such as employee, employer, contract, casual employee and wages. The Act sets out the basic elements of an employment relationship by clarifying the obligations of an employer, such as ensuring that they provide employees with clear contracts of employment, disciplinary rules and procedures, processes of changing employment terms, as well as the basis and procedure for termination of employment. The Act also sets the basis for protection of wages as well as work conditions and hours. While not specifying a maximum number of hours, the Act states that employees are entitled to at least one day of rest in the week, paid annual leave which should be at least 21 working days in a year, sick leave of at least 7 days with pay and 7 days on half pay after every consecutive two months of service, and at least three months' maternity leave for female employees and 2 weeks' paternity leave for male employees. These basic provisions are subject to collective bargaining and if the collective agreements are more favourable to employers they are adopted (Federation of Kenya Employers, 2021). The degree to which the provisions of this Act are applied to gig workers in Kenya is unclear and an issue to be determined by this study.

ii. *Labour Institutions Act, 2008*

This Act sets up the National Labour Board, which, among other functions, is expected to advise the cabinet secretary in charge of labour on the legislation concerning employment and labour, systems of labour inspection, administration of labour laws, as well as the general state of employment, training and manpower development in the country. More importantly, the Act sets up the wage councils (general wage council and agricultural wage council) which in turn set the minimum wages for workers in different sectors of the economy. Additionally, it defines employment agencies as any person, organisation or entity that acts as an intermediary for the purpose of procuring employment for a worker. This definition fits the conventional roles played by gig platforms. According to the Labour Institutions Act, employment agencies are subject to inspection by employment officers to ensure they are compliant to labour laws (Kenya Human Rights Commission, 2019). There is no evidence on the extent to which these provisions of this Act are applied to gig workers in Kenya.

iii. Labour Relations Act, 2007

This Act provides for the establishment and registration of trade unions and employee organisations for the purpose of advocating for fair labour practices as a constitutional right to all employees in Kenya. This provides workers with a platform for collective bargaining for terms of employment for all employees in unions. Once agreed upon, the collective bargaining agreements are registered with the Employment and Labour Relations Court. It also provides employees with the rights to protest if disputes arise on conditions and terms of service that are unresolvable after reconciliation thus providing for protected strikes (Kenya Human Rights Commission, 2019). Again, the application of this Act to gig workers is unclear and will be investigated in this project.

iv. Occupation Safety and Health Act, 2007

This Act is intended to protect workers from risks to their health and safety by providing guidelines for securing healthy work environments. It states the duty of care as it pertains to the employers (occupier), which includes ensuring that the work environment is free of hazards and that proper risk audits are performed as well as provide safety equipment and protective clothing for their employees. The Act charges self-employed workers with the duty to ensure their own safety and welfare. Given that gig workers are generally considered as self-employed, they are thus responsible for their own safety, according to this Act (Kenya Federation of Employers, 2021).

v. Micro and Small Enterprise Act, 2012

This Act sets up the Micro and Small Enterprise Authority, which is charged with the mandate of licensing small and medium enterprises as well as umbrella associations of the same. The Act also sets up the Micro and Small Enterprises Development Fund, which is used for small business development. It is relevant to gig work because a majority of workers in the gig economy work in small and medium enterprises that require registration to be able to legally operate in the country. However, information on how this Act has benefited gig workers in Kenya is unknown and thus is also one of the subjects of this research.

vi. Licensing laws

To be able to operate in Kenya, there are a number of licenses required for businesses or individuals. These licences vary depending on the industry in which the business is established. The main licenses are for wholesale and retail trade, food and catering, health services, beautician and salon, and construction, among others. Table 1 below provides a summary of the licenses required for different workers.

vii. Copyright Act, 2001

This Act sets up protections for the intellectual property of authors in the country. Works eligible for copyright protection under the Act include literary works, musical works, artistic works, dramatic works, audio visual works, sound recordings and broadcasts. Infringement of copyright by way of piracy or plagiarism is considered an offence under this Act (Copyright Act, 2001). It affects the workers in the gig economy, especially those involved in crowd work because their products are often their intellectual property. Examples of such work include graphic designs, research reports or academic writing, among others.

viii.Digital Economy Blueprint - Kenya

In 2019 the Government of Kenya developed a digital economy blueprint. It is intended to act as a guide and provide a framework for successful and sustainable digital economy. According to the Communications Authority of Kenya (CAK) (2019), the digital economy blueprint is premised on five pillars:

- Digital government (the use of digital services and platforms for public service delivery)
- Digital business (the development of a digital marketplace with support of financial digital infrastructure as well as generation of valuable digital content)
- Infrastructure (the available of accessible, available and reliable infrastructure)
- Innovation-driven entrepreneurship (the existence of a conducive ecosystem to encourage development of new solutions and products)
- Digital skills and value creation (the existence of a digitally skilled workforce)

The blueprint further emphasised the need for a policy and legal framework for the digital economy to thrive (Torgerson, 2020). Among the legislative gaps indicated in the blueprint include: the need to develop tax policies adopted to the digital economy, expanding the capacity of the judiciary and legislative bodies to be able to handle legal issues arising in the digital arena, creating frameworks for enforcing contracts and ensuring customer protection, improving accessibility to digital assets and infrastructure for people with disabilities, protecting copyright and intellectual property, among others (CAK, 2019). The blueprint acknowledges that the existing legacy regulations are not effective in a digital work. However, the issues addressed are broad and can only serve as a foundation from which to develop specific regulations for the different sectors of digital economy such as gig work, gig platforms and gig workers.

ix. National Broadband Strategy (2018–2023)

The growth and sustainability of the digital economy is dependent on the existence of reliable high-speed Internet (Mwasho, 2021). Despite Kenya being lauded as one of the most connected countries in Africa, often being referred to as the Silicon Savannah, the country's National Broadband Strategy 2018–2023 acknowledges the existence of gaps in broadband access across Kenya specifically in most rural parts with last mile of connectivity proving to be a challenge. Slow Internet speeds, unreliable networks and high cost of access to broadband (CAK, 2020) are the major challenges to the development of the gig economy because, without broadband coverage in rural areas, gig economic opportunities are restricted to urban centres, hence denying other workers the opportunity to participate in the digital economy (Wyche & Olson, 2018; Hunt et al, 2019). The National Broadband Strategy 2018–2023 sets out to extend fixed Internet infrastructure to the level of the ward, build capacity through education and digital literacy programmes, and provide affordable and reliable Internet connections throughout the country (CAK, 2020). If implemented as planned, the strategy will lead to the expansion of the digital gig economy, making regulatory frameworks all the more vital.

x. Data Protection Act 2019

The purpose of the Data Protection Act (2019) is to regulate the processing of personal data and protection of personal privacy (Kenya Law Reports, 2019). This regulation directly affects the digital economy because it addresses the collection, storage and use of personal data by public and private organisations (Kinyanjui, 2019). The legislation borrows heavily from the General Data Protection Regulation of the European Union. It ascribes to similar principles and obligations of data protection, which include the need for informed consent from data subjects prior to collection of data, the right to know the reason for which data is be collected, as well as how it will be processed and who it will be shared with. It also establishes the office of the data protection commissioner, which oversees the implementation of the act (Daigle, 2021). This law is vital for the regulation and growth of e-commerce because the digital economy is premised on data processing and sharing (Nengo, 2020). Gig platforms collect data from platform users and clients and use this data to match the service or product providers with the customers. Given the vast amount of personal data platforms collect on both their gig workers and customers, it is important that this data is protected and the privacy and security of users maintained. Article 35 of the Act addresses automated individual decision-making and states that the individual has a right not to be subject to a decision made solely on automated processing, including profiling. This is particularly applicable to gig platforms because algorithms used to rate and evaluate platform workers have a direct impact on their ability to get gigs (Greenwood et al., 2017; Duggan et al., 2020). Article 46 of the Act sets out special conditions on health data, stating that such data must be processed under the responsibility of a healthcare provider or an individual subject to professional secrecy under the law. This directly impacts health data collected in the gig platforms that is used for automated diagnosis and prescription (Munyolo, 2021).

xi. African Union Convention on Cyber Security and Personal Data Protection

The African Union Convention on Cyber Security and Personal Data Protection is intended to provide a framework for cybersecurity in Africa from which member states can base their national laws and policies (Kenyanito & Chima, 2016; Ball, 2017). The convention addresses e-commerce, personal data protection and cybersecurity. In addition to having similar provisions for data protection as provided for in the General Data Protection Regulation of the European Union, Article 28 of the convention emphasises the need for international cooperation among member states. It requires that legislation set up in member countries to be aimed at regional a harmonisation to enhance exchange of information across countries and enable mutual legal assistance (Orji, 2015). This is particularly relevant to the gig economy because a significant number of gig jobs are performed on a global arena with the digital platforms having workers in different countries. Similar laws across the region will ensure that gig platforms are regulated equally across the board regardless of the country in which they are based. This will eliminate the loophole of gig platforms taking advantage of countries that have lax or vague legislation to exploit gig workers in the region. Currently, only 14 out of 55 member states are signatories to the convention, 13 of which have ratified it. Unfortunately, Kenya is not among them (African Union, 2022). Despite not being a signatory to the convention, Kenya has made strides in developing regulations for data protection and cyber security among which is the Data Protection Act (2019).

	Industry	Licences and certificates	Laws or policy
1	Wholesale and retail	- Single business permits - Wholesale permits	Public Fees Act, 1961
2	Food and catering	- Restaurant licence - Tourism licence - Work permits - Food handlers and health certificate	Tourism Act, 2011
3	Hotel or accommodation	- Hotel license - Restaurant licence - Tourism licence	- Tourism Act, 2011 - Tourism Regulatory Authority Regulations, 2014
4	Home stay	Homestay licence	- Tourism Act, 2011 - Tourism Regulatory Authority Regulations, 2014
5	Postal or courier services	Postal or courier licence	- Information and Communications Act, 1998
6	Public transport	- Bodaboda rider registration certificate - Public service vehicle licence - Vehicle inspection certificates	National Transport and Safety Authority Act, 2012
7	Clinic or hospital	- Medical licenses for health professionals - Annual practice license	Medical Practitioners and Dentists Council Act (cap 253)
8	Pharmacy	- Annual practice licence - Premise registration license	Pharmacy and Poisons Act (Cap 244)

Table 1: Licensing requirements for varied industries in Kenya

Source: Researchers (2022)

2.5 THE ROLES OF STAKEHOLDERS ON PLATFORM REGULATIONS IN KENYA

In Kenya, there are quite a number of stakeholders that assist in promoting both platform regulation and growth. Some of the stakeholders are:

i. Donors and investors

Kenya has donors that fund organisations and interventions to help the Kenyan youth fight unemployment through gig platforms. The donors also assist in developing programmes that build tech skills for the youth in the rural and urban areas in Kenya (Mercy Corps, 2019). These skills enable the youth to be able to engage in jobs on the digital platforms. Some of the donors that support gig economy in Kenya are highlighted in Table 2.

Donor	Name of the programme
Google.org	Mercy Corps Youth Impact Labs
Mastercard foundation	Youth Africa Works Kenya
Department for International Development	Kenya Catalytic Jobs Fund
The Rockefeller Foundation	The Digital Jobs Initiative
Federal Ministry for Economic Cooperation and Development	MakeIT in Africa
The World Bank	Kenya Youth Employment and Opportunities Project

Table 2 : Donors supporting the Gig economy in Kenya

Source: Mercy Corps (2019)

Mercy Corps (2019) developed a report which indicated that Kenya has had investors who are supporting platforms at the early stage of development. In 2018, Kenya had closed over 41 contracts in technology industries worth over 126 million dollars while, in 2020, the tech start-ups secured a total of 19.1 billion Kenya shillings (Musila, 2021). This has played a role in linking the gig workers to the market through development of tech platforms. Despite the growth in investment, some of the gig platforms still face challenges in receiving funds (Mercy Corp, 2019). For example, Safisafi, a gig platform that used to link plumbers, electricians and house managers to services available, was closed in 2018 due to lack of funds to manage it.

ii. Civil society

According to ILO (2016), having an active union assists workers in supporting and organising collective bargaining for them. Through this, workers are able to enjoy maximum gains from the work they perform. The union also assists in lobbying for better working conditions. Currently, gig workers do not form part of the formal unions because they are seen as external to the employing organisation. ILO (2016) advocates for inclusivity and representation of the gig workers in the unions. The main role of civil society organisations is to lobby for good working conditions and legal representation of its members. For example, in United Kingdom, the GMB Union won a case against Uber. The case was based on the misclassification of drivers and denial of basic employment necessities like holiday and breaks (GMB Union, 2021). Similarly, the New York Taxi Workers Alliance (NYTWA) has assisted Uber drivers on matters relating to harassment of drivers by the company (Rivoli, 2016).

In Kenya, gig workers are rarely represented in civil society; however, in 2020 digital taxi drivers came together to set up savings and credit cooperative organisations (SACCOs) that would assist them in negotiating for better working conditions with their platform providers (Ochieng, 2020). Some of the unions developed were the Digital Taxi Association of Kenya, the United Online Cabs Association and Kenya Online Transportation Association. The success of these associations in supporting their gig members is unknown and will be studied in this project.

iii. Policymakers

The ability of gig economy to reduce unemployment has made it a matter of interest to policymakers in Kenya. The Ministry of Information and Communication Technology in Kenya partnered with the Youth and Gender Affairs department and developed the Ajira digital employment programme to increase the engagement of youth in online work (Mercy Corps, 2020).

The role of policymakers is to develop policies and regulations that govern gig work. Currently, Kenyan laws are inadequate in addressing the interests of gig workers as they mainly deal with formal work regulations. Hence, there are gaps on issues around social protection, labour standards and job classification of gig workers in Kenya.

It is also the role of policymakers to ensure that gig workers have laws on the applicable taxes. In terms of income tax, an employee traditionally files with a pay as you earn (PAYE) scheme through deductions from employers. The fact is that most gig workers are engaged by international platforms operating from outside the country. Therefore, it is difficult for gig workers to remit taxes. Recently, the Government of Kenya implemented a 5% minimum tax on any persons operating or working through digital platforms, but the challenge of collecting remains (Mercy Corp, 2020).

iv. Gig employers/developers

According to Fairwork (2021), most of the gig platforms in Kenya have limited evidence to show how the employers manage gig workers. The issues evaluated included workers' safety, health safety and work representation. Fairwork rated the digital platforms based on the global principles of fairness at work developed during a multi-stakeholder meeting at United Nations Conference on Trade and Development (UNCTAD). The roles of gig employers are to ensure fair pay, fair working conditions, fair contracts, fair management and fair representation.

The gig platforms in Kenya did not show how the employers managed issues of fair pay. Only Glovo, a delivery service, indicates that their workers do not fall below minimum wage payment and that they are paid based on the hours worked. For fair conditions, most of the employers have taken steps to mitigate risks for their workers. For example, Glovo has a compensation strategy that they used during COVID 19 if workers became infected in the course of work. In terms of fair management, most workers risk being blocked from using the platform; gig employers can deactivate the workers' platforms without consulting them.

2.6 CHALLENGES OF POLICIES ON GIG WORK IN KENYA

The current regulatory framework for the gig economy in Kenya is inadequate and consequently many challenges have arisen in the industry. The five main challenges that arise due to the poor regulatory framework include unfair work conditions, job

THE CURRENT REGULATORY FRAMEWORK FOR THE GIG ECONOMY IN KENYA IS INADEQUATE AND CONSEQUENTLY MANY CHALLENGES HAVE ARISEN IN THE INDUSTRY

insecurity, lack of social protection for gig workers, poor renumeration as well as poor health and safety of gig workers.

i. Unfair working conditions

Subject to the Employments Act, 2007, all Kenyan employees are entitled to fair working conditions. However, because gig workers are not considered employees as defined by the act but rather treated as independent contractors, they do not enjoy the protections of basic work conditions set forth in the act. For example, the Employments Act specifies that employees must have at least one day of rest in a week, but the nature of gig work is such that there are no set work hours. Therefore, there is no set rest times. In fact, gig workers are incentivised by the platforms to take on as many tasks as possible in order to earn income or gain ratings. Thus, gig workers often will work more and have little or no work-life balance (Wood et al., 2019). Furthermore, gig platforms do not offer gig workers leave days and if a worker chooses not to work at specific times or days, they forfeit pay. To make up for the low pay and to increase their chances of getting jobs, most gig workers work for multiple platforms. The result is that most gig workers are prone to overworking, with a majority working 10 or more hours a day (Lehdonvirta, 2018). This leaves little room for rest, which in turn affects their health and quality of life.

ii. Job insecurity

The nature of gig work is such that there is high competition for the work provided on the platform. The ubiquity of technology and the increased online connectivity has led to more workers joining the gig economy and consequently there is an oversupply of labour. Sometimes a worker may not find any work to do on the platform or may be outbid for existing jobs. This is especially the case with crowd work platforms, where a task is posted and workers have to bid for it. To be able to secure jobs, workers often bid low to undercut the competition, i.e. each other, often times against their own interest. Graham et al. (2017) estimate that Kenya has potential online workforce of 21,700 of which only 1,500 are successful. This indicates that there is an oversupply of 20,200 gig workers in Kenya. In addition to this already highly competitive environment, online gig workers from developing countries face discrimination, especially if competing on global platforms. Furthermore, jobs or tasks posted are often restricted to workers in developed countries, despite Kenyans' ability to perform the task to the required standard (Curran, 2021; Graham et al., 2017). To be able to overcome this and secure work, gig workers in developing countries such as Kenya often lie about their location or undercharge for their services with the aim of outbidding the competition, which ultimately affects their own ability to make a decent income.

iii. Lack of social protection

Platforms do not define themselves as employers. Rather, they present themselves as intermediaries whose role is simply to connect workers with clients who want to hire them. By doing so, they evade the responsibility employers have towards their employees (Aranguiz & Bednarowicz, 2018). In addition, gig workers are misclassified as self-employed independent contractors rather than employees. This further absolves the platforms from the responsibility for ensuring they provide gig workers with basic social protections. Consequently, gig platforms do not provide basic minimum wages, health insurance, pensions or staff training and development. These are left up to the workers (Mercy Corps, 2019). Additionally, gig workers are not protected from summary dismissal and often run the risk of having their platform accounts deactivated or locked without notice or warning – leaving them cut off from their source of income, often without recourse. Given the computer-mediated nature of gig work, it is difficult for gig workers to reach the representatives of the platforms and file complaints or even defend themselves from complaints launched against them (Rotich, 2022). The threat of summary dismissal has kept gig workers from unionising in many cases, which prevents them from being able to collectively bargain for better conditions. Thus, despite the existence of the Labour Relations Act (2007) 99% of gig workers in Kenya are not in any form of union (Fairwork, 2021).

iv. Poor remuneration

Gig workers are not paid a salary. Instead, they are paid on commission and for tasks completed. This means that their incomes are often unpredictable. Gig workers do not enjoy wage protections that employed workers get. Thus, platforms are free to change terms of payment without consulting their workers. This often arises when platforms lower prices to undercut competitors and do so by reducing the earnings of gig workers. For example, Uber and Little Cab, two ride sharing platforms in Kenya, tried to undercut each other by cutting rates to such an extent that drivers on the platforms held demonstrations in protest (Mercy Corps, 2020). Additionally, because gig workers are considered independent contractors, they bear all overhead costs instead of the platforms. The workers are responsible for daily operating costs such as fuel, insurance, parking fees, vehicle repairs, Internet connection and electricity, among others. These costs are not factored into the remuneration and thus, once they have been accounted for, gig workers make even less income per task. It is not surprising, therefore, to find gig workers making below the minimum wage after expenses are accounted for. The lack of labour protections for gig workers has led to exploitation in instances where payment for accomplished tasks is delayed or even cancelled entirely if clients are unsatisfied with the quality of work done. Ironically, the clients can still make use of the work submitted, despite not paying or getting refunded (Mercy Corps, 2020). The lack of a stable income source has more and far-reaching consequences for gig workers. It is directly responsible for their ineligibility to access financial services that other employees in conventional employment can. An unreliable income source makes them ineligible for loans because they cannot guarantee that they will be able to make repayments in time. Also, gig workers have a difficult time building savings because monies earned are often spent during times when there is reduced or no income (Deshpande, 2020).

v. Poor health and safety of workers

The Occupational Health and Safety Act (2007) places the responsibility for the health and welfare of the gig workers on the gig workers themselves, because they are considered self-employed individuals. This means that gig platforms are not legally responsible for ensuring workers have health insurances, sick days, maternity or paternity leave, or even compensation for injury occurring during work. This lack of regulations for the safety of gig workers became even more pressing during the Covid-19 pandemic, as most gig workers had to continue providing services without access to protective gear such as masks or gloves. They also had to work while sick because they could not take time off to recover (Mercy Corps, 2020). This put not just the lives of the workers in danger, but also those of the clients they serve.

2.7 THEORETICAL FRAMEWORK

This study was guided by the Group Theory of Public Policy. The theory posits that society is made up of interest groups constantly striving to access and maintain favourable conditions to achieve their objectives (Anyebe, 2018). These interest groups may include economic interest groups such as individuals, business organisations and corporations or professional groups such as trade unions and professional associations, and finally public interest groups such as human rights groups and environmental protection groups (Martini, 2012). Each of these groups strives to enhance their interests. Thus, they are constantly trying to access and claim more societal resources. In the process of gaining advantage in society, they may exploit other groups. For example, businesses and corporations, in their pursuit of profits, may exploit their workers or degrade the environment. This, in turn, puts them in conflict with the environmental and human rights protection groups. The disenfranchised groups will in turn push back demanding for favourable conditions. To resolve this conflict, public policy is created that acts as a form of negotiated truce. Consequently, public policy acts as a point of compromise for the groups. Policies are, therefore, not permanent and are bound to be amended or new ones created if the prevailing conditions change and existing one(s) become unfavourable to a group. Interest groups, when disenfranchised, will advocate and lobby policymakers (legislature and executive arms of government) for the policies to be changed or for new favourable ones to be created (Abas, 2019). In the context of this study, there are two main groups competing for supremacy, the gig platform creators and the gig workers. The existing market conditions are not favourable and often exploitative of gig workers by platforms and other groups in society. There is, therefore, a need for the existing policies to be reviewed and new ones created to protect gig workers. This can be done by another group, namely the policy-maker group. These groups will then need to work together to be able to be more inclusive and develop policies that are favourable to gig workers. Figure 1 represents this relationship.

THERE IS A NEED FOR THE EXISTING POLICIES TO BE REVIEWED AND NEW ONES CREATED TO PROTECT GIG WORKERS

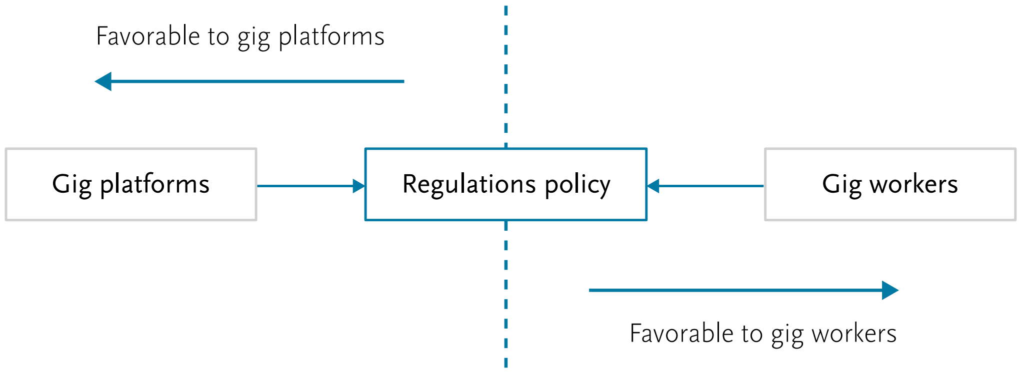


Figure 1: Modified group theory of public policy

To support the above premise as well as to inform the subsequent findings, a research methodology is presented below. This also covered the research instruments used to gather data. These include questionnaires and interviews with relevant stakeholders. The findings are presented in the final research report.

3. RESEARCH METHODOLOGY

3.1 INTRODUCTION

Research methodology entails the procedures undertaken to identify, select, process and analyse information about a specific problem (Mohajan, 2018). It enables a researcher to critically study a topic and bring out its validity and reliability (Kumar, 2014). This section explains the methodology of the study in terms of the research approach, design, population, sample, sampling procedures, data collection methods, validity and reliability, and the ethical matters to be considered.

3.2 RESEARCH APPROACH

According to Creswell et al. (2003), a research approach can also be termed as a research framework which can be qualitative, quantitative or mixed methods research. An approach is a strategy that explains the steps and detailed ways of collecting, analysing and interpreting data. It is aligned to the research problem being studied. It can be divided into two categories: approaches of collecting data and approaches of data analysis or reasoning. Both categories will be applied in this study.

This study adopted the mixed methods research approach, which involved collecting and analysing both quantitative and qualitative data. The mixed methods research approach was used to investigate the existing status of gig economy regulation, explore the challenges faced by stakeholders in the creation and implementation of policies in the industry, and recommend a legal framework for regulation of the same. Mixed methods research is suitable because it enables the collection of dissimilar data from dissimilar sources by different methods to achieve a fuller understanding of the research issues above. It increases the strength of results because findings can be strengthened through triangulation (Kothari, 2014). According to Kwanya (2022), the mixed methods research approach is generally used because it facilitates data and methodical triangulation.

The study specifically applied explanatory mixed methods research. The researchers first conducted a quantitative study through which quantitative data was collected using structured questionnaires. The results of the first phase were used to inform the second phase which involved the collection of qualitative data using interviews.

3.3 RESEARCH DESIGN

Kothari (2014) explains that research design is the strategy that a researcher uses to study a phenomenon. It is like the blueprint for data collection, analysis and presentation. This study will adopt the survey research design. A survey method is a process where researchers gather information by asking questions to a predefined group of people. Surveys can use quantitative research strategies (such as multi-choice questionnaires) and qualitative research (such as open-ended questions) or both strategies (Ponto, 2015). According to Ponto (2015) the survey research design is known to be used when research has a large population for data collection. Its primary purpose is to obtain information from a large sample relatively quickly.

This study adopted an exploratory survey research design. This is because the researchers were investigating a problem that is not clearly known. This helped to better explore as many facets of the gig work regulations as possible.

3.4 POPULATION OF THE STUDY

THE GENERAL POPULATION OF THE STUDY INCLUDED PLATFORM DEVELOPERS, PLATFORM USERS, POLICYMAKERS AND IMPLEMENTERS, AND CIVIL SOCIETY

The general population of the study included platform developers, platform users, policymakers and implementers, and civil society groups involved directly or indirectly with the gig economy in Kenya (see appendix 1). The estimated population of the study was approximately 37,000 gig workers and stakeholders. A report by Fairwork Kenya in 2021 indicates that there were more than 36,000 gig workers in Kenya by 2019 and it is expected to grow to 100,000 by 2023 (Fairwork, 2021).

3.5 SAMPLING TECHNIQUES AND SAMPLE SIZE

The study used multistage sampling. The first stage was stratified sampling where the researchers used information-oriented purposive sampling to select six (6) sectors the gig economy in Kenya. The sectors selected are e-commerce, freelancing, health services, transport, hospitality and education. Mercy Corps' report (2020) highlights these six sectors as having the highest share of gig workers in Kenya, hence the selection for this study. The second stage involved identifying the specific participants from each sector. The researchers adopted the table developed by Krejcie and Morgan (1970) to determine the sample size (see appendix 2). The study has a population of approximately 37,000 gig workers. From the table, the researchers needed a sample of three hundred and eighty (380) respondents. From the sample of 380 gig workers, the researchers selected eighty (80) respondents from the freelancing sector and the other three hundred (300) were distributed equally among the other five sectors. According to Mercy Corps' report (2020), the freelancing sector has the greatest number of gig workers and it is growing by 40% annually, hence the allocation of more respondents. To get the actual respondents from the sectors, the researchers adopted a convenience random sampling technique. The sample for stakeholders and platform owners was achieved through snowballing until saturation is reached.

S. No.	Gig economy sectors	Sample of gig workers
1	E-commerce	60
2	Freelancing	80
3	Health services	60
4	Transport	60
5	Hospitality	60
6	Education	60
Total		380

Table 3: Sample size for gig platform users with an estimated total of around 38,000 gig workers in Kenya

3.6 DATA COLLECTION

As explained earlier, the researchers collected both quantitative and qualitative data. Quantitative data was collected using semi-structured questionnaires while qualitative data was collected through interviews. The semi-structured questionnaires were used to collect data from platform users while interviews were used to collect data from platform developers, policymakers and implementers, and civil society.[4]

3.7 DATA COLLECTION TOOLS

The data collection tools used were:

Semi-structured questionnaire

Cheung and Ching (2014) define a semi-structured questionnaire as a document that contains questions formulated by the researcher and have both expected answers as well as some open questions. This type of questionnaire consists of pre-coded questions and follows a well-defined pattern for answering the questions and open-ended questions, which the respondents need to answer according to their views. Some of the questions were based on a Likert scale, while others were multiple-choice responses. The semi-structured questionnaire is deemed suitable for this study because the sample size is large, thereby making it difficult for the researchers to conduct interviews with each respondent. The questionnaire was used to collect data from the gig workers in the selected sectors and was administered by research assistants.

Interview schedule

An interview schedule consists of questions that a researcher develops to ask respondents during data collection (Allan, 2020). It is a list of questions prepared to guide the researcher when conducting interviews. An interview schedule facilitates the conduct of an interview and increases the probability of collecting accurate data through follow-up on questions which are not responded to fully. The schedules also enhance the flow of research questions and reduce the chances of forgetting key questions during interviews. The interview schedule was used to gather data from the gig economy stakeholders in Kenya. The interviews were both virtual and face-to-face depending on the preference of the respondents. The interviews were conducted by research assistants.

3.8 DATA COLLECTION PROCEDURE

The researchers first obtained a research permit from the National Commission for Science, Technology and Innovation (NACOSTI). They also sought ethical clearance from a registered Institutional Review Board (IRB) in Kenya. Once the researchers got the clearance, they embarked on data collection from the selected respondents.

4 For detailed information about the data collection and interview questionnaires please contact the author Prof. Tom Kwanya (tom.kwanya@gmail.com).

3.9 DATA ANALYSIS AND PRESENTATION

The collected quantitative data was analysed statistically using inferential and descriptive statistics. This was done with the help of IBM Statistical Package for the Social Sciences (SPSS) Version 21. The analysed data was presented using tables and graphs. Qualitative data was coded and grouped into different themes based on the objectives of the study. This was done with the help of ATLAS.ti version 9 software and VOSviewer software. The software also assisted to visualise the data. The data was presented using wordle images, textual displays and verbatim responses.

3.10 RELIABILITY AND VALIDITY OF THE RESEARCH

Reliability and validity are measures which ensure that the research results are valid and consistent.

Reliability

According to Easterby-Smith et al. (2012), reliability deals with the capacity for other researchers to replicate the findings by generalisation. This is relatively simple for quantitative research because one can provide the numerical dataset. However, it is difficult for qualitative research because some results can be subjective. To ensure that research results are reliable, the researchers used data and methodical triangulation. They also collected data from multiple categories of respondents.

Validity

To ensure that the research findings are valid, the researchers adopted criterion validity. The constructs of the study were measured and compared using other knowledge available (literature review). The researchers made sure they conducted a thorough literature review for all the objectives of the study.

3.11 ETHICAL CONSIDERATIONS

The researchers ensured ethical behaviour during the study by employing the following:

Confidentiality

Confidentiality refers to the management of information in a personal manner (De-Vos et al., 2011). It can also be defined as the organisation of private information by the researcher in order to safeguard the participants' identity. In this study, confidentiality was achieved by ensuring respondent anonymity by using codes rather than actual names.

Informed consent

The researchers made sure that the respondents interviewed agreed to be interviewed. This was done by ensuring that the respondents understood and demonstrated their willingness to participate in the study by signing an informed consent form. The respondents were also asked to authorise any audio-visual recording of the interviews.

Storage and disposal of research data

How will the research data be stored and maintained?

The research team will store the data on password protected external hard drives for at least two years as instructed by the ethical clearance board.

How and when will the research data be disposed of?

The data contained in physical documents (such as questionnaires) will be disposed through shredding, while digital data will be disposed through complete/permanent deletion. This will be done after the two-year storage timeline elapses from the time the research is completed.

4. RESEARCH FINDINGS

4.1 INTRODUCTION

This section presents the analysed data. It begins with the respondents' demographic information followed by the analysis based on the objectives of the study which were to:

- Examine and summarise the academic and policy-related literature that assesses digital platform regulation in terms of, inter alia, market power concentration, workers' rights and copyright protection in Kenya.
- Identify policy initiatives on digital platform regulation on the issues identified above in reference to Kenya.
- Investigate the role of stakeholders in academic studies and policy initiatives on platform regulation in Kenya and the extent to which these efforts have been driven by local researchers and policymakers.
- Explore the challenges, concerns and factors affecting effective platform regulation in Kenya and
- Recommend platform regulation approaches, regimes and frameworks appropriate to nurture, mainstream and sustain a gig economy in Kenya and other sub-Saharan countries.

4.2 DEMOGRAPHIC INFORMATION OF THE RESPONDENTS

A total of 314 of the 380 questionnaires were returned giving a response rate of 83%. According to Mugenda and Mugenda (2012), a response rate of 60% is generally good and that of 70% is excellent for data analysis. At 83%, the response rate in this study is excellent in terms of generating adequate results for data analysis.

4.2.1 Gender distribution of the respondents

As shown in Table 4, there were 226 (72%) male and 88 (28%) female respondents, respectively. As observed, the majority of the respondents who participated in this study were male. This can be attributed, partly, to the fact that most gig workers in Kenya are male (Hunt et al., 2019). In fact, Anwar and Graham (2020) conducted a study of gig workers on Upwork from South Africa, Kenya, Uganda, Nigeria and Ghana which concluded that about 60% of gig workers in these countries were male. Ostoj (2021) concurs and asserts that there are generally more male than female gig workers in the global South, while the opposite is true in some countries in the global North such as United Kingdom and Italy. A report by Das and Kotikula (2019) for the World Bank claims that there are generally more male than female workers (63% compared to 49%) in the labour market. Therefore, the gender imparity reflects the general situation in the labour market in the region.

A TOTAL OF 314 OF THE 380 QUESTIONNAIRES WERE RETURNED GIVING A RESPONSE RATE OF 83%. THERE WERE 226 (72%) MALE AND 88 (28%) FEMALE RESPONDENTS, RESPECTIVELY

Gender of respondents	Frequency (n)	Percent (%)
Female	88	28.0
Male	226	72.0
Total	314	100.0

Table 4: Responses aggregated by gender

4.2.2 Age and gender cross tabulation of respondents

As can be seen in Table 5, the majority (92%) of the respondents were below 35 years of age, with 50% being between 26–35 years old and 42% being below 25 years old. Significantly, there were no respondents aged between 56 to 65 or above 65 years. In terms of gender, most (54.4%) of the male respondents were in the age bracket of 26–35 with a total of 123 of all the male respondents. Most (56.8%) of the female respondents were below 25 years. This suggests that the gig economy attracts young workers who are potentially starting to forge a career and beginning to earn a living. It also suggests that technology uptake is mainly attractive to the young, who are normally technologically savvy and are confident in their adoption and use of emerging technologies and applications.

Age	Gender	Count	Total	Total percentage
Below 25	Female	50	132	42%
	Male	82		
26–35	Female	34	157	50%
	Male	123		
36–45	Female	4	24	7.6%
	Male	20		
46–55	Female	0	1	0.3%
	Male	1		
Total	Female	88	314	28%
	Male	226		72%

Table 5: Age and gender cross tabulation

4.2.3 Highest level of academic achievement

As displayed in Table 6, the majority of the respondents 135 (43%) had attained a high school level of education. This was followed by those with a Diploma level of education at 101 (32%); Bachelor's degree holders at 63 (20%); and those with a Master's level of education at 5 (2%) of the respondents. Ten (10) respondents selected "others" category of education with nine (9) of them specifying that they had a post-high school level certificate, while one (1) had only a primary school level of education. These findings reveal that most gig workers (78.3%) in Kenya are non-degree holders. This implies that most of the gig work in Kenya is less-specialised and does not require a high level of education.

Level of education	Frequency (n)	Percent (%)
High school	135	43.0
Diploma	101	32.0
Bachelor's	63	20.0
Master's	5	2.0
Others	10	3.0
Total	314	100.0

Table 6: Highest level of education of respondents

4.2.4 Gig industries respondents involvement

Figure 2 summarises the sectors of the economy that gig workers in Kenya are involved in. The findings reveal that the majority 92 (28%) of the respondents were involved in e-commerce (retail and wholesale). This was followed by transport and ride share services 82 (25.1%); freelancing 70 (21.4%); education and training 29 (9%); health and health services 26 (8%); and hotel and hospitality 8 (2.4%). A total of 20 (6.1%) of the respondents categorised their gig industries as "others" and specified them as sports, fitness and food production.

In retail and wholesale gig work, the workers sell diverse products on online platforms. The products include beauty merchandise, home and office furniture, electrical appliances, computers and other digital devices, home electronics appliances and accessories, clothing and other apparel, sports gear and kits, automobiles, publications, grocery, toys and games, and musical instruments, among many other products. The workers can either sell their own products or merchandise from other local or foreign producers or traders. Today, there is virtually no product which is not traded online in Kenya. With the ubiquitous use of mobile money transfer solution known as MPESA, buyers are able to pay for products with ease. Transport and ride share services involves providing taxi and general transport services through an application which enables clients to hail nearby drivers online. Drivers in Kenya use both foreign (international) and local apps to deliver this service, which has become particularly popular in urban centres. Drivers operate motorcycles, saloon cars, SUVs and bigger vehicles. Freelancing involves a diverse bouquet of services, which includes all forms of individual and organisational functions. These workers bid for and offer these services through myriad platforms. Education and training services revolve around e-learning, coaching, tuition, development of learning materials and other forms of capacity development. Gig workers in Kenya also offer health and wellness services which include consultations, gym training, nutrition and dietetics, pharmaceutical services and physiotherapy, among other services. Hotel and hospitality services include leisure, events management, rapporteuring, outside catering, Airbnb host and hiking guide, among others.

THE MAJORITY 92 (28%) OF THE RESPONDENTS WERE INVOLVED IN E-COMMERCE

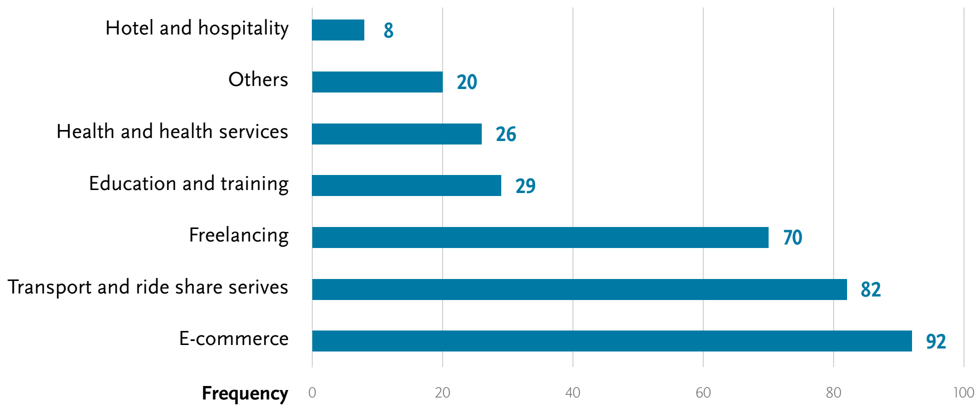


Figure 2: Industries of gig work in Kenya

This study identifies e-commerce, transport and ride share, and skilled freelancing to be the most attractive types of gig work in the country. This is perhaps because the jobs are easy to find and may offer relatively better pay. It is also likely that e-commerce, ride share and freelancing platforms have the lowest entry barriers and require less specialised personnel as compared to health services, education and training or hotel and hospitality. There is need for deliberate efforts by stakeholders to promote gig work in more areas while also maintaining the current industries.

E-COMMERCE, TRANSPORT AND RIDE SHARE, AND SKILLED FREELANCING TO BE THE MOST ATTRACTIVE TYPES OF GIG WORK IN THE COUNTRY

Most of the gig workers were involved in the industries they considered capable of providing reasonable income, enabling them to earn a living and put food on the table. Nonetheless, there are some gig workers who selected sectors based on the level of freedom the gig work offered. These findings, therefore, reveal that the majority of gig workers in Kenya prioritise economic interests when selecting industries to work in. Thus, gig work in Kenya is undertaken for socioeconomic survival.

MOST OF THE GIG WORKERS WERE INVOLVED IN THE INDUSTRIES THEY CONSIDERED CAPABLE OF PROVIDING REASONABLE INCOME, ENABLING THEM TO EARN A LIVING

4.2.5 Platforms used in the industries and the reason for their choice over others

The respondents were asked to highlight the platforms they use for their gig work. The most mentioned platform was Bolt (68) followed by Upwork (37). Other platforms were Bolt food (30), Jumia food (17), Uber (13), Jumia (10), and Uber Eats (6).

Table 7 shows the list of some of the commonly mentioned platforms that gig workers in Kenya use.

THE MOST MENTIONED PLATFORM WAS BOLT (28%) FOLLOWED BY UPWORK (15,3%)

Platform	Occurrence	Platform	Occurrence	Platform	Occurrence
Bolt	68	Study pool	3	Code monk	1
Upwork	37	Sendy	3	Edusson	1
Bolt food	30	Cloud factory	2	Essay Shredder	1
Jumia food	17	Course hero	2	Guru	1
Uber	13	Dawati	2	Hava	1
Jumia	10	Dial a delivery	2	Querero	1
HIV test+	6	Essay pro	2	Remote OK	1
Uber Eats	6	Kilimall	2	Study bay	1
Facebook	5	Speech pad	2	Writers' hub	1
Fiverr	5	TikTok	2	Xobo	1
Glovo	5	Bridgme app	1	Zip recruiter	1
Instagram	5	Chegg	1		

Table 7: Platforms used for gig work in Kenya

Bolt, Uber and Hava are the most popular ride share platforms in Kenya. These are platforms that customers use to request taxi services online. Clients are able to request rides and be linked to drivers who will take them to their destinations for a predetermined price. This removes the need to haggle over fare as well as ensures that drivers have the opportunity to meet more clients near their location.

Jumia foods, Uber Eats, Dial-a-delivery and Bolt Foods are online food ordering and delivery apps similar to DoorDash. Uber Eats and Bolt Foods are subsidiaries of Uber and Bolt and use the same drivers to deliver food as for taxi services, while Jumia foods is a subsidiary of Jumia e-commerce platform. These platforms enable users to order take-out from restaurants and have it delivered to their location. Jumia and Kilimall are e-commerce platforms similar to Amazon, which provide vendors with a virtual marketplace to sell their products. All vendors register with the platforms and share their inventory on the website where buyers can place orders, make payment and have the goods delivered to their doorsteps or to a convenient pick-up location.

Glovo is an online platform that provides shopping and delivery services. Users of the app can request for products to be purchased from participating supermarkets or shops, and have riders shop on their behalf and deliver the products to their doorstep. The requests can vary from food and groceries purchases to specialty items from specific stores. The service is particularly useful for people who are unable to do their own shopping as they can essentially hire a personal shopper. Sendy and Xobo are similar to Glovo. However, they offer delivery services for businesses. These include packing, pick-up and drop-off delivery services for medium sized goods and large packages using fleet drivers registered to the platform.

Upwork, Fiverr, WritersHub, Edusson, Essay Shredder, Code Monk, Speechpad and Guru are online freelancing platforms that provide a wide range of services such as graphics design, academic writing, essay writing, digital marketing, transcription services, translation services, finance and accounting. These platforms provide clients with access to experts who are able to provide professional solutions to the clients, allowing them to outsource jobs they do not have the in-house expertise for. Instagram, Facebook and TikTok are social media platforms that, in addition to allowing users to upload entertaining content, also have features that allow for virtual marketplaces such as Facebook Marketplace and Instagram Professional Accounts. These virtual marketplaces allow users to advertise the products and services, contact buyers and make sales on the platforms.

Course Hero, Dawati, Studypool, Chegg and Quraro are online learning platforms that bring together students and teachers in virtual classrooms for learning purposes. The tutors provide lessons and upload learning materials to the platforms, which students can access and download for a fee. ZipRecruiter and Remote OK are online recruiting agencies that offer a platform for business to post vacancies and then match them with potential employees. Remote OK focuses mainly on recruitment of staff for IT jobs such as programming, while Zip-recruiter focuses on providing recruiting services for small and medium enterprises. Shining Hope for Communities (SHOFCO) is a platform that provides health services in low resource communities by partnering with health professionals to provide services such as HIV+ testing and counselling.

The respondents were also requested to indicate the reasons for using the mentioned platforms. Most of them indicated that the platforms are “well known” (24) and are “the best” (24) and “widely known” (19) in their respective industries. Consequently, they chose to work on them because they would be likely to get more work. For some (22), it was a matter of opportunity that led them to selecting the apps they worked on. Others (18) also joined the apps that they felt had the most favourable conditions or terms.

4.2.6 Relationship of platform usage and gender

Table 8 indicates that Pearson's Chi-Square statistics as $\chi^2 = 264.460a$ and $p = 0.498$. Given that the p-value is greater than 0.05, which is the threshold for the test, the null hypothesis that there is no relationship between gender and the reason for platform usage cannot be rejected. Since $p > 0.05$, therefore, there is no relationship between the platform selected for gig work and the gender of the gig workers in Kenya. It follows, therefore, that the selection of the platform for gig work in Kenya is not determined by gender-based factors. This finding also implies that the platforms do not intrinsically favour any gender. This is an important facet of the gig economy since it equalises opportunities for both male and female workers.

Chi-Square tests

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	264.460a	265	.498
Likelihood ratio	314.083	265	.021
N of valid cases	314		
a. 530 cells (99.6%) have expected count less than 5. The minimum expected count is .28.			

Table 8: Relationship between platform usage and gender

4.2.7 Perception of employment relationship between gig workers and platforms

Table 9 shows that the majority 212 (68%) of the respondents perceived themselves to be fulltime employees of the agency, app or website they work from. Only 98 (32%) of the respondents considered themselves to be contractors. This finding implies that most gig workers in Kenya are engaged fulltime. Similarly, they are committed to the specific platforms, agency, apps or websites to the extent that they perceive themselves to be fulltime employees. Given that most platform owners perceive the workers to be contractors, however, this variance in the understanding of the nature of engagement is a serious potential area of conflict between the gig workers and the employers.

Reason	Frequency (n)	Percent (%)
I think of myself as a full-time employee of the agency, app, or website.	212	68.0
I think of myself as an independent worker/contractor who uses the agency, app, or website to connect with customers.	98	32.0
Total	310	100.0

Table 9: Perception of employment relationship between gig workers and platforms

4.2.8 Length of work in the gig economy

Most 63 (20%) of the respondents indicated that they had worked in the gig economy for two years. This was followed by those who had worked for less than a year 58 (19%) and three years 56 (18%). Only 2 (0.6%) respondents had worked for more than a decade, specifically 11 years. These findings, which are presented in Figure 3, imply that gig work is gaining momentum in Kenya with the majority of workers (276) having joined the industry in the past five years. Additionally, a significant number (58) have worked in the industry for less than a year which shows that there is a growing interest in gig work in Kenya. In contrast, there are only 32 gig workers who have been in the industry for 6 years or more, with the fewest working the longest: 11 years (2). This implies that the gig economy does not retain workers for long periods of terms unlike other permanent jobs or careers.

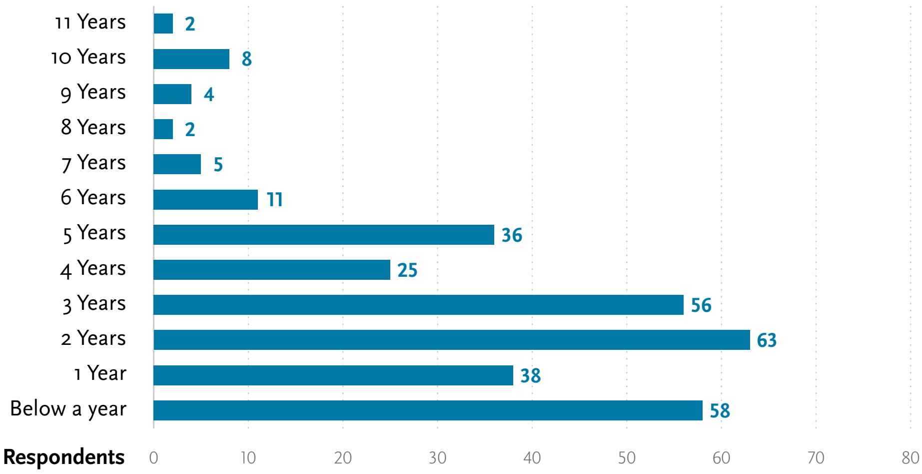


Figure 3: Length of work in the gig economy

4.3 MARKET POWER CONCENTRATION AND WORKERS' RIGHTS IN THE GIG ECONOMY

This section presents the findings of the study relating to the power arrangements in the gig economy and how this affects the workers' rights.

4.3.1 Main features of gig work

The findings presented in Table 10 reveal that most 263 (83.8%) of the respondents did not have a fixed remuneration but rather were paid per task. Therefore, a failure to be active on the platform meant that they did not receive any pay. Only 27 (8.6%) of the respondents acknowledged the fact that the gig economy offered them a high degree of autonomy and they could choose which assignment to take or leave. Similarly, only 24 (7.6%) of the respondents indicated that their jobs were of a short-term nature. These findings show that gig workers mainly defined their jobs by the form of remuneration rather than autonomy or length of contract.

MOST 263 (83.8%) OF THE RESPONDENTS DID NOT HAVE A FIXED REMUNERATION BUT RATHER WERE PAID PER TASK

Gig work feature	Frequency	Percent (%)
A high degree of autonomy: High degree of control and flexibility in determining workload and work portfolio. Decides which assignments to accept based on criteria such as the fee, the desirability of the client, or the timing, and can change those choices over time.	27	8.6
Payment by task, assignment, or sales: Paid by the task, assig-nment, contract, or the volume of sales made. Unlike salaried employees, they are not paid for time not spent working.	263	83.8
Short-term relationship between the worker and the customer: Perform short-term assignments. Both the worker and the customer acknowledge the limited duration of the relationship. Some contracts may extend for months or even years, at which point the individuals become indistinguishable from traditional employees; we therefore define independent work as assign-ments lasting less than 12 months.	24	7.6
Total	314	100.0

Table 10: Main features of gig work

4.3.2 Income of gig workers

This subsection discusses the perception of the nature of income gig workers in Kenya generated from their platform work.

4.3.2.1 Type of income of gig workers

Most 282 (89.8%) of the gig workers in Kenya consider the gig work as their primary source of income while 32 (10.2%) use it as a supplemental income generation avenue. Table 11 presents the data.

Type of income	Frequency	Percent (%)
My primary income	282	89.8
My supplemental income	32	10.2
Total	314	100.0

Table 11: Type of income for gig workers

4.3.2.2 Monthly income from gig work

The respondents were asked to indicate the amount of money they earned from gig work on a monthly basis. It emerged from the findings that most 145 (46.2%) of the respondents earned between 10,000 (USD 82) and 20,000 (USD 164) Kenyan Shillings[4] monthly. The findings also showed that 93 (29.6%) were earning between 20,001 and 30,000, while 36 (11.5%) were earning between 30,001 and 40,000. Those who earned between 40,001 and 50,000 were 5 (1.6%), while those who earned below 10,000 made up 25 (8.0%). Table 12 shows the results. It is evident from the findings that the majority (75.8%) earned between 10,000 and 30,000 Kenyan Shillings per

4 1USD = 120 KES on 14 November 2022.

month. This represents a low income particularly for fulltime gig workers. Given that most gig work is done in cities where the cost of living is high, these findings reveal the need for discussions and interventions to scale up the monthly earnings from gig work. Otherwise, it will remain a less viable income generation activity, particularly, for the jobless youths living in Kenya's cities.

Income range of gig work (KES)	Frequency	Percent (%)
Below 10,000	25	8.0
10,000–20,000	145	46.2
20,001–30,000	93	29.6
30,001–40,000	36	11.5
40,001–50,000	5	1.6
Above 50,000	10	3.2
Total	314	100

Table 12: Monthly earnings of gig workers

4.3.2.3 Consistency of income from gig work

The respondents were requested to indicate how consistent their income from gig work was. Most 121 (38.5%) of them indicated that the income was inconsistent and varied from week to week. A total of 86 (27.4%) stated that the income was neither steady nor inconsistent. Those who held the opinion that the income was steady from week to week were 107 (34.1%). Table 13 shows the data. These findings reveal that the earnings of the majority of the gig workers in Kenya were inconsistent and unreliable. Such inconsistency implies that gig work earnings are unreliable and insecure. This is particularly so for persons who rely on gig work as their sole source of income. There is need to stabilise gig work earnings as a means of strengthening their value in the lives of gig workers in Kenya.

Consistency of gig work income	Frequency	Percent (%)
It is inconsistent from week to week	121	38.5
It is neither steady nor inconsistent from week to week	86	27.4
It is steady from week to week	107	34.1
Total	314	100

Table 13: Consistency of gig workers' income

4.3.2.4 Determinants of income stability from gig work

The respondents indicated that one of the reasons why their income from gig work was inconsistent was because of variations in the number of orders or number of customers. They also said that income varied depending on the day of the week (weekend had more clients).

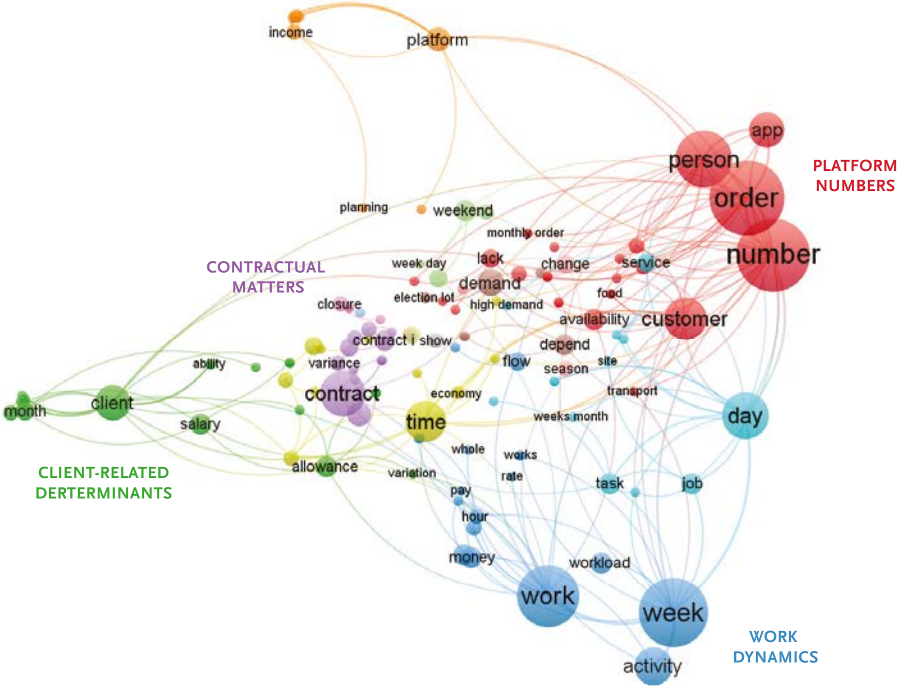


Figure 4: Determinants of income stability for gig workers

Additionally, different apps offered different pay rates for similar jobs. It also emerged that ongoing social events such as elections or summer breaks affected the amount of work available. Competition from other apps, tasks allocated and the prevailing economic environment were some of the other reasons for income instability. Figure 4 shows the data.

Three clusters are discernible. The cluster which is coloured red is the most dominant and relates to the number of clients, volume of orders, and the number of people using the job platforms. The second most dominant cluster is coloured blue and reflects the work dynamics including the number of days worked in a week, the daily workload, and work activities performed. The cluster which is coloured violet relates to contractual matters while the green cluster shows client-related determinants. One way of addressing the inconsistency of gig incomes is to influence these determinants. For instance, the number of clients and assignments can be increased by diversifying the number of platforms as well as expanding the scope of gig work in Kenya.

4.3.3 Satisfaction with gig work

Table 14 shows that 131 (41.9%) of the respondents were highly satisfied with the gig tasks they are working on. The other aspects of gig work with which a substantial number (more than 100) of respondents were highly satisfied include the number of hours worked 129 (41.2%), independence of gig work 124 (39.6%), opportunities for creativity 122 (39.0%), learning opportunities 122 (39.0%) and the level of empowerment that gig work facilitates 111 (35.5%). On the other hand, the respondents were not satisfied with the benefits they accrued from gig work 129 (41.2%), low recognition of their efforts and performance 78 (24.9%), income security 76 (24.3%) and the amount of income generated 46 (14.7%).

Issues	NS	LS	S	HS
Overall work life	21 (6.7%)	31 (9.9%)	168 (53.7%)	93 (29.7%)
Tasks you are working on	6 (1.9%)	25 (8.0%)	151 (48.2%)	131 (41.9%)
No. of hrs worked	18 (5.8%)	37 (11.8%)	129 (41.2%)	129 (41.2%)
Ability to choose working hrs	18 (5.8%)	32 (10.2%)	144 (46%)	119 (38%)
Independence in work	14 (4.5%)	30 (9.6%)	145 (46.3%)	124 (39.6%)
Your employer(s)	28 (8.9%)	44 (14.4%)	151 (48.2%)	89 (28.4%)
Level of empowerment	11 (3.5%)	35 (11.2%)	156 (49.8%)	111 (35.5%)
Expressing creativity at work	42 (13.4%)	25 (8.0%)	124 (39.6%)	122 (39.0%)
Learning opportunities	18 (5.8%)	63 (20.1%)	110 (35.1%)	122 (39.0%)
Your income	46 (14.7%)	97 (31%)	87 (27.8%)	83 (26.5%)
Your income security	76 (24.3%)	107 (34.2%)	87 (27.8%)	43 (13.7%)
Benefits of employment	129 (41.2%)	100 (31.9%)	53 (16.9%)	31 (9.9%)
Your recognition	78 (24.9%)	90 (28.8%)	83 (26.5%)	62 (19.8%)
NS=No satisfaction; LS=Low satisfaction; S=Satisfied; HS=High satisfaction				

Table 14: Level of satisfaction with gig work

Table 15 presents an analysis of the relationship between the overall life of the gig workers and their satisfaction with gig tasks they are working on. The table shows that Pearson's Chi-Square statistics is $\chi^2 = 56.821^a$, and $p < 0.0001$. This p value is far less than 0.05, which is the threshold for the test. The null hypothesis that there is no relationship between overall life and level of satisfaction with gig work is rejected at 95% confidence interval, since $p < 0.05$. Therefore, there is a relationship between the overall life of the gig workers and their level of satisfaction with gig work. This finding implies that, if rolled out effectively, gig work has the potential of fully supporting the overall life needs of gig workers in Kenya.

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	56.821a	9	.000
Likelihood ratio	50.683	9	.000
N of valid cases	314		
a. 6 cells (37.5%) have expected count less than 5. The minimum expected count is .40.			

Table 15: Relationship between the overall life of the gig workers and their satisfaction with gig tasks

Table 16 presents an analysis of the relationship between the number of hours worked by gig workers and their ability to choose the working hours. The table shows that Pearson's Chi-Square statistic, $\chi^2 = 40.041^a$, and $p < 0.000$. This p value is far less than 0.05, which is the threshold for the test. The hypothesis that there is a relationship between the number of hours worked and the ability to choose the working hours is accepted at 95% confidence interval since p-value is less than 0.05. This indicates that gig workers have the freedom to choose the number of hours to work from any of the platforms and that they are satisfied with the arrangement.

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	40.041a	9	.000
Likelihood ratio	30.456	9	.000
N of valid cases	314		
a. 4 cells (25.0%) have expected count less than 5. The minimum expected count is 1.03.			

Table 16: Relationship between the number of hours worked by gig workers and their ability to choose the working hours

Table 17 indicates the Chi-Square test of the independence of gig workers and their employers. The results show that the Pearson's Chi-Square statistic is $\chi^2 = 53.591^a$, and $p < 0.000$. This p value is far less than 0.05, which is the threshold for the test. The hypothesis that there is a relationship between the independence of gig workers and the employers is true and hence the study fails to reject the hypothesis since the p-value is >0.05. This implies that gig workers' independence is usually controlled by the employers, who are the owners of the platform. This is corroborated by the responses of the gig workers who indicated that sometimes the employers can switch off their platforms without consulting them.

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	53.591a	9	.000
Likelihood ratio	49.476	9	.000
N of valid cases	314		
a. 5 cells (31.3%) have expected count less than 5. The minimum expected count is 1.25.			

Table 17: Independence of gig workers and their employers

Table 18 presents an analysis of the relationship between the level of empowerment of gig workers and the degree of creativity they can express. The results indicate that Pearson's Chi-Square statistic, $\chi^2 = 26.529a$, and $p < 0.002$. This p value is far less than 0.05, which is the threshold for the test. The null hypothesis that there is no relationship between level of empowerment and creativity of gig workers is rejected. The results indicate a relationship between the two variables.

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	26.529a	9	.002
Likelihood ratio	25.480	9	.002
N of valid cases	314		
a. 6 cells (37.5%) have expected count less than 5. The minimum expected count is .88.			

Table 18: Chi-Square test for level of empowerment and creativity at gig work

Table 19 presents an analysis of the relationship between creativity expression and learning opportunities gig workers encounter. The results show that Pearson's Chi-Square statistic, $\chi^2 = 102.512a$, and $p < 0.000$. This p value is far less than 0.05, which is the threshold for the test. The hypothesis that there is relationship between creativity of gig workers and learning opportunities satisfaction is accepted at 95% confidence interval since p-value is less than 0.05. This indicates that gig workers' creativity is influenced by the learning opportunities they encounter in their daily work or through education.

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	102.512a	9	.000
Likelihood ratio	97.502	9	.000
N of valid cases	314		
a. 2 cells (12.5%) have expected count less than 5. The minimum expected count is 1.51.			

Table 19: Chi-Square test for creativity expression and learning opportunities of gig workers

Table 20 indicates the Chi-Square test of creativity expression at work and the income generated by gig work. The findings show that the Pearson's Chi-Square statistic is $\chi^2 = 89.588a$, and $p < 0.000$. The hypothesis that there is a relationship between creativity expression and income of gig work is accepted and hence the study fails to reject the hypothesis since the p-value is >0.05. This infers that if a gig worker is able to express their creativity, it will show in the payment amount they receive.

	Value	df	Asymptotic significance (2-sided)
Pearson Chi-Square	89.588a	9	.000
Likelihood ratio	83.807	9	.000
N of valid cases	314		
a. 1 cells (6.3%) have expected count less than 5. The minimum expected count is 3.66.			

Table 20: Chi-Square tests for creativity you can express at work and income of gig workers

4.3.4 Effects of the gig economy

Most of the respondents indicated that they were affected positively by the gig economy in terms of their personal 302 (96.2%), professional 230 (73.2%) and financial 302 (92.2%) lives. This data is presented in Table 21. This implies that gig work has the potential to improve the personal, professional and financial life of gig workers.

Statement	Effects	Frequency	Percentage
Personally	Positive	302	96.2%
	Negative	12	3.8%
Professionally	Positive	230	73.2%
	Negative	84	26.8%
Financially	Positive	302	96.2%
	Negative	12	3.8%

Table 21: Effects of gig work on lives of gig workers

4.3.5 Economic benefits of the gig economy

Most 137 (43.8%) of the respondents strongly agreed that the gig economy offers better quality products. The other remarkable economic benefits of the gig economy include low transaction costs for consumers 79 (25.2%), benefits associated with increased scalability potential 70 (22.4%) and enhanced corporate capabilities 76 (24.3%). The respondents, however, felt that some of the downsides of gig economy was that it generated anxiety about working conditions and rights of the labour force in general 134 (42.8%), created room for unfair competition 105 (33.5%) and threatened permanent job positions 120 (38.3%). Table 22 presents the data.

Statement	D (%)	UD (%)	A (%)	SA (%)
Low transaction costs for consumers	18 (5.8%)	52 (16.6%)	164 (52.4%)	79 (25.2%)
Better quality products	2 (0.6%)	31 (9.9%)	143 (45.7%)	137 (43.8%)
Benefits of companies due to scalability	87 (27.8%)	40 (12.8%)	116 (37.1%)	70 (22.4%)
Companies may acquire new capabilities	10 (3.2%)	64 (20.4%)	163 (52.1%)	76 (24.3%)
Gig work may increase labour force participation	15 (4.8%)	69 (22.0%)	151 (48.2%)	28 (24.9%)
Gig work creates anxiety about working conditions and the rights of labour force in general	39 (12.5%)	79 (25.2%)	134 (42.8%)	61 (19.5%)
Gig work threatens permanent job positions	38 (12.1%)	88 (28.1%)	120 (38.3%)	67 (21.4%)
Gig work creates unfair competition	62 (19.8%)	77 (24.6%)	105 (33.5%)	69 (22.0%)
Key: D = Disagree, UD = Undecided, A= Agree, SA = Strongly Agree				

Table 22: Level of economic benefits of gig work

4.3.6 Gig economy model

This subsection presents the correlation analysis between overall work life, employer(s), low transaction costs for consumers, income, independence in work life and the tasks in gig economy. Regression analysis was used to predict the influence of each of the variables above on the economy. Table 23 shows the summary of the model.

In the model:

Dependent variable = Overall work life

The **independent** variables are chosen key indicators namely:

1. Your income
2. Low transaction costs for consumers
3. Independence in your work life
4. The tasks you are working on
5. Your employer(s)

Model summary

Model	R	R square	Adjusted R square	Std. error of the estimate
1	.569a	.324	.313	.674
a. Predictors: (Constant): Your employer(s), low transaction costs for consumers, your income, independence in your work life, the tasks you are working on.				

Table 23: Correlation of gig work variables and the economy

From Table 23, it can be noted that 32.4% of the overall work life in the gig economy can be explained by the independent variables: the gig worker's income, low transaction costs for consumers, independence in work life, the tasks they are working on and the gig employer(s).

ANOVA

Model		Sum of squares	df	Mean square	F	Sig.
1	Regression	66.928	5	13.386	29.491	.000b
	Residual	139.798	308	.454		
	Total	206.726	313			
a. Dependent Variable: Overall work life						

Coefficientsa

		Unstandardised coefficients		Standardised coefficients		
Model		B	Std. error	Beta	t	Sig.
1	(Constant)	.282	.261		1.078	.282
	Independence in work life	.089	.050	.087	1.784	.075
	Income	.248	.039	.313	6.344	.000
	Low transaction costs for consumers	.220	.048	.218	4.596	.000
	The tasks	.269	.059	.231	4.539	.000
	Employer(s)	.099	.044	.108	2.216	.027
a. Dependent Variable: Overall work life						

Table 24: ANOVA of overall work life of gig work

From Table 24, it can be observed that the measures produced by the linear regression on the independent variables were: gig workers' income (0.248), low transaction cost (0.220), independence of gig work life (0.089), tasks worked on (0.269) and employers' satisfaction (0.099). This was used to calculate the overall satisfaction of work life of gig workers using the formula below.

$$Y = C + \beta_1 \chi_1 + \beta_2 \chi_2 + \beta_3 \chi_3 + \beta_4 \chi_4 + \beta_5 \chi_5 + \varepsilon$$

Y = Level of economic effect
ß1 = Your income
ß2 = Low transaction costs for consumers
ß3 = Independence in your work life
ß4 = The tasks you are working on.
ß5 = Your employer(s)

Overall work life = 0.282+ (0.248* Your income) + (0.220* Low transaction cost) + (0.089* Independence in your work life) + (0.269* The tasks you are working on + (0.099* Your employer(s) + 0.261. The model shows that the overall work life of gig workers is affected significantly by the tasks that the gig workers perform 0.269 (26.9%), the income they earn 0.248 (24.8%), transaction costs incurred 0.220 (22%), the gig employer 0.099 (9.9%) and the degree of the workers' independence 0.089 (8.9%).

4.3.7 How customer complaints are handled in the platform

The respondents indicated that the platform reaches out to the customers via emails (93) followed by giving them a customer care number (28) to call for assistance. The platforms can also deal with the customer complaints using the contacts or medium they provided when signing up for the platform. A minority (14) of the respondents had communication channels that enabled a face-to-face meeting. This implies that a majority of gig workers have never met their platform representatives in real life but only communicated with them via online means. Table 25 presents the top ten methods that the platforms use to handle customer complaints.

Ways of handing customers' complaints	Frequency
Email	93
Customer care number	28
Various methods given by customers when registering	18
Phone calls	16
Platform feedback features	9
Visit to the physical office	7
Meetings (virtual and physical)	4
Online chat	4
Front desk support	3
Suggestion box	2

Table 25: Methods of handling customer complaints

4.3.8 Platform user complaint handling and reporting

The respondents indicated that they mostly use email to send their complaints. They further reported that platform owners also used the same to address their complaints. The top ten channels that they used are as indicated in Table 26.

Complaint handling mechanism	Occurrences
Email	460
Phone call	85
Message	45
Front desk	36
App/platform	30
Meeting	21
Proper way	18
Team leader	16
Face to face interactions	14
WhatsApp group	11

Table 26: Complaint handling mechanisms

4.4 POLICY INITIATIVES ON DIGITAL PLATFORM REGULATION

This subsection presents results on issues such as contractual engagement between platform owners and the gig workers, awareness of the terms and conditions of the contracts and policies on gig work.

4.4.1 Contractual engagement with the platforms worked on

The majority 256 (81.5%) of the respondents said that they have a contract with the platforms they used. However, 58 (18.5%) of the respondents did not have a contract with the platforms they used. This implies that the mechanism of engagement is ad hoc, thereby making the workers vulnerable to exploitation. The results are as indicated in Table 27.

Do you have a contract	Frequency (%)	Percent (%)
No	58	18.5
Yes	256	81.5
Total	314	100.0

Table 27: Contract with gig platforms

4.4.2 Awareness and understanding of the terms and conditions of the gig work

Most 292 (93.0%) of the respondents were aware of the terms and conditions of their engagement. Nonetheless, some 22 (7%) of the respondents did not know their terms of engagement. Table 28 presents the data.

SOME 22 (7%) OF THE RESPONDENTS DID NOT KNOW THEIR TERMS OF ENGAGEMENT

Awareness	Frequency (n)	Percent (%)
Aware	292	93.0
Not aware	22	7.0
Total	314	100.0

Table 28: Awareness of the terms and conditions of gig work engagement

4.4.3 Policies on gig platforms

Most of the respondents 194 (61.8%) were aware of customer service policies followed by payment or remunerations 162 (51.6%). A total of 155 (49.3%) were aware of policies on termination or deactivation of contract. Only 22 (7%) of the respondents were aware of operational health and safety polices on their platforms. A total of 42 (13%) of the respondents were not aware of any policies on the platforms they used. Figure 6 shows the results.

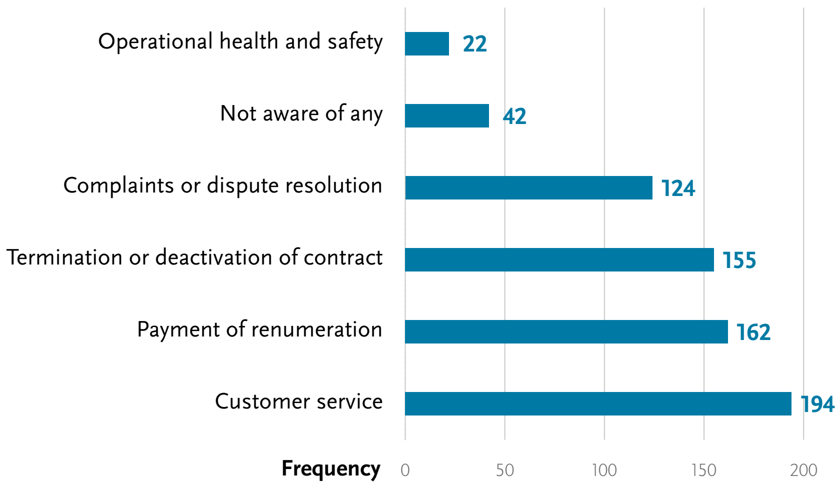


Figure 6: Policies on gig platforms

4.4.4 Platform regulation instruments in Kenya

The findings of this study revealed that there are no specific legal and policy instruments to regulate gig work in Kenya. Nonetheless, there are a number of laws and policies in the physical work space which can be applied, albeit to a limited extent, in the gig economy. Both gig workers and platform owners need to be aware of these instruments, and the provisions therein, to apply them in the gig economy. The findings of this study, however, revealed that most 191 (60.8%) of the respondents were not aware of any regulations used to manage gig platforms in Kenya. There was a significant number of respondents 69 (21.9%) who were aware of the Employment Act of 2007 and 46 (14.6%) who were aware of the Labour Relations Act of 2007.

A total of 35 (11.1%) of respondents were aware of the Data Protection Act (2019) and Licencing laws while 33 (10.5%) were aware of the Copyright Act (2001). A total of 16 (5.0%) respondents were aware

THE FINDINGS OF THIS STUDY REVEALED THAT THERE ARE NO SPECIFIC LEGAL AND POLICY INSTRUMENTS TO REGULATE GIG WORK IN KENYA

of the Digital Economy Blueprint (2019), Micro and Small Enterprises Act (2012) and the Occupational Safety and Health Act (2007). Only 5 (1.5%) of the respondents were aware of the National Broadband Strategy (2018–2023). Figure 7 shows these results. The low awareness levels of these instruments imply that the provisions therein may be violated without any gig worker realising that their rights are being violated. Similarly, the workers may let such violations to pass because they are not aware of how to seek redress.

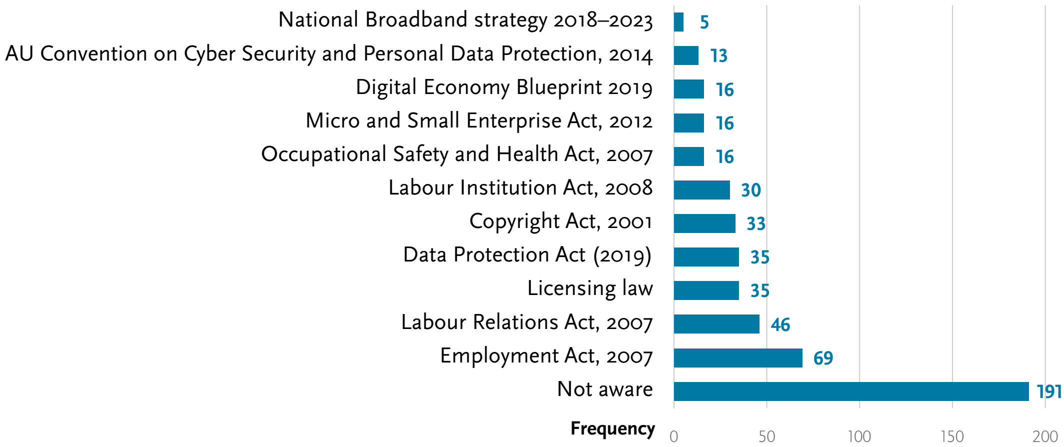


Figure 7: Awareness of platform regulation instruments in Kenya

4.5 Role of stakeholders in gig economy regulation

This subsection presents the findings of the study with regard to the role of stakeholders in the regulation of the gig economy in Kenya. It specifically presents data on which stakeholders ought to regulate the gig economy, stakeholder support to workers and challenges affecting stakeholder involvement in the regulation of gig work in Kenya.

4.5.1 Stakeholders to regulate gig economy

Most 176 (56.0%) of the respondents indicated that the Government of Kenya should be the institution to regulate the gig economy. This was followed by 98 (31.2%) who were of the view that the gig employers should regulate the economy. Still, 91 (29.0%) suggested that the gig economy should be regulated by donors and investors. Only 10 (3.1%) felt that civil society could regulate the gig economy. Figure 8 presents the findings of the study in this regard.

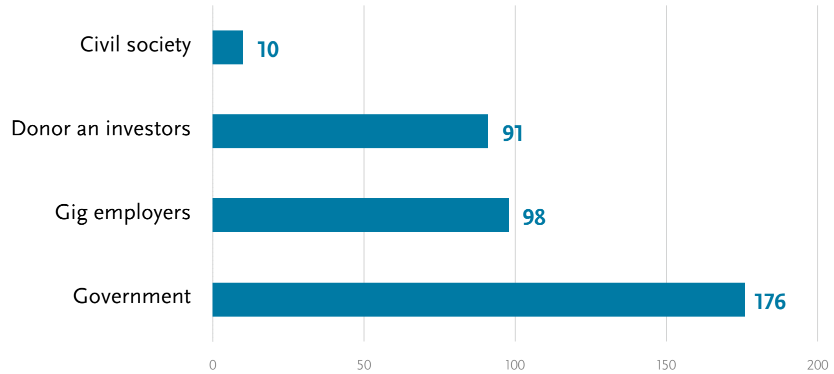


Figure 8: Stakeholders to regulate gig economy in Kenya

The respondents were asked to justify their suggestions on the entity which can best regulate the gig economy in Kenya. Some of their responses are reported hereunder verbatim:

> *"The government has the power to set laws/policies in collaboration with gig stakeholders"* [R4]

> *"The government is able to ensure that the regulations are followed and enforced..."* [R45]

> *"The government has the mechanisms and the resources which may be needed to regulate the sector..."* [R63]

> *"In collaboration with gig employers, the government should come in with laws/polices that regulate the gig economy. Gig employers really take an advantage of the unawareness and the lack of the policies in our country..."* [R108]

> *"The employers have almost the ultimate say on how the gig economy goes as they determine how much to pay, when to give jobs and whom to give the jobs to..."* [R226]

> *"The stakeholders help to protect gig workers against exploitation..."* [R270]

> *"The government is reliable in controlling all businesses around the country and issuing permits..."* [R301]

4.5.2 Stakeholders' support to gig workers

THE RESPONDENTS WERE NEARLY EVENLY SPLIT ON WHETHER OR NOT STAKEHOLDERS SUPPORTED THE GIG WORKER

The respondents were nearly evenly split on whether or not stakeholders supported the gig worker with 158 (50.3%) of them feeling that stakeholders did not support the gig economy while 156 (49.7%) were of the opinion that stakeholders support the gig workers. Table 29 shows the data.

Awareness	Frequency (n)	Percent (%)
No	158	50.3
Yes	156	49.7
Total	314	100.0

Table 29: Stakeholders' support to gig workers

4.5.3 Labour unions and societies in the area of gig work

There was generally low awareness of labour unions and welfare societies among gig workers with only 79 (25%) of the workers naming the Central Organisation of Trade Unions (COTU) as the union they are aware of. Table 30 shows the labour unions and civil society organisations gig workers in Kenya are aware of.

Association	Weight
Central Organisation of Trade Unions (COTU)	79
Ajira	1
Association of Designers Kenya (ADK)	1
Bloggers Association of Kenya (BAKE)	1
Tailors and Textile Workers' Union	1
Jumia SACCO	1
Kenya National Union of Teachers (KNUT)	1
Kenya Union of Savings & Credit Cooperatives (KUSSCO)	1
Kenya Psychiatrist Association	1
Kenya Digital Taxi Association	1
Transport and Allied Workers' Union (TAWU)	1
United Auto Workers Union	1
Kenya Veterinary Association	1

Table 30: Unions and civil society organisations supporting gig work in Kenya

4.5.4 Challenges facing implementation of platform regulations in Kenya

The respondents identified the main challenge hindering the implementation of gig economy regulations in Kenya was corruption (136). This was followed by lack of awareness (68), and inadequate funding (45). Table 31 shows the challenges identified by the respondents.)

THE RESPONDENTS IDENTIFIED THE MAIN CHALLENGE HINDERING THE IMPLEMENTATION OF GIG ECONOMY REGULATIONS IN KENYA WAS CORRUPTION (136%)

Challenges	Occurrences	Challenges	Occurrences
Corruption	136	Lack of cooperation	4
Lack of awareness	68	Customer	4
Inadequate funding	45	Disagreement	4
Tribalism	15	Fuel price	4
Self interest	13	Lack of stakeholder involvement	4
Lack of teamwork	9	Lack of support	4
Platform issues	7	Law	3
Government	6	Nepotism	3
Low payment	6	Bribery	3
Allowance	5	Employer	3

Table 31: Challenges facing implementation of gig regulation platforms in Kenya

4.6 GIG ECONOMY AND WORKER DEVELOPMENT

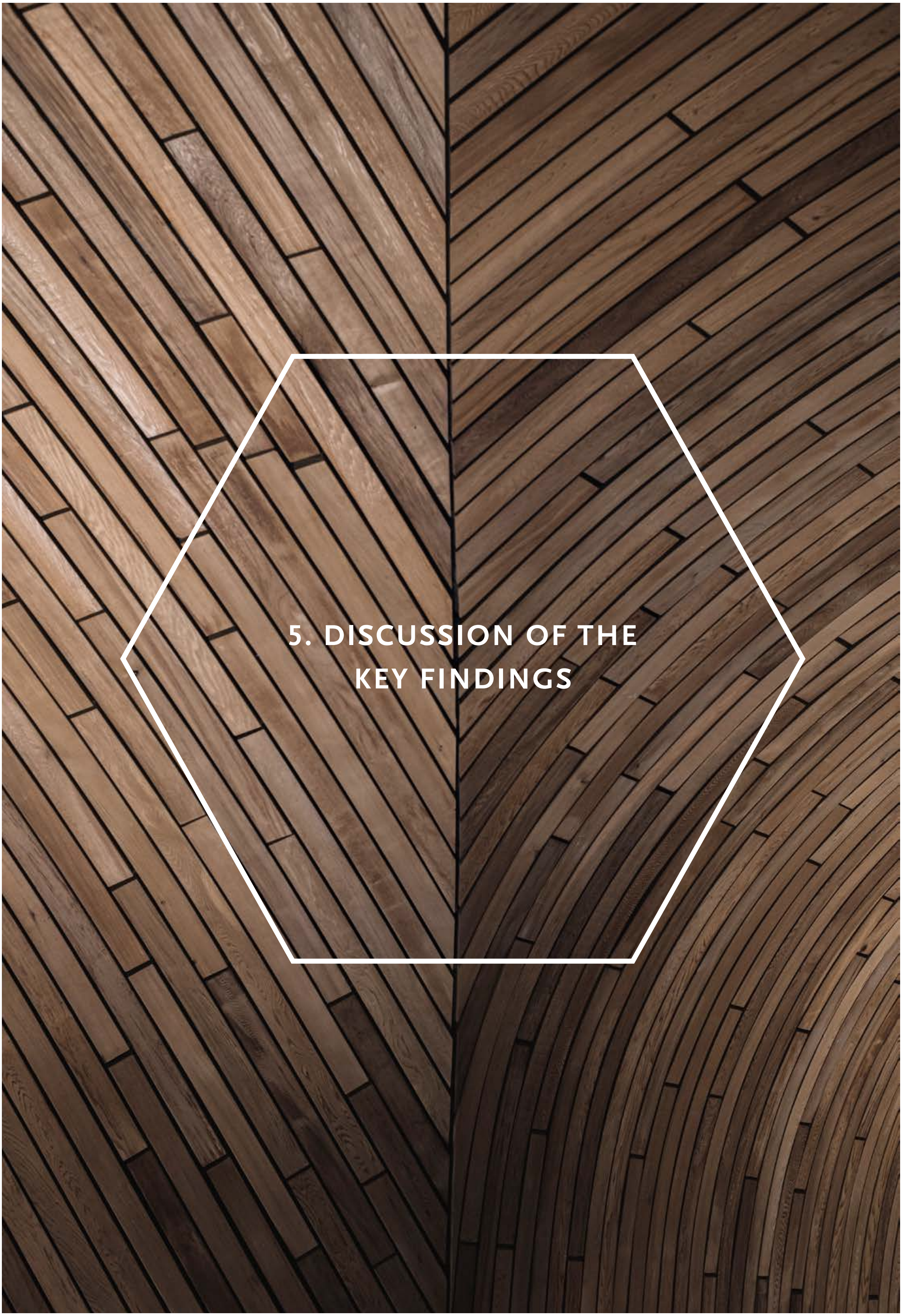
This subsection presents data on development opportunities for gig workers in Kenya. It also presents data on the future of gig work in the country.

4.6.1 Opportunities for advancement by gig workers

The respondents identified the opportunities for them to advance in the gig economy. These opportunities revolved around increased earnings/salary (169) and change of job positions (24). This was linked closely with opportunities of improving their qualifications and skills (20). There were also respondents who felt that technological advancement (2), efficiency (2) and user awareness (2) provided opportunities for advancement in the gig economy.

4.6.2 Future security of gig workers

A majority of the gig workers did not feel assured of their financial future (108). The majority had no retirement benefits to look forward to and felt that they would need to rely on loans (49) to be able to secure their financial future.



5. DISCUSSION OF THE KEY FINDINGS

5.1 INTRODUCTION

This chapter discusses the key findings of the study. These are presented according to the objectives of the study, beginning with the demographic attributes of the respondents, followed by the market power concentration and workers' rights in the gig economy, policy initiatives on digital platform regulation, role of stakeholders in the gig economy regulation, and finally the challenges hampering the effective implementation of platform regulation in Kenya.

5.2 DEMOGRAPHIC CHARACTERISTICS

This section discusses the gender, age and level of education of gig workers in Kenya. It also discusses the industries gig workers in Kenya are involved in as well as their perception of gig engagements.

Gender and gig work in Kenya

The findings of the study presented in Table 4 show that the majority (72%) of gig workers in Kenya are male. Only 28% of them are female. These findings corroborate other studies which show gender disparities in participation in the gig economy with men being the majority of workers (Barzilay & Ben-David, 2016; Chibanda et al., 2022; Kasliwal, 2020; Milkman et. al, 2021). This can be attributed to diverse factors. For instance, Hunt and Samman (2019) indicated that men are more likely to participate in gig work that is physically demanding such as driving and other transport services while women are more likely to work on platforms that require intellectual input such as crowd work.

The safety of female gig workers is also a major factor that may have hindered women from fully participating in the gig economy. According to Natabaalo (2021), most women gig workers face sexual harassment or discrimination especially in instances where the gig work requires face-to-face interaction with clients such as ride share services. Consequently, women are less likely to participate in these types of gig work for fear of their own safety, despite the low entry barriers to these types of gig work.

Kasliwal (2020) also posits that another reason why fewer women participate in the gig economy is because women already bear the burden of unpaid labour of running households. Dokuka et al. (2022) concur with this view and go further to state that women in gig work do not often work in the evenings because of the need to balance their gig work and their domestic duties. Consequently, they put in less hours and complete less tasks than their male counterparts. This leads to a gender pay gap where women in the gig economy end up earning less than men.

The findings on Table 5 showed that the majority of women gig workers are below the age of 25. Hunt and Samman (2019) argue that women are more likely than men to exit the gig economy. Often this is because as they get older, they are likely to get married, start a family and need to focus their energies on taking care of their families. Thus, unmarried girls who do not have children are more likely to participate in gig work than their older counterparts. Statistics show that the average age for a first marriage in Kenya for women is 19.5 in rural areas and 21.5 in urban areas (Gathura, 2018). It is, therefore, likely that most women above the ages of 25 are married and have to focus on managing their homes and have little or no opportunity to participate in gig work.

Age and gig work in Kenya

Findings on Table 5 show that the majority of gig workers are below the age of 35. This is contrary to the expectations that gig work would provide an attractive alternative to retirement (Sommerlad, 2018; Orrell, 2021). The findings of this study also showed that the average gig worker has been working in the sector for less than a year (see Figure 3). Caro, O'Higgins and Berg (2021) posit that a likely reason for this disparity in age of gig workers is that the younger generation are more tech savvy and therefore more comfortable with exploiting digital solutions than their older counterparts. Additionally, a majority of gig work available is physically demanding and mentally stressful. This may discourage older people from participating in gig work. Cook et al. (2019) found the older gig workers are paid less than their younger counterparts. By studying the earnings of Uber workers, they found that drivers over 60 years of age earned 10% less than younger drivers. This was because they drove in less congested areas to avoid the stress of driving busy routes. Thus, they accepted fewer rides and benefited less from surge pricing. Another reason why there are fewer older workers in the gig economy could be because most workers treat the gig economy as a stepping stone to permanent employment and participate in it as a stop gap engagement while they complete their education or seek fulltime employment (Adermon & Hensvik, 2022).

Gig work and education

The findings in Table 6 showed that the majority (43%) of gig workers had only attained high school education with the minority (2%) having a Master's degree. This may be attributed to the fact that most gig economy jobs do not require highly skilled personnel to perform (Mehta, 2020). The popular kind of gig work in Kenya is ride hailing services, which only require the workers to be able to drive, have an approved vehicle and the requisite licenses to begin operating on the platform. Consequently, there is little need for specialised skills. On such platforms, additional expertise on the part of the worker does not translate to better pay or better opportunities. Therefore, a gig worker with higher education is likely to be underemployed in the gig economy (Malos et al., 2018). Additionally, the nature of the gig economy is such that those workers involved in it on a fulltime basis and for whom the gig work is their only source of income often have no opportunity for further professional development and are thus unlikely to advance careerwise (Webster, 2016). O'Higgins and Caro (2021) concur that education is a negligible factor in determining crowd worker earnings and as long as the gig worker can complete the assigned tasks in the specified time and the required quality, they would make better earnings regardless of their levels of education.

Gig industry in Kenya

Most of the respondents indicated they are involved in e-commerce, transport/ride share and freelancing (see Figure 2). This study data concurs with Okello-Orlale and Ngene (2022) who indicted that most of the platform workers in Kenya are in e-commerce and transport. Similarly, Brock and Munichiello (2022) found that most gig workers are engaged by Uber or delivering food. According to Yuen (2022), the top high performing gig companies in the United States are Uber and Lyft. Both are ride hailing platforms. This further confirms that the transport industry is among the most popular gig sectors. In China, the gig sector is made of over one hundred and ten million freelancers, taxi drivers, house cleaners and couriers, which together account for 15% of its labour force (Rothschild, 2018). These industries are preferred because they provide income to the growing population of middle-aged generation in the urban areas. In Kenya, approximately 20% of the population comprises of youth, aged between 15 and 24 years old. This population is the one driving growth in the gig economy as they adventure into any possible sources of income (Ibrahim, 2022).

In terms of the platform used in these industries, the respondents preferred Bolt, Upwork and Bolt Food (see Table 7). This corroborates a study by Ngene (2019) which found that the most popular gig platforms in Africa are Uber, Lynk and Airbnb. According to Lee (2022), the most popular platforms in United States are Uber (18%), Deliveroo (12%), Fiverr (10%), Upwork (9%), TaskRabbit (8%) and Amazon Flex (8%). In the United Kingdom, Upwork is the most preferred platform followed by Fiverr and Bark. Most gig workers in Kenya preferred Bolt platform because it was popular with clients and therefore offered the opportunity to get more gigs.

It also emerged that most of the respondents viewed themselves as fulltime employees of the platforms they worked for (see Table 9). This finding contradicts other studies which revealed that gig workers consider themselves to be independent contractors (Charlton, 2021; Eatough, 2022). This can be explained that most of the gig workers in Kenya are engaged fulltime and are committing all their working hours to gig assignments.

5.3 MARKET POWER CONCENTRATION AND WORKERS' RIGHTS IN THE GIG ECONOMY

This section discusses the main features of gig work, income of gig workers, satisfaction with gig work, as well as customer and platform user complaint handling in the gig economy in Kenya.

Main features of gig work in Kenya

The findings of the study indicated that most of the gig workers did not have a formal remuneration but were paid by tasks they performed. Some respondents also indicated that they worked on gigs based on short-term contracts and flexible assignments. These findings revealed that gig work in Kenya was generally similar to other countries. According to Surbhi (2021), gig workers are paid based on the tasks or job they undertake. Thus, the gig economy is characterised by freedom of engagement, where one can work during their free time with no fixed hours. It also allows the workers to choose their working hours. The Corporate Finance Institute (2022) indicated that gig economy is an economy that is flexible in nature and entails employment via digital platforms. Stanford (2021) asserts that gig work is a digitally mediated work that uses technology as the business model. He also indicates that gig work is an insecure job venture that does not guarantee a constant availability of the job. Therefore, the future or sustainability of gig work is uncertain.

Income of gig workers

Most of the respondents indicated that they do gig work as their primary source of income and earn an average of between 10,000 to 20,000 Kenyan Shillings monthly. According to Buchwald (2021), every third gig worker undertakes gig work as the main source of income in the United States. However, Nealy (2022) indicates that most people take up gig work to supplement their primary sources of income. Amadala (2021) also asserts that Kenya has an average of 1.2 million online workers who earn an average of 20,773 Kenyan Shillings per month. Most of the gig work in Kenya is only functional in the urban areas which have high costs of living and hence require a high earning job (Hakeenah, 2021). The current earnings in the gig economy in Kenya is low and is unlikely to meet the standard living expenses. Indeed, a research study conducted by Mihika (2022) found that most gig workers survive "hand to mouth". Their earnings are spent on recurring expenses like rent, household and education. Thus, non-recurring expenses like medical issues normally destabilise their finances.

Satisfaction with gig work

The respondents in the study were highly satisfied with the gig tasks they undertake. They were also highly satisfied with the working hours, opportunities to be creative and ability to choose the hours to work. Statista Research Department (2022) argued that, in 2021, 77% of the gig workers in the United States were satisfied with their jobs. Similarly, a study by Atske (2021) found that 80% of gig workers have a positive experience of the gig economy. Kapoor (2021) did a survey with Deliveroo riders who indicated they were satisfied with their work and wanted to remain as self-employed rather than being formal employees. They also reported that they were satisfied with the control they have over time for their work. The gig economy thus indeed does allow workers to control their own time and schedule their work with flexibility (Ozimek, 2022). Many workers engage gig work because it supplements their income from formal employment and bolsters their financial standing (Farrell & Greig, 2016).

Although the respondents indicated that their gig work positively affects their overall work life, they still highlighted some challenges like lack of income security, no work benefits and the occasional low transaction levels. Various surveys indicate that unpredictable earning and poor consistency are the major challenges affecting gig work (Thomas & Baddipudi, 2022). According to Hartman (2018), the challenge of predicting the transactions and earnings of gig work sometimes can lead to economic and psychological trauma for gig workers. Gig workers do not have access to company benefits since the platforms do not consider them to be employees but rather temporary service providers. Therefore, they are not able to access insurance cover, loans and retirement benefits (Department of Labour, United States of America, 2019).

Customer and platform user complaint handling in gig economy

The respondents indicated that, most of the time, the customers usually send their complaints directly to the platform owners by email. They can also call or use the platform features provided to them to reach the platform owners or their agents. Uber and Bolt allow their customers to rate the services via the apps (Cameron, 2022). The customer rating influences the availability of work for the driver (or "rider" in case of food delivery). Thus, the customers turn into digital bosses that gig workers must seek to please above all else. The platform owners take the rating seriously. Worker accounts can be deactivated or closed based on their rating by the customers. Naraharisetty (2021) indicates that a gig worker's livelihood depends on the rating they acquire from their customers. Most of the platforms – Uber, Lyft, Uber Eats, Bolt and Jumia – are designed in such a way that the customers have the power, through the rating, to control the gig workers. The customers and platform owners thus end up exploiting the gig workers. The platform owners use the rating to put pressure on the workers, while the customers use it to get favourable services (Xiongtao et al., 2021).

5.4 POLICY INITIATIVES ON DIGITAL PLATFORM REGULATION

This section discusses relevant policy initiatives on contractual engagement with the platforms worked on, awareness and understanding of the terms and conditions of gig work, gig platform policies and platform regulation in Kenya.

Contractual engagement with the platforms worked on

The findings of the study, as shown in Table 27, show that the majority of the respondents have a contract with the gig platform they work with. Most of the platforms require users to accept their terms and conditions before they can create accounts. Consequently, these terms and conditions are part of the signing up process, and users cannot complete the sign-up process before accepting them. These terms and conditions are legally binding contracts between the users and the platforms. However, unlike traditional contracts, gig workers are unable to negotiate the terms of the contract and are instead forced to accept the contract as is (July et al., 2021; Kuhn & Galloway, 2019; Tran & Sokas, 2017). This lack of negotiation means that users have no choice but to accept contracts that may be unfair to them in the long run or do not reflect their level of expertise or experience.

In Kenya, the Employment Act (2007) states that every employer must provide their employees with a contract. Therefore, the gig platforms meet this requirement. However, the contracts presented to gig workers are short-term, and gig workers are not termed employees but rather independent contractors, thus rendering most of the law inapplicable to their situation. In contrast, the Supreme Court in the United Kingdom in 2021 ruled that Uber drivers are employees and not independent contractors, and therefore are eligible for benefits such as a national minimal wage, a statutory minimum level of paid holiday and sick days (Butler, 2021; July et al., 2021). This ruling directly affected Uber as a platform and changed the relationship between it and its users. However, the ruling was specific to Uber and is therefore not applicable to other gig platforms in the UK.

Awareness and understanding of the terms and conditions of gig work

The research findings in Table 28 show that a majority of gig workers are aware of the terms and conditions of gig work engagement. As indicated earlier, the terms and conditions are presented to users, and it is only after they agree that they are able to sign up for the services offered on the platform. There is of course the prevalent opinion that most people do not read the fine print of online contracts but agree to them nonetheless (Berreby, 2017). Nevertheless, most gig workers seem to be aware of the unfair nature of the terms and conditions provided to them by the platforms but often have no choice but to accept them because they do not have viable alternative means to earn a living. This is supported by the findings shown in Table 11 in which it emerged that for 89% of gig workers their gig work is their primary source of income. They, therefore, will accept the terms and conditions however unfair rather than face unemployment (Anwar & Graham, 2021).

Gig platform policies

The findings in Figure 6 show that users of gig platforms were more aware of the policies on customer service than other policies regarding their gigs. This is likely because gig platforms place greater emphasis on the quality of service that workers on their platforms provide to clients. Additionally, gig workers' services are evaluated and rated by the end users. This rating directly affects the gig worker's capacity to get more jobs (Li et al., 2019). It is, therefore, necessary for them to be familiar with the platforms' policies on how to handle customers and deliver the services and products to the expected standards. Payment or remuneration policies directly affect the amount of income earned by gig workers. Consequently, they are likely to familiarise themselves with the policies. Similarly, policies on termination or deactivation of contracts or accounts stipulate the circumstances under which a gig worker can be barred from using the platform. This would translate to the worker losing their source of income. On the contrary, very few platform users were aware of any operational health and safety policies on their platforms. This could be because under the existing laws in Kenya (Occupational Health and Safety Act, 2007) independent contractors are individually responsible for their own health and safety while performing their jobs. Therefore, gig platforms do not take legal responsibility for the safety of the platform users and thus may not even have health and safety policies.

Platform regulation in Kenya

The majority of platform users were not aware of any regulation that could be used to manage the gig economy. The findings demonstrate generally low levels of awareness of existing legal frameworks for labour in the country. This could be attributed to the non-existence of laws that directly apply to the gig economy, as most of the current labour laws in Kenya are applicable only to those in conventional employment (Anwar et al., 2022; Nafula, 2021). The general low level of awareness of labour laws could also be attributed to the lack of gig platform workers unions or welfare societies. This is mostly because of the nature of gig work that isolates workers form each other and in some instances gig platforms even ban platform workers outright from unionising or organising collectively in any way, dealing rather with any conflicts on an individual basis (Collier et al., 2017; Wood et al., 2018). The role of labour unions includes raising awareness among members about their rights and advocating for better working conditions as well as collectively bargaining on behalf of the members. Without access to such resources, gig workers lose out on important information and benefits (Misaro, 2012).

5.5 ROLE OF STAKEHOLDERS IN GIG ECONOMY REGULATION

The respondents indicated that the Government of Kenya should be on the forefront in regulating the gig economy. They should work with the gig employers, who are mostly the platform owners, to come up with regulations that serve the interests of the gig workers. Of influence are also the donors, investors and civil society organisations who serve as funders and advocates of gig workers. From the findings, the respondents were nearly equally split about the extent to which these stakeholders support or do not support the gig workers. According to Inversi et al. (2022), the government should strengthen the gig economy by ensuring that regulatory policies are not only formulated but also implemented adequately. In each stage, it is the role of government to influence both gig workers and employers to participate in legitimising the gig business and hence improve capital accumulation. According to Smith (2019), the gig economy is new to most governments; therefore, they are facing challenges in dealing with regulatory issues on the economy. The United States and European governments supported their gig workers by introducing sick pay for them during the COVID-19 pandemic (Osborn, 2020).

The Government of Kenya needs to work with other stakeholders to meet the needs of gig workers. The ILO (2016) report on gig economy indicates that the civil society organisations should be involved in collective bargaining for gig workers, advocating for defined rights, guaranteed working time and acquiring regular employment for gig workers. The ILO report has contradictions where the gig employers believe on self-regulations, while the civil society and platform employees stress the need for a legal framework. The civil society organisations can also lobby for resources for gig workers. Van Doorn and Badger (2020) assert that the trade unions are challenged when lobbying for policy and regulations because of power imbalances. They are mostly not consulted when policies and regulations are developed. Unfortunately, gig workers in Kenya have low awareness of unions that can assist them in lobbying and advocating for their rights. Green (2021) asserts that gig workers require unions to assist them in collective bargaining. The greatest challenge in creating unions is the fact that gig workers rarely even know each other, and hence it is difficult to organise themselves into a union.

5.6 CHALLENGES FACING IMPLEMENTATION OF PLATFORM REGULATIONS IN KENYA

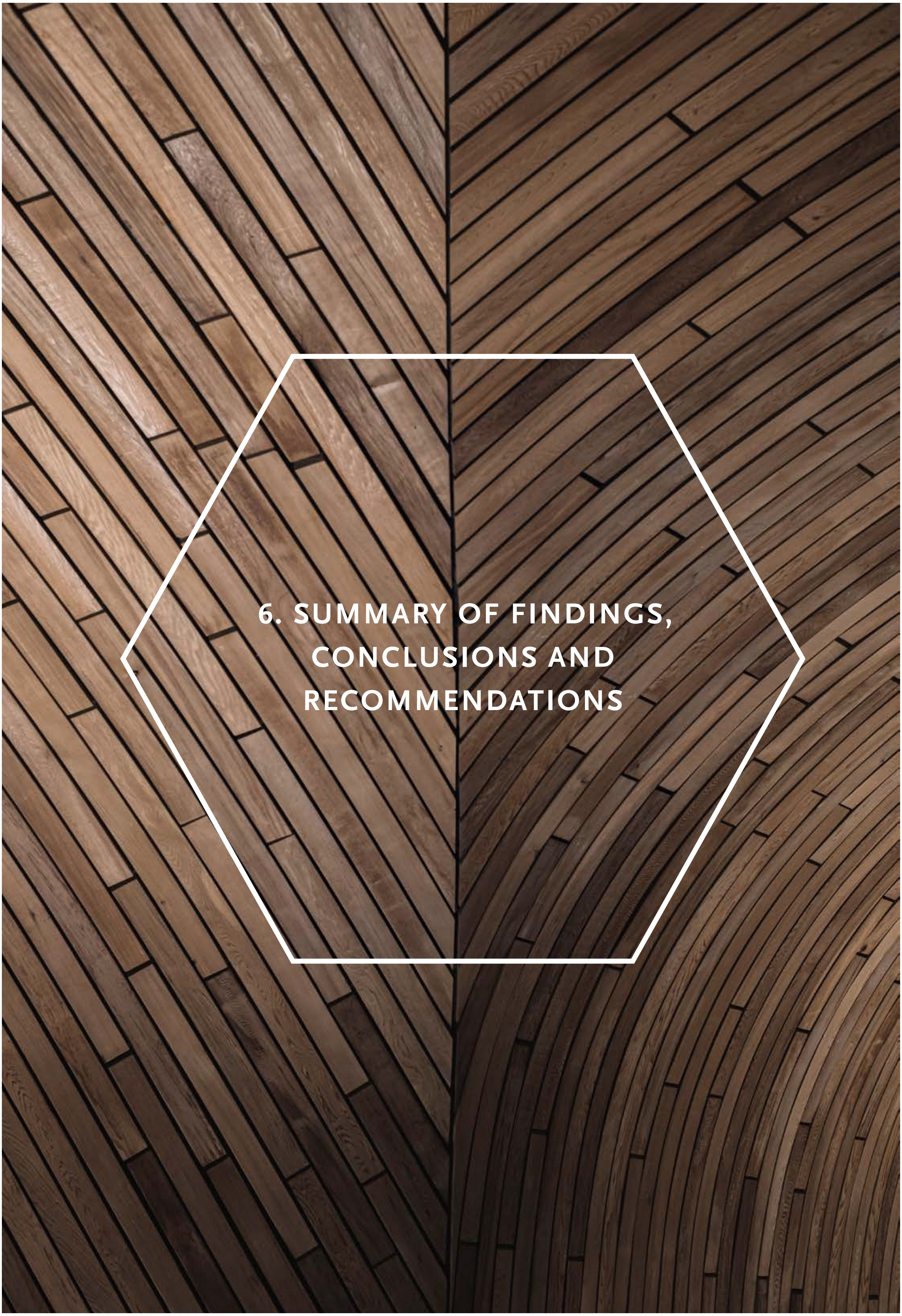
The research findings as displayed in Table 31 showed that a majority of the platform users felt that corruption was the main challenge hampering the effective implementation of regulations on gig platforms. This is contrary to the expectations that gig economy would be less ridden by vices like corruption, which affect the physical environment of work. Ouedraogo and Sy (2020) argued that the adoption of digital solutions in African countries was aimed to reduce corruption. It is, therefore, a paradox that digital platforms are themselves perceived by the users to be plagued by corruption. It is possible that gig workers view the reluctance of the government as a stakeholder to step in to regulate gig platforms as a result of corruption. Figure 8 shows that most gig workers (176) believe that the regulation of digital gig platforms is the government's responsibility rather than that of platform owners, donors, investors or civil society. While there are many studies supporting the contribution of digitisation and gig economy to reducing corruption in third world countries, there is a dearth of literature on corruption on gig platforms.

In addition to corruption, lack of funds was indicated by platform users as one of the main challenges to implementing regulations on gig platforms in Kenya. Ngene et al. (2021) argued that umbrella bodies such as the Kenya Digital Taxi Association are poorly funded and therefore unable to mobilise enough resources to petition government and champion the rights of gig workers. Funding is essential, particularly when challenging the status quo as this may result in lengthy litigation processes that are expensive.

The findings of the study further show that self-interest among the gig workers poses another challenge to the implementation of gig platform regulation. This can be attributed to the nature of gig work being highly independent and flexible. While these features have advantages when it comes to allowing gig workers more freedom as compared to traditional work environments, it unfortunately also leads to gig workers lacking a sense of belonging or community. Consequently, they feel no sense of collective responsibility but rather look out only for their own self-interest (Glavin et al., 2021; Petriglieri et al., 2019). This lack of connectivity and community makes it difficult for gig workers to present a united front and advocate for better terms and conditions of work as a cohesive group. Therefore, in light of the group theory of public policy (Abas, 2019), gig workers form a poorly organised interest group in society and are unable to mobilise well enough to successfully lobby policymakers to formulate favourable policies. Consequently, they continue to be exploited by the gig platforms.

The lack of laws specific to the gig economy was also indicated as a challenge to regulation of gig platforms. The existing laws in Kenya do not recognise gig workers as employees. Therefore, they do not adequately protect gig workers. Being classified as independent contractors, gig workers do not enjoy the basic statutory protection provided for by the current labour laws in the country (Iazzolino, 2021; Wambaa, 2018; Young, 2019). Gig platforms take advantage of this to avoid any form of regulation. Case in point, a Kenyan court on July 20, 2022 ruled that digital taxi services (Uber, Bolt, Yego) must register with the National Transport and Safety Authority (NTSA) to be allowed to operate in the country. It also ruled that commissions paid to the digital taxi platforms must not exceed 18% of the driver's earnings, which is a reduction from the 25% currently being charged by the gig platforms (Muthoni, 2022; National Council for Law Reporting, 2022). Uber Kenya Limited, is currently appealing against the ruling in the High Court, arguing that the company does not own vehicles, but rather each driver, independent of the platform, is the owner responsible for their own vehicle's maintenance and other operating costs such as licences. They argue that it is unconstitutional to require a technology provider that owns no vehicles to register as a public transport service provider under the NTSA. Further, Uber Kenya argues that capping the commission at 18% is illegal and unrealistic given the prevailing market conditions and will lead to curtailment of the flexibility of its business model. The gig platform continues to charge 25% commission despite the court ruling.

This lack of adequate gig platform legislation in the country has also led to the lack of social protections such as pensions, social security and health insurance for gig workers, as evidenced by our findings where it emerged that gig workers felt that their financial future is not assured. This is because they were not only ineligible for pension or social security but also unable to save because of poor and irregular income during the time they are active in the gig platforms (Anwar & Graham, 2021).



6. SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

6.1 INTRODUCTION

This section presents a summary of the key of findings of the study categorised by the main objectives of the project. The objectives were to: examine and summarise the academic and policy-related literature that assesses digital platform regulation in terms of, inter alia, market power concentration, workers' rights and copyright protection in Kenya; identify policy initiatives on digital platform regulation on the issues identified above in reference to Kenya; investigate the role of stakeholders in academic studies and policy initiatives on platform regulation in Kenya and the extent to which these efforts have been driven by local researchers and policymakers; explore the challenges, concerns and factors affecting effective platform regulation in Kenya; and recommend platform regulation approaches, regimes and frameworks appropriate to nurture, mainstream and sustain a gig economy in Kenya and other sub-Saharan countries.

6.2 SUMMARY OF FINDINGS

6.2.1 Literature on digital platform regulation in Kenya

Several issues have emerged from the literature reviewed on gig economy. The first issue relates to the definition of gig work. Three characteristics help in the understanding of what gig work is: 1) Gig work is temporary (Carney & Stanford, 2018; De Stefano, 2016; Veluchamy et al., 2021). A gig is, therefore, a short-term task that once completed the hired party can move on. 2) Gig work is flexible (Cook et al., 2019; Healy et al., 2020; Spurk & Straub, 2020; Wood et al., 2019). In this context, flexibility refers to the ability of the workers to decide whom to work for, where, how and when. 3) Gig work does not have a consistent remuneration. Instead, payment is made based on task completion or commissions (Bates, et al., 2021; Berg, 2015; Brawley, 2017; Hafeez et al., 2022). Therefore, gig workers, unlike their permanently-employed counterparts, do not have a stable income. It also emerged from literature that gig work can either be crowd work or work-on-demand. Crowd work is the type of gig work in which gig workers are hired to perform digital tasks or remote tasks. Examples of crowd work include online academic writing, freelance programming or system development, freelance graphic design and online advertising, among others. Work-on-demand gig work differs from crowd work because it entails real-world interactions (Aloisi, 2015; Kaine & Josserand, 2019). This type of gig work is required to be performed offline rather than purely through digital transactions. These include provision of services such as cleaning, ride share, food delivery and product delivery, among others. The understanding of the characteristics of gig work is essential in the formulation and implementation of policy and legislative frameworks to regulate it. From the foregoing, it is evident that gig work is fluid and, in some cases, happens in intangible digital spaces undefined by physical space and time.

Scholars also argue that in spite of the flexibility and autonomy that gig work offers, there are many loopholes in its structure which expose gig workers to exploitation and injustice (Steinbaum, 2019). For instance, Paul (2017) asserts that employers of the gig workers operate using the business model that is steeped in making profit. Therefore, the model above all benefits the employer and not the gig workers. Also, the platform dictates the terms of transactions for the worker; the worker can hardly influence these terms meaningfully. The gig platforms also rely on customer ratings rather than direct supervision by the employer. Works (2018) indicates that most of the gig workers' employers have more power when it comes to work-related issues on the platforms. They have the capacity to set wages, which is influenced by factors like the number of gig workers on the platform, high rate of unemployment and work preferences. Literature also indicates that gig workers face challenges such as low wages, lack of pension, limited access to social protection schemes, limited collective bargaining rights, as well as violation of privacy and discrimination (Codagnone et al., 2016; De Stefano & Aloisi, 2019; Stuart et al., 2017). There is need for a workers' rights protection to enable easy flow of services and reduce the frequent strikes by gig workers. Additionally, there is need to include digital workers in the formal employment rights.

6.2.2 Market power concentration and workers' rights in the gig economy

The findings of the study corroborated the views reflected in the reviewed literature that platform owners wield a lot of power over gig workers. Because of this power concentration, gig workers in Kenya are vulnerable to exploitation by the platform owners. The following were the specific key findings under this theme in regard to the power dynamics in the gig economy in Kenya:

- Most of the respondents 263 (83.8%) did not have a fixed remuneration but rather were paid per task. Only 27 (8.6%) of the respondents acknowledged the fact that the gig economy offered them a high degree of autonomy and they could choose which assignment to take or leave.
- Most of the gig workers 282 (89.8%) in Kenya consider the gig work as their primary source of income while 32 (10.2%) use it as a supplemental income generation avenue.
- The majority of gig workers (75.8%) earned between 10,000 and 30,000 Kenyan Shillings per month.
- Most of the gig workers 121 (38.5%) indicated that the income was inconsistent and varied from week to week. A total of 86 (27.4%) stated that the income was neither steady nor inconsistent.
- 131 (41.9%) of the gig workers were highly satisfied with the gig tasks they are working on.
- Most of the respondents indicated that they were affected positively by the gig economy in terms of their personal 302 (96.2%), professional 230 (73.2%) and financial 302 (92.2%) lives.
- The overall work life of gig workers is affected significantly by the tasks that the gig workers perform 0.269 (26.9%), the income they earn 0.248 (24.8%), transaction costs incurred 0.220 (22%), the gig employer 0.099 (9.9%) and the degree of the workers' independence 0.089 (8.9%).

6.2.3 Policy initiatives on digital platform regulation in Kenya

A number of laws, policies and strategies which may have relevance to the regulation of gig work in Kenya have been enacted and are in force. These include the Employment Act, 2007; Labour Institutions Act, 2008; Labour Relations Act, 2007; Occupation Safety and Health Act, 2007; Micro and Small Enterprise Act, 2012; Licensing laws; Copyright Act, 2001; Digital Economy Blueprint – Kenya; National Broadband Strategy, 2018–2023; Kenya Data Protection Act, 2019; and the African Union Convention on Cyber Security and Personal Data Protection. However, the findings of this study revealed that the provisions of these laws, policies and strategies are not being applied to gig work because they were tailor-made for the traditional work environment. The following were the primary key findings of the study under this theme which demonstrate violation of the key principles and provisions in the above laws:

- The majority of the respondents 256 (81.5%) said that they have a contract with the platforms they worked on. However, of the respondents 58 (18.5%) did not have a contract with the platforms they worked on.
- Most of the respondents 292 (93.0%) were aware of the terms and conditions of their engagement. Nonetheless, some of the respondents 22 (7.0) did not know their terms of engagement.
- Most of the respondents 194 (61.8%) were aware of customer service policies followed by payment or remunerations 162 (51.6%). A total of 155 (49.3%) were aware of policies on termination or deactivation of contract.
- A total of 42 (13%) of the respondents 42 (13%) were not aware of any policies on the platforms they used.
- Most of the respondents 191 (60.8%) were not aware of any regulations used to manage gig platforms in Kenya.

6.2.4 Role of stakeholders in policy initiatives on digital platform regulation in Kenya

The gig economy stakeholders identified by the respondents are the Government of Kenya and its agencies, donors and investors, civil society organisations, and the platform owners or employers. All these stakeholders could play diverse roles in gig platform regulation in Kenya. The Government of Kenya, through its various agencies, can lead in the development and implementation of regulatory frameworks such as laws and policies, among others. Investors and donors provide financial and technical support to gig work and can influence policies on resource mobilisation and allocation. They can essentially partner with the government and other stakeholders to provide the resources needed for the implementation of the regulatory frameworks. The civil society groups can lead advocacy campaigns on behalf of voiceless gig workers. In this process, they can lobby for the development and implementation of regulations which are favourable to the workers. Platform owners are the employers in the gig economy whose interest is profit making. Therefore, they naturally are not inclined to support activities, at least not willingly, which would improve the welfare of gig workers at the expense of their business. The following were the key primary findings under this theme:

- Most of the respondents 176 (56.0%) indicated that the Government of Kenya should be the institution to regulate the gig economy.
- Most of the gig workers 158 (50.3%) felt that the stakeholders did not support the gig economy while 156 (49.7%) were of the opinion that stakeholders support the gig workers.
- There was generally a low awareness of labour unions and welfare societies among gig workers with only 79 (25%) of the workers naming the Central Organisation of Trade Unions (COTU) as the union they are aware of.

6.2.5 Challenges hampering digital platform regulation in Kenya

Several challenges stand in the way of effective implementation of platform regulations in Kenya. These challenges largely revolve around the non-conducive implementation environment resulting from ineffective contribution of stakeholders to platform regulation in Kenya. The specific findings were as outlined hereunder.

- Corruption was seen as the main challenge facing implementation of regulation on gig platforms, in that it affected the relevant stakeholders' commitment to implementing legal and policy frameworks for a just gig economy in Kenya.
- Lack of funds was identified by platform users as the other challenge to implementing regulations on gig platforms. This is because funding is essential, particularly when challenging the status quo, which in most cases involves lengthy and expensive litigation processes.
- Self-interest among the gig workers is another challenge to the implementation of gig platform regulation. Gig workers lack a sense of belonging or community. Consequently, they feel no sense of collective responsibility but rather look out only for their own self-interest. This lack of connectivity and community makes it difficult for gig workers to present a united front and advocate for better terms and conditions as a cohesive group.
- The lack of laws specific to the gig economy is also a challenge to effective regulation of gig platforms. The existing laws in Kenya do not recognise gig workers as employees.
- Lack of awareness of the legislative and policy frameworks for regulating gig work in Kenya was another challenge. It follows, therefore, that most of the gig workers are not aware of their rights. Without this knowledge, the workers are vulnerable to exploitation.
- The stakeholders should explore using vetting and registration of gig platforms as a means of enhancing accountability and responsibility for protecting the rights of workers. The employers should be facilitated to educate their workers and ensure that their basic welfare needs are met proactively.
- Although the number of gig workers is increasing steadily, they are still relatively too few to attract the attention of the government. As of 2019, only 36,500 gig workers were documented in Kenya. Given that many of them are not easily discoverable, many stakeholders hold the view that the real number of gig workers could be higher than documented. Even then, they have yet to attain a critical mass which can attract the attention of the government to commit adequate resources to address their plight.

6.2.6 Recommendations on enhancing digital platform regulation in Kenya

To strengthen the regulation of platforms for a just gig economy in Kenya, this study recommends the following:

- The Government of Kenya should recognise gig work as employment and gig workers as employees whose rights need to be protected legally.
- The Government of Kenya, in collaboration with the other stakeholders, should review, revise or update legal and policy frameworks governing terms of employment, workers' rights and welfare to include the interests the burgeoning number of gig workers.
- Gig workers in Kenya should be sensitised to their rights as employees and should be encouraged to join unions which can lobby and advocate for their rights. Civil society organisations as well as unions should spearhead initiatives in this regard.
- The Government of Kenya should identify and implement strategies which diversify and promote gig work as an alternative income generation mechanism for both employed and unemployed citizens. Financial and other incentives, such as tax relief, would go a long way to mainstreaming gig work in the country which is striving towards a knowledge economy status.

- State Department of ICT and Digital Economy should be facilitated fully to prioritise the realisation of a lucrative but just gig economy in Kenya. It should be facilitated to commence work immediately.
- Civil society organisations as well as unions should provide affordable or free legal advice or representation to gig workers whose rights are violated but have no means of seeking legal redress.
- The Judiciary of Kenya should create a section for gig workers under its Labour and Employment Division. This would strengthen the capacity of the judiciary to handle disputes emerging from gig work competently and expeditiously.
- Gig work should be integrated in the Competency Based Curriculum as a critical component of digital literacy and citizenship. Gig work should also be included as one of the career paths for graduates of technical colleges and universities. Programmes building capacity in gig work should expand their horizons to include mentorship, hand-holding and acceleration mechanisms to create and strengthen practical skills needed by the gig sector.
- The gig economy in Kenya is still nascent. Therefore, specific regulatory issues have yet to emerge fully. Currently, regulation efforts such as requiring ride-share platform owners to register with the NTSA are viewed as aimed at expanding tax collection rather than addressing workers' welfare. This leads to suspicion even by the gig workers themselves. The Government of Kenya should make its regulatory intentions clear and work more with the stakeholders to build confidence in its efforts.

6.3 CONCLUSION

The study has confirmed that gig work is becoming ubiquitous. This is particularly true for young workers aged between 26 and 35. This age range of gig workers is mainly attributed to male gig workers, while for female workers it is below 25 years. The difference can be attributed to social and cultural norms, with younger women marrying and therefore opting out of gig work the older they get. Also revealed in the study is the fact that gig work offers the opportunity to earn a living and therefore support families in an age where unemployment is otherwise high. As such, gig work plays a role in reducing the unemployment gap. However, this comes at some demonstrable cost which, for the most part, includes the insecurity of this type of occupation given that it is contract and zero-hours based. Due to this, gig workers cannot expect benefits similar to those in more permanent employment such as leave days, pensions, maternity breaks and other similar benefits. Remuneration is also therefore fluid, with a worker able to generate income if and when they have a contract but not able to earn anything when business is not good. This is where asymmetrical power differentials are evident, with platform owners having power over gig workers. The power differentials are also illustrated between other stakeholders, namely policymakers who, according to respondents, have failed to implement effective gig regulatory frameworks, partly due to corruption which hinders a just gig economy.

ASYMMETRICAL POWER DIFFERENTIALS ARE EVIDENT, WITH PLATFORM OWNERS HAVING POWER OVER GIG WORKERS

Further, although there are evident policies and strategies that have been enacted into law such as the Employment and Labour Relations Acts among others, these are mainly for more traditional

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work practices rather than for the gig economy. This has a definite impact on work benefits for the gig sector. Gig work offers a promising opportunity to address employment challenges in Kenya. Indeed, it can contribute positively to the efforts of the government in reducing unemployment in the country. Nonetheless, gig work needs to be just, fair and secure. This can be achieved by ensuring that gig platforms are regulated as a means of strengthening their sensitivity to the workers' rights. The recommendations above, if implemented, will go a long way to creating a lucrative but just gig economy in Kenya.

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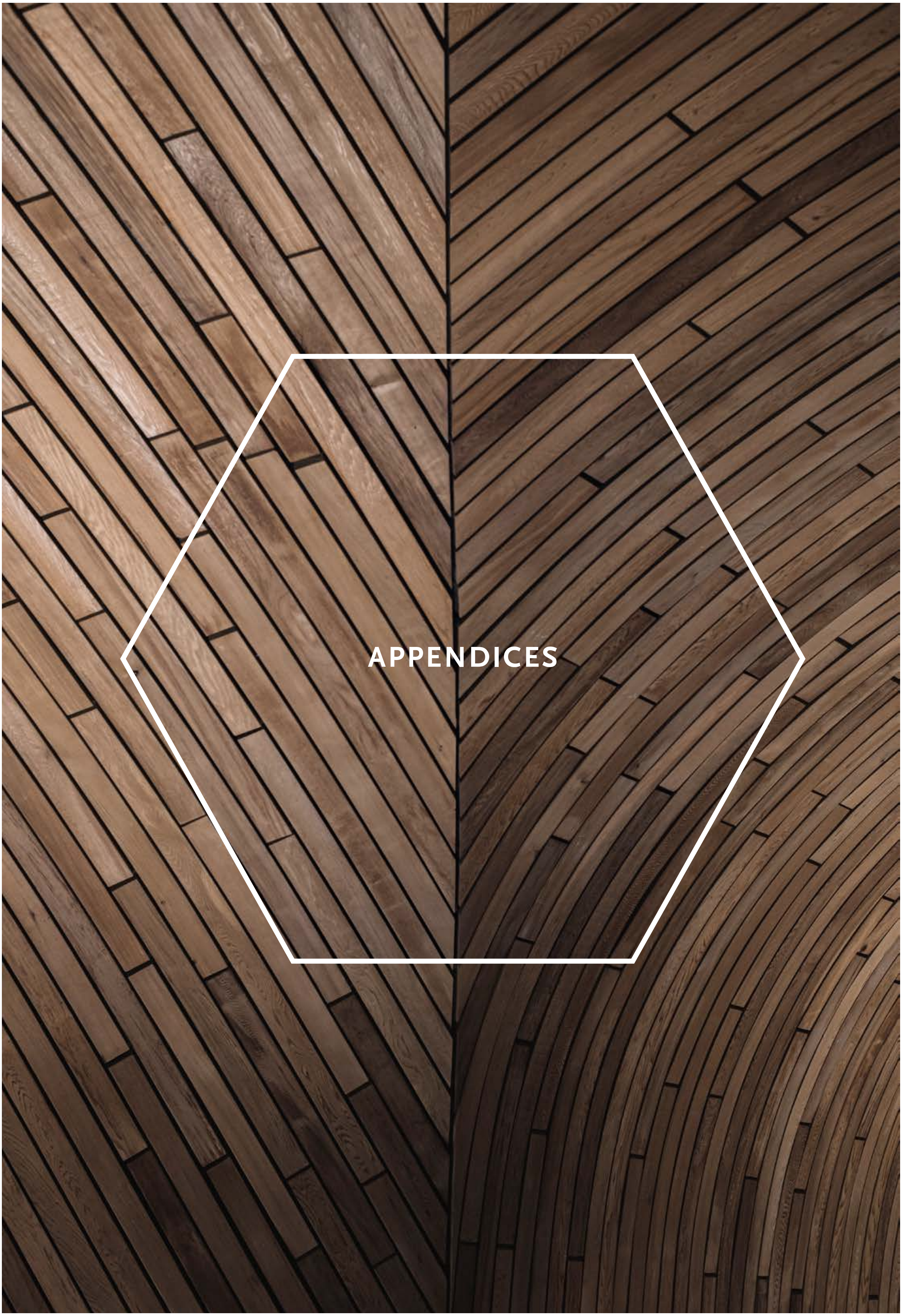

APPENDICES

APPENDIX 1: STAKEHOLDERS IN GIG WORK IN KENYA

Category	Policymakers and Implementers	Platform	Platform Users	Civil Society
Ecommerce	Communications Authority of Kenya Competition Authority of Kenya Information and Communication Technology Authority Micro and Small Enterprises Authority	jumia.co.ke jiji.co.ke kilimall.co.ke sky.garden jamboshop.com shopit.co.ke pigiame.co.ke	Retailers	Kenya Private Sector Alliance Retail Trade Association of Kenya Association of Start-ups and SMEs Enablers of Kenya
Freelancing	Ministry of Labour	kuhustle.com freelance.com truelance.com Guru.com Ziada (kazi app)	Individuals	Kenya Union of Hair and Beauty Workers Tailors and Textile Workers Union Kenya Union of Entertainment and Music Industry Employees Kenya Union of Commercial, Food and Allied Workers Fairwork Mercy Corps
Health Services	Kenya Medical Practitioners and Dentist Council Nursing Council of Kenya Pharmacy and Poisons Board of Kenya Kenya Nutritionist and Dietitians Institute Ministry of Health Clinical Officers Council	mDaktari wazi AfyaBora Lishe Living MYDAWA Ponea Health	Health workers Therapists Nutritionists Ordinary citizens	Kenya Medical Practitioners, Pharmacy and Dentists Union
Transportation	Ministry of Transport National Transport and Safety Authority (NTSA) Kenya Traffic Police	Wasili Safeboda Hava Zuru Taifay Little Cab	Drivers Motorcyclists Owners Riders	Motorcycle Assemblers Association of Kenya Kenya Transporters Association Ltd. Transport Workers Union of Kenya Kenya Alliance for Residents Association (KARA)
Hospitality	Ministry of Tourism and Wildlife Kenya Association of Manufacturers Tourism Regulatory Authority Kenya Bureau of Standards (KEBS) Kenya Agricultural Research Institute (KARI) Kenya Plant Health Inspectorate Services (KEPHIS) Department of Public Health (DPH) Weights and Measures Department (WMD) Kenya Dairy Board (KDB) Horticultural Crops Development Authority (HCDA) Consumer Information Network Consumer Insight Kenya Union of Commercial Food and Allied workers Kenya Union of Entertainment and Music Industry Employees	Yum delivery Dial-a -delivery Take Eat Easy	Hotels Individuals Motorcyclists	Association of Hotel Professionals Kenya (AHPK) The Kenya Association of Hotelkeepers and Caterers (KAHC) The National Association for Catering and Events (NACE) KUDHEHIA
Education	National Government-Ministry of Education County government (TVET and ECDE) School board members Teachers Parents Teachers Service Commission	Mshule Elimu Advisor E-soma KE Dawati Mymlango Khan academy Zeraki learning Mswali Arifu E-limu platform Zydii Digiskool Kidato Endless Solutions Funke Science Educartis Mosabi Ubongo kids Elimu Eneza education Kytabu	Tutors Content developers	KUPPET KNUT Kenya National Association of Parents (KNAP) Elimu Yetu Coalition Forum for African Women Educationalists (FAWE) IREX Kenya Kenya Education Fund Live and learn in Kenya International Agha Khan foundation Moving Mountains Kenya

APPENDIX 2: KREJCIE AND MORGAN SAMPLING TABLE

N	S	N	S	N	S
10	10	220	140	1200	291
15	14	230	144	1300	297
20	19	240	148	1400	302
25	24	250	152	1500	306
30	28	260	155	1600	310
35	32	270	159	1700	313
40	36	280	162	1800	317
45	40	290	165	1900	320
50	44	300	169	2000	322
55	48	320	175	2200	327
60	52	340	181	2400	331
65	56	360	186	2600	335
70	59	380	191	2800	338
75	63	400	196	3000	341
80	66	420	201	3500	346
85	70	440	205	4000	351
90	73	460	210	4500	354
95	76	480	214	5000	357
100	80	500	217	6000	361
110	86	550	226	7000	364
120	92	600	234	8000	367
130	97	650	242	9000	368
140	103	700	248	10000	370
150	108	750	254	15000	375
160	113	800	260	20000	377
170	118	850	265	30000	379
180	123	900	269	40000	380
190	127	950	274	50000	381
200	132	1000	278	75000	382
210	136	1100	285	1000000	384

N is population size, S is sample size
Source: Krejcie & Morgan, 1970

IMPRINT

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

PUBLISHED
April 2023

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PUBLISHER
Alexander von Humboldt Institut für Internet und Gesellschaft
Französische Straße 9
10117 Berlin
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ACADEMIC REVIEW
Dr. Fabian Stephany, Marie Blüml

DESIGN
Max Falley, Larissa Wunderlich

KEYWORDS
Gender, Gig Work, Kenya, Equality

CITATION
Kwanya, T. & Wakunuma, K. (2023). Regulation of Digital Platforms for a Socially-Just Gig Economy in Kenya. *HIIG Impact Publication Series*. DOI: https://doi.org/10.5281/zenodo.7588795