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

ALEXANDER VON HUMBOLDT INSTITUTE FOR INTERNET AND SOCIETY

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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.

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