Labour Market Profile 2020

KENYA

Danish Trade Union Development Agency, Analytical Unit

ULANDSSEKRETARIATET – DTDA
DANISH TRADE UNION DEVELOPMENT AGENCY

PREFACE

Danish Trade Union Development Agency (DTDA) is the development organisation of the Danish trade union movement. It was established in 1987 by the two largest Danish confederations – Danish Federation of Trade Unions (Danish acronym: LO) and Danish Confederation of Professionals (Danish acronym: FTF). These two organisations merged to become the Danish Trade Union Confederation (Danish acronym: FH) in January 2019. By the same token, the former name of this organisation, known as the LO/FTF Council, was changed to DTDA.

The work of DTDA is in line to the International Labour Organization's (ILO) Decent Work Agenda (DWA) with the four Decent Work Pillars: Creating decent jobs, guaranteeing rights at work, extending social protection and promoting social dialogue. The overall development objective of DTDA's interventions in the South is to eradicate poverty and support the development of just and democratic societies by furthering the DWA.

DTDA works in partnership collaboration with trade union organisations in Africa, Asia, Latin America and the Middle East. The immediate objective of the programme collaboration is to assist the partner organisations in becoming change agents in their own national and regional labour market context, capable of achieving tangible improvements in the national DWA conditions and towards the achievement of the labour-related Sustainable Development Goals' (SDGs).

The format of the Labour Market Profile (LMP) provides a comprehensive overview of the labour market situation in the individual countries of engagement. LMP aims at giving a comprehensive view of structures, developments and challenges in the labour markets. The document is divided into eleven thematic sections describing trade unions, employers' organisations, government, bi-/tripartite institutions and social dialogue, national labour legislation, violations of trade union rights, working conditions, status of the workforce, education, social protection, and economy.

In the framework of DWA and SDGs, LMPs are reporting on several key indicators addressing several aspects of labour market development, especially the trade union membership evolution, social dialogue and bi-/tri-partite mechanisms, policy development and legal reforms, status vis-à-vis ILO conventions and labour standards, among others.

Main sources of data and information for LMPs are:

- As part of program implementation and monitoring, national partner organisations provide annual narrative progress reports, including information on labour market developments. Furthermore, specific types of data and information relating to key indicators are collected by use of a unique data collection tool.
- National statistical institutions and internatinal databanks are used as source for collection of general (statistical) data and information. This includes the ILOSTAT and NATLEX, World Bank Open Data, ITUC Survey of violations of Trade Union Rights, the U.S. Department of State as well as other labour related global indexes.
- Academia and media sources (e.g. LabourStart, national news, etc.) are also used in the general research on labour market issues.

Labour Market Profiles for more than 30 countries are available on the DTDA website: http://www.ulandssekretariatet.dk/content/landeanalyser).

DTDA's Analytical Unit in Copenhagen prepared this Labour Market Profile in close collaboration with the DTDA Eastern Africa sub-Regional Office in Tanzania and Central Organization of Trade Unions (COTU) in Kenya.

Should you have questions about the profile, you can contact Kasper Andersen (kan@dtda.dk), Manager of the Analytical Unit.

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EXECUTIVE SUMMARY

Kenya is a lower-middle income country with well-organised industrial relations, but structural challenges are affecting the labour market. Economic growth has been robust, along with increasing wages. However, a majority of the workforce operates in the informal economy (83%), which is shaded by non-compliance of labour regulations (including wages). An increase in living cost has eroded incomes' purchasing power and projections on the progress of employment by middle-class has been sluggish reaching 20% in 2020.

Few legal reforms on the labour market were approved in recent years. Generally, labour legislation has some flaws in terms of the international standards on the right to organise, the right to collective bargaining, and the right to strike. Besides, labour regulations and policies are not fully implemented in the formal sector on government and company levels. Several reforms are put on the table, e.g. wage regulations, youth employment, breastfeeding rights at work, and strike deregulations.

Central tripartite structures are working, but frequently reacting slowly. For instance, the Employment and Labour Relations Court (ELRC) has an insufficient number of judges which causing a serious backlog of cases. Decisions often lack enforcement, just as many employers do not comply with the court's reinstatement orders.

In recent years, an increase of casual contracts and outsourcing in the formal sector has prompted massive lay-offs. It triggered rising disputes along with non-compliance of collective bargaining and breakdown of Collective Bargaining Agreements (CBAs) on company level. Between 2017 and 2018, several unsatisfactory collective bargaining triggered unrest and strike actions. An upsurge in systematic violation of labour rights is registered. General awareness of the need to go back to constructive social dialogue to improve industrial relations amongst workers and employers is in progress in some sectors.

There is emerging employment intensity in the agricultural sector based on a boom in economic output that represents as the primary driver of growth for the economy. In contrast, low-slung employment intensity is present in the industry and service sectors, especially in the manufacturing industry. Job creation in the formal sector has not followed the fast-growing young population. It has held up the structural development in the employment. The rapid urbanisation fosters high youth unemployment (18%) and youth underemployment (80%), which are among the central labour-related challenges in the country.

The 2010 Constitution provides a framework for addressing gender equality. Discriminatory gender practices are widespread, though; e.g. women are often trapped in vulnerable employment conditions and do not receive equal pay for equal work.

Kenya has a higher out-migration than in-migration. The country's migrant workers often reach the Middle East, mostly as domestic workers. The government has taken actions to protect Kenyan workers in the Gulf States. The country hosts some of Africa's largest refugee camps inhabited mostly by South-Sudanese and Somalis, which represent 6.4% of the population. Refugees have limited opportunities for economic inclusion due to insufficient legislation to allow free movement, education, and employment.

The education system demonstrates high enrolment in school on all levels, including vocational training, in comparison to the sub-Saharan Africa average. Dropout rates are high in the education system. It is signalled in the high child labourer rate of 26%. Insufficient formal job creation turns many youths discouraged that is echoed in the high NEET rate of 29% (i.e. neither in education, employment or training).

The country is making progress in consolidating its national social protection system. Still, just around one out of ten (10%) of the population is covered by at least one social protection benefit while one out of four (25%) above retirement age receives a pension. No specific protection directly addressing unemployment benefits is available. The low coverage of social protection mirrors the extensive vulnerable employment conditions present in Kenya.

Disturbing industrial relations ambience in recent years has challenged trade unions' affiliation of organising workers: the consequence has been reflected in a flat growth in trade union recruitment. Trade union density of total employment was 15% in 2018, which remained significantly higher than in other Eastern Africa countries.

The two tables below provide an overview of what is happening in the labour market. The first table on status of key labour market indicators in the framework of the Decent Work Agenda (DWA) in Kenya is based on key indicators that are followed by DTDA in collaboration with Central Organization of Trade Unions (COTU (K)). 'Yes' and 'No' measurements are based on assessments from the DTDA Sub-Regional Office and partners interlinked to data collection.

The second table on key Sustainable Development Goals in labour market related issues (next page) presents an overview of the SDGs indicators' current value and targets in relation to labour market issues.

Status of key labour market indicators in the framework of the Decent Work Agenda (DWA) in Kenya, 2018

Creating decent jobs	
Policy reforms addressing creation of decent employment	Yes. Legal reforms to improve working conditions for breastfeeding mothers, increase youth employment, as well as universal health care as part of the Big Four Government Agenda
ILO standard setting on improvement of status of workers from the informal economy	Yes. Tri-partite National Informal Employment Forum addresses policy issues and the status of informal employment.
Guaranteeing rights at work	
Growth in partner trade union members from year 2014 to 2018 (%) (COTU)	97 %
Violations of trade union rights	Ranking 4 out of 5 (5+ is the worst)*
Labour legislation is improved according to ILO standards	Yes. Employment amendment act (No. 14) from 2017 gives women the option to extend their three months paid maternity leave with three additional months, unpaid.
Partner organisations with minimum 30% women representation in decision-making bodies	24 %
Extending social protection	
Health social protection coverage as % of total population in partner countries	16%**
Workers from the informal economy have access to national social security schemes	Yes, 21 % are covered by National Hospital Insurance Fund (NHIF)
Promoting social dialogue	
Trade union density of total employment (%)	15 %
Cooperation in labour-employer relations	Ranking 91 out of 141 (1 is best) ***
Number of Collective Bargaining Agreements (CBAs), 2017	386 **** / 313*****
Workers' coverage of Collective Bargaining Agreements to employees	5 %
Bi-/tri- partite agreements concluded	Tri-partite Alternative Disputes handling mechanisms are in the process of being established with the aim of resolving labour disputes and reduce the existing case backlog and other delays.

** This is interpreted as systematic violations of rights. Countries with a rating of 4 are interpreted as governments and/or companies engaging in serious efforts to reduce the collective voice of workers and put fundamental labour rights under threat (Source: ITUC, Global Rights Index).*
*** Members of National Hospital Insurance Fund (NHIF)*
**** This indicator is based on data from the Global Competitiveness Index that represents employers' opinion from surveys (Source: World Economic Forum)*
***** SRO Data-collection tool, 2018*
****** Economic Survey 2019*
Sources: ILO, DTDA Sub-Regional Office data collection tool 2018, Economic Survey 2019, and DTDA's Analytical Unit own calculations.

Status of key Sustainable Development Goals in labour market related issues in Kenya

Indicators	Value	Year	SDG Targets
1.1.1: Working poverty rate (percentage of employed living below US$1.90 PPP)	30 %	2019	By 2030, eradicate extreme poverty for all people everywhere, currently measured as people living on less than $1.25 a day
1.3.1 Proportion of population covered by social protection floors/systems	10 % *	2016	Implement nationally appropriate social protection systems and measures for all, including floors, and by 2030 achieve substantial coverage of the poor and the vulnerable
5.5.2: Female share of employment in managerial positions	-	-	Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life
8.1.1: Annual growth rate of real GDP per capita	2.3 %	2017	Sustain per capita economic growth in accordance with national circumstances and, in particular, at least 7 per cent gross domestic product growth per annum in the least developed countries
8.2.1: Annual growth rate of real GDP per employed person	3 %	2019	Achieve higher levels of economic productivity through diversification, technological upgrading and innovation through a focus on high-value added and labour-intensive sectors
8.3.1: Proportion of informal employment in non-agriculture employment	84 %	2018	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage the formalisation and growth of micro-, small- and medium-sized enterprises, through access to financial services
8.3.1: Women	-	-	
8.3.1: Men	-	-	
8.5.1: Average hourly earnings of women and men employees	-	-	By 2030, achieve full and productive employment and decent work for all women and men, including young people and persons with disabilities, and equal pay for work of equal value
8.5.2: Unemployment rate (Total)	9.3 %**	2019	
8.5.2: Women, 15+	9.2 %**	2019	
8.5.2: Women, 15-24 years	18 %**	2019	
8.5.2: Men, 15+	9.4 %**	2019	
8.5.2: Men, 15-24 years	18 %**	2019	
8.6.1: Proportion of youth (15-24 years) not in education, employment or training)	-	-	By 2020, substantially reduce the proportion of youth not in employment, education or training
8.7.1: Proportion and number of children aged 5-17 years engaged in child labour (Total)	26 %	2016	Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025, end child labour in all its forms
8.7.1: Girls	27 %	2016	
8.7.1: Boys	25 %	2016	
8.8.1: Frequency rates of fatal and non-fatal occupational injuries	-	-	Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment
8.8.2: Level of national compliance with labour rights (freedom of association and collective bargaining)	-	-	
9.2.2: Manufacturing employment as a proportion of total employment	11% ***	2018	Promote inclusive and sustainable industrialisation and, by 2030, significantly raise industry's share of employment and gross domestic product, in line with national circumstances, and double its share in least developed countries
10.4.1: Labour income share as a percent of GDP	-	-	Adopt policies, especially fiscal, wage and social protection policies, and progressively achieve greater equality

** Value of population covered by at least one social protection benefit (Contingency), see also Table 17. ** ILO estimations. *** Relative to wage employment.*

Source: United Nations, Sustainable Development Goals, Knowledge Platform, Kenya National Bureau of Statistics, Economic Survey 2019, UNICEF 2016 and ILO, Key Indicators of the Labour Market (KILM)

COUNTRY MAP

Source: [CIA, The World Factbook]

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TRADE UNIONS

Two federations, the dominating national Central Organization of Trade Unions - Kenya (COTU (K) and the relatively new Trade Union Congress of Kenya (TUC-Ke), are hosting 48 trade unions; and additionally 9 are independent organisations (see also Appendix Table 20). Around 2.6 million workers were members of trade unions in 2018. The trade union density was estimated at 15% of the total employment in 2018, which is relatively high in comparison to the neighbouring East African countries with trade union density rates from 2% to 6%.[1] Table 1 shows the status of trade unions in Kenya.

Table 1: Status of trade unions in Kenya, 2018

Number of trade unions	57
Members of trade unions	2,591,570
Women member share of waged workers	44 %
Growth in membership, 2014-2018	70 %
Trade union density (total employment)	15 %
Members of affiliated trade unions from the informal economy	11,540

Source: COTU, DTDA, Kenya National Bureau of Statistics, Economic Survey 2019

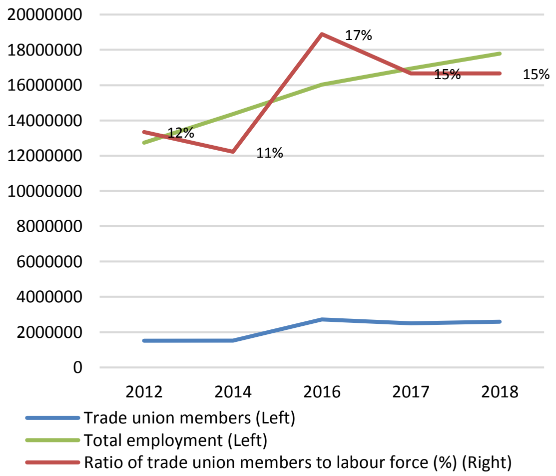
Most trade unions are sector-based with a few general unions that cover several industries. Civil servants are also active members of worker organisations and exercise the freedom of association rights.

Although the country has one of the most institutionalised industrial relations in Africa, lay-offs and rising disputes in recent years, along with non-compliance of collective agreements, affected negatively the labour market. It is an impact of increasing outsourcing and casualisation in the formal sector and it has challenged the affiliation of trade union members. For example, the misuse by employers of internships and other forms of transitional employment, but not hiring employees after the internship ends, has tested the trade unions' ability to organise and bargain collectively for better working conditions.

A wide range of major strike actions in education, health and transport sectors exemplifies the difficult period of the industrial relations since 2016. The events were related to disagreement between workers their employers about Collective Bargaining Agreements (CBAs) employment terms. In 2017, labour strikes cost Ksh 5.2bn (US$52 million) in government spending to stop the strikes, which was the historically highest cost (see also the section: Trade Union Rights Violations).[2] In 2018 and 2019, trade unions and private/public employers intensified in dialogue that is more constructive.

During 2014 and 2016, the trade union density grew rapidly. A drop of 2.3 percentage points in trade union density from 2016 to 2017 illustrates the complication of the industrial relations in recent years; stayed on a flat growth from 2017 to 2018. The tempo of employment growth also superseded the trade union membership progress that widening a gap (see Figure 1).

Figure 1: Trade union membership and total employment trends, 2012-2018



Source: COTU (K) and LO/FTF Council

COTU (K) is the largest organisation covering around 97% of total trade union membership (Table 2). The organisation registered a fast growth in 2014/15, but it stalled since 2016 (see more below). In 2019, COTU brought on board the Kenyan National Union of Teachers (KNUT) (see more ahead).

Table 2: Trade Union Centres members and affiliated unions in Kenya, 2018

	Total Members	Women share, %	Growth in membership, 2014-2018
COTU (K)	2,470,329	44 %	97 %
TUC-Ke	111,676	37 %	-57 %
Independent	9,565	98 %	21 %
Total	2,591,570	43 %	70 %

Source: COTU and DTDA research.

Central Organisation of Trade Unions (COTU (K))

COTU (K) was formed in 1965 and is the largest trade union federation in Kenya with 45 affiliated trade unions, and is considered as one of the strongest in Africa. The organisation is a well-established political actor on general labour market issues. The role of

COTU (K) has concentrated on negotiating improvements in relation to salaries, workplace safety, fringe benefits and generally better terms and conditions of employment for the workers represented by COTU (K) in the formal sector. Most of the affiliates of COTU (K) are engaged in collective bargaining processes.

Among the registered 2.5 million members in 2018, 44% were women. During the national congress of COTU (K) in 2016, three women General Secretaries were elected together with two women National Treasurers and over 500 representatives at branch and shop floor levels. In addition, COTU (K) amended its constitution to provide positions for women and youth committee chairpersons into the Board. The COTU (K) congress also adopted its first gender policy.

COTU is affiliated to the International Trade Union Confederation (ITUC), the Organization of African Trade Union Unity (OATUU), the Trade Union Federation of Eastern Africa (TUFEA), and the East African Trade Union Confederation (EATUC).

The organisation's trade unions range from large unions such as the Kenya Plantation and Agricultural Workers Union (KPAWU) with 740,000 members to small unions such as Kenya Union of Voluntary and Charitable Organization with 35 members (See more in Appendix Table 20).

COTU (K) represents affiliated unions and informal economy associations in tri/bi-partite bodies such as the National Social Security Fund (NSSF), the National Labour Board, and the Wage Councils. During 2016, COTU (K) sensitised its membership on the ILO Recommendation 204 on the transition from the informal to the formal economy.

KNUT, formed in 1957, joined COTU (K) as co-founder in 1965, but was in 1969 forced out by the government as the government decided that public employees could not belong to COTU (K).[3] Since then, KNUT was not affiliated with any union federation until 2014 when KNUT became a part TUC-Ke.[4] Because of disputes over the leadership of TUC-Ke, KNUT was suspended from TUC-Ke in 2018. KNUT registered 83,500 members in 2018. In January 2019, KNUT was re-affiliated to COTU (K). According to data from COTU (K), KNUT's membership was 300,000 in July 2019, which suggests a high influx of organised teachers. As just indicated, the industrial relations between KNUT and the government deteriorated in recent years in relation to a legal turmoil of a collective bargaining agreement (see also in the sub-section: Social Dialogue). The KNUT's Union Subscription Fee is collected from every member of the union at the rate of 2% of the basic salary of every member per month (e.g. a senior master is deducted Ksh 1,200 (US$12) per month for membership).

Trade Union Congress of Kenya (TUC-Ke)
Federation of Public Service Trade Unions of Kenya (PUSETU-K) was launched in November 2012. It was re-named as Trade Union Congress of Kenya (TUC-Ke) in 2014. Four trade unions were affiliated with TUC-Ke in 2018 and representing 111,676 members, which included KNUT (Appendix Table 20). In the beginning, the organisation was dominated by members from the public sector and later opened up for private sector unions.

EMPLOYERS' ORGANISATIONS

Employers are estimated to make up 8.1% of the total employment in Kenya in 2019, which is 4.8 percentage point higher than the African average (3.2%) (see also ahead in Figure 4). This high share of employers is an impact of the flourishing entrepreneurship movement in the country.

The Global Competitiveness Index provides the employers' view on several aspects. In particular, pillar 8 looks at the labour market and measures its efficiency in a given country. Information is based on surveys among employers and other statistical data. In 2019, Kenyan employers considered the labour market to be moderately effective, placed in the upper-middle segment, ranking the country as number 79 out of 141 countries (1 is the best).

Out of the 12 labour market efficiency indicators, the highest scorings are in labour tax rate (8), internal labour mobility (21), and hiring and firing practices (44), which indicate that employers in Kenya in general are satisfied with the labour taxation rate and find it relatively easy to fire and mobilise labour. Kenya's lowest score is in ratio of wage and salaried women workers to men workers (113), which indicating a substantial gender gap in the labour market (see more in the sub-section: Gender). The cooperation in labour-employer relations rank is the second lowest (91) and this indicator fell down by 19 steps from the last ranking (72) from 2018, which suggest a deterioration in social dialogue in Kenya (see more details in Table 3).

Table 3: Employers' view of the labour market efficiency in Kenya, 2019

Indicator	Rank *
Total	79
Redundancy costs (weeks of salary)	69
Hiring and firing practices	44
Cooperation in labour-employer relations	91
Flexibility of wage determination	69
Active Labour policies	84
Worker's rights	89
Ease of hiring foreign labour	81
Internal labour mobility	21
Reliance on professional management	57
Pay and productivity	50
Ratio of wage and salaried women workers to men workers	113
Labour tax rate %	8

** Rank from 1 to 141 (1 is best ranking).*
Source: The Global Competitiveness report 2019- Pillar 8

Federation of Kenya Employers (FKE)[5]
FKE was established in 1959 and celebrates its 60th anniversary in 2019. As Kenya's largest and leading employers' organisation, FKE is active in the public debate lobbying for corporate organisations. Its overall objectives are to maintain good industrial relations, promote sound management practices and fair employment conditions. Maintaining industrial relations are the core function of FKE. It also provides business development assistance to members (advocacy, industrial relations, employment laws and related value-add services through management, consultancy and training).

FKE headquarters are in Nairobi, while its three branches are located in the Coast, the Rift Valley and the Western Regions. It is independent of both government and political parties.

Membership is open to all organisations in the public and private sectors except the civil service and the disciplined forces. Its membership comprises of at least 4,000 Kenyan businesses both direct and indirectly through 15 associations that cuts across all sectors of the economy. The members constitute both small and large employers. In comparison, Kenya has an estimated 35,000 large or medium sized enterprises, constituting 2% of Kenya's 1.7 million enterprises.

The organisation is registered on United Nation's Global Compact and collaborating with ILO. FKE is a member of International Organization of Employers (IOE) and is represented by Business Africa.[6]

In practice, FKE is the bi-partite social partner to COTU. It represents employers in the most central bi-/tripartite organs, and deals and provides hearing inputs on labour policies and legislation. Among others, FKE is incorporated in the Government's Employment Policy and correspondent strategies alongside COTU.[7] FKE furthermore leads negotiations of Collective Bargaining Agreements (CBAs) on behalf of its member enterprises at company, industrial and/or sectoral level.

FKE expresses concerns about Kenya's competitiveness in doing business and especially the low job creation in the formal sector, the high growing youth population and wage increases. Similarly, concerns have been raised about the lacking infrastructure repair as well as the out-migration of workers (see also the sub-section: Migration).

FKE has been involved in programs such as capacity building, developing small scale enterprise, informal economy, child labour prevention, developing micro finance, tackling youth unemployment, HIV/AIDS at the workplace and expanding social protection.

Since 1991, FKE has been involved with employers in the informal economy by, for example, providing institutional services to businesses.[8] In 2018, the federation decried the size of the informal economy compared to the formal one and encouraged the government to initiate programmes which will protect existing jobs in the formal sector (see also the sub-section: Informal Economy).[9] FKE has also been vocal in criticising the President for increasing the minimum wage by 5% in 2018.[10]

In a report published by FKE in 2018, the federation criticised universities for not sufficiently preparing graduates for the labour market, claiming that a large amount of degree-holders take up positions meant for diploma and certificate holders.[11] Meanwhile, FKE states that diploma and certificate holders are increasingly being excluded from the labour market. In the report, FKE advocates for the universities to teach more hands-on technical skill sets and focus less on academic qualifications (see also the section: Education).[12]

GOVERNMENT

The government is the largest employer in the formal sector, with an estimated 737,100 government workers in 2016 (28% of total formal employment).

Ministry of East African Community, Labour and Social Protection was formed of re-organisation of the government in 2013. The Ministry combined the former Ministry of Labour and part of the former Ministry of Gender, Children and Social Development. The two former ministries have existed in various forms since independence in 1963.

Presidential Circular No. 2 of 2013 constituted the re-organised government, placed the following departments under the ministry: Department of Labour, Office of the Registrar of Trade Unions, Directorate of Occupational Safety and Health Services (DOSHS), Department of Children Services, Department of Social Development, Social Protection Secretariat, National Employment Bureau (NEB), Productivity Centre of Kenya (PCK) and the Directorate of National Human Resource Planning and Development. Others are the Semi-Autonomous Government Agencies (SAGAs) namely the National Industrial Training Authority (NITA), National Council for Persons with Disability (NCPWD) and National Council for Children Services. The only Autonomous Government Agency (AGA) under the Ministry's mandate is the National Social Security Fund (NSSF).

Ministry of East African Community (EAC), Labour and Social Protection typically operates with disputes to mediation, fact-finding, or binding arbitration at the Employment and Labour Relations Court. The administration of the employment and labour relations court and the labour inspection have been criticised by social partners for reacting slowly on labour issues and handling of day-to-day business.

CENTRAL TRIPARTITE STRUCTURES[13]

Tripartism is a collaboration based on social dialogue between employer, labour, and state affiliations within the economy. Each part is supposed to act as a social partner to create economic policy through cooperation, consultation, negotiation, and compromise. The Labour Institutions Act (2007) in the constitution (2010) establishes and provides the functions for the labour institutions.[14] The leading institutions are:

National Labour Board (NLB)

NLB is a tripartite institution and composed by appointees of the minister in charge of labour: three representatives from trade unions, including the Secretary General of COTU (K); three representatives from employer's organisations, including the Executive Director of FKE; at least two independent members; Director of Employment, Director of Micro and Small Enterprises Authority (MSEA), Director of Occupational Safety and Health (OSH), Director of Industrial Training, Registrar of Employment and Labour Relations Court and the Registrar of Trade Unions.[15] The Labour Board advises the Minister of Labour on labour legislation and other labour matters. The Minister of Labour consults the board, when various sensitive changes to the labour laws are made. NLB is composed of appointees of the Minister in charge of labour.

Wages Councils

Kenya has seventeen Wages Councils out of which only two are currently operational: the General Wages Council and the Agricultural Wages Council.[16] General Wages Council covers all non-agricultural sectors, while the Agricultural Wages Council serves agricultural workers. The councils are composed by appointees of the minister and consist of three representatives from each of the tripartite parties plus three independent members, usually a labour market expert or industry expert. Councils set statutory minimum wages and working conditions in different occupations, monitor the enforcement of minimum standards requirements and advices the Minister of Labour on matters of minimum wages and conditions of employment in the formal sector and informal economy.

Critics argue that wage councils and several tripartite committees have only convened on a few occasions and that the majority of the councils only have updated statutory wages on an ad-hoc basis, which are often outdated or not active as mentioned.[17]

Productivity Centre of Kenya (PCK)

PCK is a tripartite institution that works to enhance the nation's competitiveness by improving productivity, sustainable growth and encouraging better working relationship between labour and employer. The centre was founded in 2002 and is a public agency under the Ministry of Labour. It gives wage guidelines for various sectors based on productivity, inflation and cost of living indices.[18] PCK is criticised for not being institutional strong enough to undertake its mandate.[19]

In August 2016, Kenya initiated to set up a National Productivity Council in Nairobi to monitor the implementation of programmes aimed at improving labour issues and standardisation. The change follows minor amendments to the Industrial Court Act of 2011 to align it to an article of the Constitution.

National Economic and Social Council (NESC)
NESC was established in 2004 as an advisory body to the government on policies to fast track the socio-economic transformation of the country, promote economic growth, social equity and employment creation. The council consists of 49 members from the government, private sector, civil society and academia.[20] The institution has contributed indirectly to social dialogue in the preparation of strategies, recommendations and policies for the government. NESC has through taskforces, sub-committees, working groups and consultative forums supported a more favourable environment for engagements between employees, employers, government and new entrants in social dialogue.

NESC developed Kenya's national long-term development plan during 2006-2008: the Kenya Vision 2030 aiming to transform the country into a "newly industrialising, upper middle-income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment."[21] In 2018/19, NESC are, among other things, to improve the socio-economic outcome in Northern Kenya through electronic tagging of cattle, a green street lightning project, addressing gaps between practise and the constitution and studying public awareness of national values.

Employment and Labour Relations Court (ELRC)
Employment and Labour Relations Court settles employment and industrial relations disputes and secures good labour relations in Kenya.[22] Apart from aligning the Industrial Court to the Kenyan constitution from 2010, and re-naming to ELRC, it has also been decentralised to 7 out of 47 counties, so far. Twelve judges have been appointed to have jurisdiction to handle employment and labour matters. COTU (K) is engaged with ensuring a more efficient ELRC by training paralegals for presentation of cases before the court and familiarising the court's functions to trade unions as well as to employers.

The function of the court has been faced with a number of challenges: First, disagreements as to whether procedures for the court cases should be aligned with procedures in ordinary courts and/or if only employers and trade unions have standing before the court. Second, the court calendar for 2018 was already full in March producing a serious backlog of cases (personal case filing). Third, aggrieved people's bypass reconciliation stages thus overwhelming litigation in court; Fourthly, critically low number of judges.

The government continues to strengthen the labour dispute system. Critics argue that decisions of the ELRC are not enforced consistently. Many employers do not comply with the court's reinstatement orders, while some workers accept payment instead of reinstatement. The government established the court to provide for a quick solution of labour disputes, but the enforcement mechanisms of the Court remain weak and its cases backlog to 2007, which raises concerns about its efficacy.[23]

If parties cannot reach an agreement, they must report the labour dispute to the Minister of Labour who shall appoint a conciliator within 21 days. The conciliator shall attempt to resolve the dispute within 30 days, and only after that can a lawful strike be called. A party can also refer the dispute to the court if conciliation fails, but not where a union may call a protected strike, i.e. a strike that concerns employment matters or the recognition of a trade union.

In recent years, ELRC has received an increased amount of cases. In June 2017, 13,723 cases were pending, which is an increase from 11,309 cases at the end of 2015-2016.[24] It has also been noted how the government and employers have inconsistently or not at all complied with decisions of ELRC. With reference to the latest data available (2016-2017), 6,082 cases were filed, while the number of cases settled were 3,668 (60%).

Inefficiency is a general critique of the Kenyan court system: case backlog stood at 315,378 in 2016/2017, down from 344,659 cases in the previous financial year. Out of these, 52,352 cases have been in the court system for more than 10 years.[25] Deadlock is related to a low budget of one percent of the national budget to the Judiciary, which is well below the international recommended standard of 2.5 percent.

The chief justice designates all county courts presided over by senior resident magistrates and higher-ranking judges as special courts to hear employment and labour cases. It has been challenging to provide adequate facilities outside Nairobi, but observers report the possibility to submit labour-related cases throughout the country.

In 2016, the judiciary finalised the Employment and Labour Relations (Procedure) Rules. Important changes are the provision for parties to access file pleadings directly in electronic form, new pre-trial procedures, alternative dispute resolutions, and a 30-day time limit for the court to submit a report on disagreements over collective bargaining agreements filed. Out of 6,253 filed cases on employee dismissals, ELRC ruled that employers had to pay for their actions in 4,377 (70%) of the cases.[26]

In order to hasten the dispute resolution processes, COTU and FKE has jointly proposed to the Ministry of Labour a number of alternative avenues outside the court system. The joint guideline on settling labour relations and employment disputes through alternative dispute resolution mechanisms is currently awaiting the Cabinet Secretary for endorsement to become law.

Other bi-/tripartite organs

- Micro and Small Enterprises Authority
- Kenyan Electricity Board
- National Industrial Training Council
- National AIDS Control Council
- National Social Security Fund (NSSF)
- National Health Insurance Fund (NHIF)
- National Hospital Insurance Fund
- National Advisory Committee on Occupational Health and Safety
- National Tripartite Consultative Committee
- Kenyan anti-corruption Board
- Teacher Service Commission
- Educational Task force

Social Dialogue

In recent years, social partners have intensified their bi-partite negotiations and consultations on labour issues relating to dispute handling, collective bargaining, negotiations and consultations on issues ranging from collective bargaining and decent work, alternative dispute resolution, taxation, social protection, TVET and skills development, the Big Four Agenda, implementing EAC protocol on free movement of labour to migration. In addition, increasing consultations have taken place on formalising the informal economy to small-medium enterprises. Similarly, there has been a noticeable strengthening of COTU and FKE collaboration to advocate and lobby government on national policy issues in tripartite boards mentioned above. In 2018, social partners objected to controversial amendments to existing labour laws effecting social dialogue negatively, e.g. the government proposed to exclude workers and employers from representation at NSSF/NHIF and future employee contributions to a Housing Fund.

Kenyan Constitution recognises the right of every trade union to bargain collectively. However, it is not clear whether this right can be enjoyed by all workers, e.g. members of Prison Department, National Youth Service, teachers under the Teachers' Service Commission, and workers from the public sector (see also the section: National Labour Legislation).[27]

Kenyan has institutionalised collective bargaining as key social dialogue mechanisms. Collective Bargaining Agreement (CBA) is by law defined by written agreements on terms and conditions of employment between a trade union and an employer or a group of employers or employers' organisation.[28] The latest national Economic Survey registered (provisional) 313 CBAs in the Industrial Court in 2018 compared to 298 CBAs in 2017 indicating decreased industrial disputes (Table 4). However, the organised workers covered by CBAs have since 2017 dropped 10% down to 85,000 workers (1.2% of total employees) in 2018. Other data suggest the amount of CBAs registered in the Industrial Court in 2018 were 386.[29]

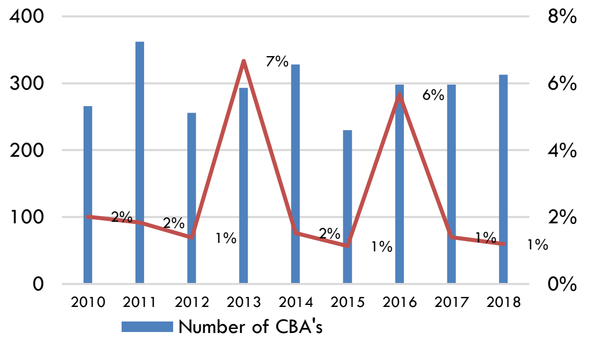
Table 4: Status of Collective Bargaining Agreements (CBAs) in Kenya, 2018

Number of CBAs (2018)	313
Organised Workers covered by CBAs	84,739
Average basic wage for workers covered by CBAs	US$408
Share of employees covered by CBAs	1.2 %

Source: Kenya National Bureau of Statistics, Economic Survey 2019 and own calculations on share of employees covered by CBAs based on data from ILOSTAT.

Figure 2 shows fluctuating in numbers of CBAs during 2010s, but stayed steadily after 2015. It is noteworthy to mention that the low CBA coverage among organised workers has been between 1% to 2% in the 2010s with the exception of 2013 among community and social services and in 2016 in the education sector.

Figure 2: Total status of CBAs and its coverage of waged workers in Kenya, 2010-2018



Source: Kenya National Bureau of Statistics: Economic Surveys

Around 42% of all CBAs are registered in the manufacturing sector that employs 29% of the total organised workers protected by CBAs in 2018. In this sector, the number of CBAs remained stable from 2017 to 2018, while the increase in the number of agreements were more pronounced in Wholesale and retail trade, Financial and insurance activities and Education.

Coverage of CBA is complicated by the fact that the majority of the employment is the informal economy or often in micro- and small enterprises, operating outside regulated industrial relations' collective agreement mechanisms.

Legal provisions of collective bargaining continue to face bottlenecks as employers and the government fail to comply with some of the clauses as laid down in the CBAs. Latest invasion into the collective bargaining process was by the Salaries and Remuneration Commission (SRC) that interfered with negotiation processes by increasing the duration of the CBAs from two to four years as well as imposing several restrictions in the overall CBA negotiation processes.[30] In addition, in employment contracts and CBAs, wider health issues – e.g. family planning or engaging employers in providing a full range of contraceptive services as part of the health insurance – tend to get less priority among workers compared to better salary, leave and transportation provisions.

Overall, the number of agreements registered an average monthly basic wage of KSh 41,381 (US$408) in 2018 and it dropped down by 23% from KSh 53,394 (US$516) in 2017. On the positive side, monthly basic wage is far above the minimum wage scale (see more in the section: Working Conditions).

In recent years, however, unsatisfactory and controversial collective bargaining triggered into unrest and large numbers of strikes from 2017 to 2019 by doctors, nurses, taxi-drivers, plantation and agricultural and university lecturer unions disagreeing with their employers about CBA employment terms and implementation. It is demonstrated in deterioration in industrial peace and social dialogue. Especially, the long and nationwide doctor and health-care strike actions in 2018 were characterised by disputes over pay and working conditions and lack of enforcement of the collective agreement from 2013 between health professionals and the Kenyan government and (see also the section: Trade Union Rights Violations). The strike action was eventually called off in 2017.

Similar teachers' and university strikes in recent years illustrated poor industrial relations between unions and the Ministry of Education, and an inefficient dispute resolution mechanism. Especially the social dialogue environment deteriorated between KNUT and the Teachers Service Commission (TSC) in the aftermath of a setback when the commission failed to deduct and remit monthly dues and threatening the union's finances; and teachers were required to re-state whether they want to remain in the union. It put the current Collective Bargaining Agreement (CBA) 2017-2021 between the partners in crisis in 2019. In August 2019, the court directed the two parties to consider reviewing the prevailing schemes of service to align them with the CBA structure without breaching the code of regulations for teachers.

NATIONAL LABOUR LEGISLATION

Kenya's labour laws comply, for the most part, with internationally recognised standards and conventions, and the Ministry of EAC, Labour, and Social Protection is going through a review of Kenya's labour laws to ensure they are consistent with the 2010 constitution.

Kenya counted in 2019 (May) a sum of 399 approved labour market-related legislations. According to the International Labour Organization (ILO), very few approved adoptions have been registered in recent years: 8 in 2016, none in 2017 and 2018 (see more in Appendix Table 21). In 2017, two laws regarding wage regulations and one regarding youth employment were passed. The Breastfeeding Mothers Clauses Bill, was submitted from the government to the parliament and is still in parliament for debate (2019).[31] The latter bill includes setting up of conductive environment and facilities at the workplace. In addition, the Statute Law (Miscellaneous Amendments) Bill (No. 12 of 2018) under Labour Relations Act 2007 was passed in 2018, regarding rights during industrial action.[32] This law is a result of a large amount of strikes in Kenya experienced in 2017.

According to COTU, oppressive amendments were attempted to be adopted in 2018 such as: i) representatives from COTU-K and FKE were removed from the NSSF Board of Trustees, ii) civil servants need to follow a 21 days' notice to strike (earlier seven days, and iii) no remittance of union dues by government.[33]
Eventually COTU challenged both moves. According to representation in the NSSF Board of Trustees, COTU took it to court, and eventually both workers representatives were returned to the board, and the

government was to have only one representative out of two.[34] COTU lobbied against the 21 day's strike notice, and the amendment were not passed in parliament.

The status of the central labour market laws is summarised below:

Constitution[35]
The independence constitution of 1963 was replaced in 2010 as it got approved by referendum. The 2010 constitution enshrines a more democratic system with a higher gender balance and the introduction of checks-and-balances with separation of powers between the executive, legislative, and judiciary.[36] The 2010 constitution includes several labour rights such as the freedom of association, collective bargaining, independence of social partners, a fair remuneration, reasonable working conditions and the right to strike. It is unclear if the right to strike under the 2010 constitution covers public sector workers. Tenets of the Decent Work Agenda are embedded in Chapter Four, also known as the Bill of Rights.

In 2018, an amendment proposal to change the date of the general elections from August to December failed to obtain 2/3 support in the National Assembly. The rationale behind the proposal is that August disrupts the education calendar and more Kenyans are able to vote in December. Another proposed amendment is pending before the National Assembly and seeks to give constitutional provision on equitable gender representation.[37] Women continue to be underrepresented in elected and appointed offices.

Another proposal from the so-called Thirdway Alliance seeks to reduce red tape by decreasing the members of parliament from 416 to 147, abolish nominated positions in county assemblies and the Senate, reduce the share of revenues for counties, and introduce a single 7-year term presidency.

Employment Act[38]
The Employment Act of 2007 regulates various aspects of employment, including rights at work, working hours, sick and maternity leave, discrimination, sexual harassment, forced and child labour, protection of wages, termination of employment and dispute settlement procedures.

Labour laws and regulations' framework protects workers in principle to a considerable degree. The laws have an insufficient effective reach, though, since Kenya features a large proportion of workers who operate in the informal economy with limited compliance to labour regulations. The law permits the government to deny workers the right to strike under certain conditions; members of the military, police, prison guards and the National Youth Service are prohibited to do so.[39] Sympathy strikes are prohibited.

The Act provides for the right of workers, to form and join unions of their choice. It includes those in Export Processing Zones (EPZs). Any seven or more workers in an enterprise have the right to form a union by registering with the trade union registrar. The law also covers the right of collective bargaining to every trade union, employer's organisation, and employer.[40]
During 2016, tripartite partners produced a simplified version of the five sets of Kenya labour laws of 2007 targeting the informal economy workers and created a mobile application of the same in order to improve accessibility.

Employment Act No. 14. of 2017 was passed as an amendment to Section 29 to give women the option to extend their three months paid maternity leave with three more months, unpaid.[41] The proposal seeks to align to ILO recommended duration of maternity leave as in recognition of the World Health Organization (WHO) recommendations for infants to be exclusively breastfeed for six months.

Labour Institutions Act[42]
Labour Institutions Act of 2007 defines rights to freedom of association, establishment of labour and employer organisations, member dues, and recognition of trade unions and CBAs. The Act also establishes and regulates the National Labour Board, the Industrial Court, Committee of Inquiry, Labour Administration and Inspection, Wage Councils and Employment Agencies. Regulation of wages is part of the reformed Labor Institutions Act from 2014, and the government has established basic minimum wages by occupation and location. In 2016, the minimum wage was not increased, but to adjust inflation, the minimum wage was increased 5% in 2017 in both the general and agricultural sector (see more in the section: Working Conditions).[43]

Labour Relations Act[44]
The Labour Relations Act from 2007 provides that workers, including those in export processing zones (EPZs), regulates trade unions and employers' organisations, collective bargaining, strikes and lockouts, trade dispute resolution and also recognises the freedom of association. Collective bargaining must be registered with the Employment and Labour

Relations Court. Most workers have a legal right to strike after giving a period of notice. Members of military, police and prison guards are prohibited from striking. Anti-union discrimination is prohibited, and the government does not have a history of retaliating against striking workers. The law provides for equal pay for equal work.

The government introduced the Miscellaneous amendment Bill in 2018 to the Labour Relations Act, to protect essential services during industrial action.[45] Essential services are defined as a service of which the interruption would probably endanger the life of a person or health of the population or any part of the population.[46] Failing to comply with the Bill can be fined not exceeding KShs 500,000 (US$4,964) or imprisonment for a term not exceeding three months. COTU has criticised the amendment for killing industrial action and that relevant stakeholders have not been consulted before the proposals were agreed upon. Sympathy strikes are also prohibited.

Occupational Health and Safety Act[47]

Occupational Health and Safety Act of 2007 deals with safety, health and welfare of persons employed at workplaces. It defines the duties of social partners and sets out occupational, health and safety standards and codes of practices at any given workplace. The Labour Ministry's Directorate of Occupational Health and Safety Services have the authority to inspect work sites, but both numbers of labour inspectors and fines to deter violations are insufficient.[48]

National Social Security Fund Act[49]

National Social Security Fund (NSSF) Act of 2013 enhances workers' social protection with two newly-established funds: a pension fund and a new provident fund, which was a need to transform NSSF from a provident fund to a pension scheme. All employers with one or more employees are obliged to register with the new pension fund. Membership in the pension fund is mandatory for all employed persons between the ages of 18 and 60. Previously fixed sum contributions have been changed and increased to a 6% + 6% contribution from employer and employee. Members of the old provident fund will be automatically enrolled in the pension fund. Membership in the new provident fund is now voluntary for employees covered by the pension fund. During the last five years, NSSF's contributions have doubled and active contributors have increased by 141% (see also the section: Social Protection).

The implementation of NSSF Act 2013 has been heavily disputed by the Government on one side and COTU and FKE on the other side. The Government decided to implement the law at once, not allowing a transition period of five years as otherwise agreed affecting the tri-partite relations negatively. A legal row over the substantial increase in contributions to workers' pensions was negotiated to a roadmap in September 2016 to withdraw court cases barring the implementation of a new NSSF Act. The government has tried to remove trade union representatives in favour of government representatives, but were prevented by high court, as mentioned in the beginning of this section.[50]

Observations on the labour legislation

Labour legislation and inclusive Occupational Health and Safety (OHS) policies and institutions operate with few gaps, but with weak implementation in practice.[51] International Trade Union Confederation (ITUC) has some observations of the legislation in comparison to the international standards on the right to organise, the right to collective bargaining, and the right to strike:[52]

- Registrar of Trade Unions may refuse to register a union if another union already exists which is sufficiently representative of the whole or of a substantial proportion of the workers the new union seeks to represent.
- The law imposes strict conditions and limitations on the use and management of trade unions' funds. The Registrar of Trade Unions also has extensive powers to audit these funds.
- The law imposes strict conditions and limitations on the use and management of trade unions' funds. The Registrar of Trade Unions also has extensive powers to audit these funds.
- The Labour Relations Act excludes members of the prison service and the National Youth Service from its scope.
- A union shall be recognised as a bargaining agent if it represents a simple majority of those employees eligible to become union members. This provision extends to public sector employers.

Migrant workers often lack formal organisation and consequently miss the benefits of collective bargaining. By the same token, domestic workers are vulnerable to exclusion from legal protections despite the Domestic

Worker' Act from 2011 and presence of domestic workers' unions to protect their interests.

Ratified ILO Conventions

Concerning Kenya's application of international labour standards, a total of 50 ILO Conventions are ratified (see also Appendix Table 22).[53] The Conventions covers principles and rights at work.

First, the eight Fundamental Conventions are the most important conventions that cover four fundamental principles and rights at work. The nation has ratified seven of them, except the Forced Labour Convention, 1930 (C028).

Second, ILO has designated four Governance Conventions that are important to build national institutions and capacities that serve to promote employment, i.e. these conventions support a well-regulated and well-functioning labour market. The country has ratified 3 out of 4 of these Governance Conventions, leaving out the Employment Policy Convention, 1964 (No. 122).

Third, ILO has furthermore 183 Technical Conventions, out of which 83 conventions are "Up-To-Date" and actively promoted, i.e. an Up-To-Date Convention is one that is ready for ratification by the Member States and/or one that has been examined by the ILO Governing Body and deemed to be still relevant.[54] Kenya has to date ratified 12 of the Technical Conventions. See more on Appendix Table 22.

The Committee of Experts on the Application of Conventions and Recommendations (CEACR) is an independent body composed of 20 legal experts at the national and international levels, charged with examining the application of ILO Conventions and Recommendations by ILO member States. The committee's latest direct request on submission from the Kenyan government was published in 108th International Labour Conference (ILC) session in 2019. It was related to provide information regarding the submission to the National Assembly of the Protocol of 2014 to the Forced Labour Convention, 1930, and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), adopted by the Conference at its 103rd Session, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), adopted by the Conference at its 104th Session, and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), adopted by the Conference at its 106th Session.[55]

Trade Agreements

Kenya is part of the intergovernmental organisation East African Community (EAC) that includes six countries in the African Great Lakes region: Burundi, Kenya, Rwanda, Tanzania, Uganda, and South Sudan that became member in 2016. The EAC commits Kenya to adopt measures to the free movement of labour and goods from the other five member states. Kenya has abolished work permit fees for EAC citizens. For migrants from other countries, an entry permit is granted if the foreigner is of benefit to Kenya, and an employer who employs a foreigner must submit a report to the authorities.

The EAC free trade agreement from 1999 contains a labour provision with cooperation on employment and working conditions with an emphasis on gender equality and discriminatory law and practices.[56]

EAC has four pillars: customs union, common market, monetary union, and political federation. In 2005, the EAC established a customs union providing free trade (or zero duty imposed) on services and goods among member states and a common external tariff (CET).[57] In 2010, the EAC agreed to establish a common market with free movement for workers, goods, services and capital. In 2013 the East African Monetary Union (EAMU) Protocol was signed laying the groundwork for a single currency in the community before 2023.[58] Fourth and last pillar is the establishment of a Political Federation with among other things common foreign and security policies. The Political Federation is not yet realised, and the process has been slow. The actual implementation of the economic integration has slowed down the last few years especially with regards to lifting barriers to trade and free movement of labour. Although formal tariffs are increasingly being abolished, trade is still challenged by non-tariff barriers and corruption.

Freedom of association and collective bargaining is protected in the EAC common market in the sense that an EAC migrant worker has equal rights as a national worker.[59] The free movement of labour within the EAC opens up questions of how to achieve equal opportunities and equal social and labour rights for migrant workers. A worker has the right to social security benefits and can be accompanied by a spouse and children.[60]

The free movement of labour is a source of concern in some of the EAC countries, as the countries' workforces have differences in productivity and educational level. Kenya is the largest economy in East Africa. The country is also most open to international workers, and on average, Kenyan workers are more qualified in terms of education and are better paid than those from other EAC countries. [61]

EAC is very heterogeneous and each country varies in the degree of hosting EAC migrants; only 16% of Kenya's migrants come from EAC (see also the sub-section: Migration).[62]

The objective of the East African trade union movement is to safeguard workers' interests in the EAC, ensure that ILO standards are upheld and member states' labour policies are harmonised, and the tripartite model is institutionalised, while the free movement of labour is promoted. The movement reached observer status in the EAC in 2009, and along with employers' organisations they participate in ministerial summits, sectoral summits, and other summits that involve labour market issues. However, in March 2019, the EAC council of Ministers convened in Kigali to review decision-making processes and efficiency in the community.[63]

Kenya is furthermore member of the Common Market for Eastern and Southern Africa (COMESA) working towards free trade among African states. Kenya has signed trade agreements with the European Union (EU) (Economic Partnership Agreement, EPA) and the United States (African Growth and Opportunity Act, AGOA and Trade and Investment Framework Agreement, TITA).[64] EPA provides duty-free and quota free access to the EU market and an agreement on increasing imports from EU. AGOA allows duty and quota free access for some products.

Kenya is also part of the 2000 Cotonou Agreement between EU and African, Caribbean and Pacific (ACP) countries, which reaffirms commitment to ILO's Fundamental Conventions and includes a labour provision on cooperation on various labour and social issues. The Cotonou Agreement will expire in 2020, and work has begun on the EU side to lay the groundwork for future partnerships. Kenya is also member of World Trade Organization (WTO). Furthermore, Kenya has a number of bilateral trade agreements, including Gulf Countries (see the sub-section: Migration).

In March 2016, landlocked Uganda agreed to build a crude pipeline from Uganda's oil fields in northern and western regions to the Indian Ocean near Tanga in Tanzania. This route replaces the proposed route from Uganda to the Kenyan port of Lamu, as Uganda rejected a Kenyan tariff model.[65]

In recent years, Kenyan–Chinese trade has increased rapidly, and China is now Kenya's largest trading partner accounting for 17% of Kenya's total trade with the world. China has lent Kenya extensive loans for infrastructure projects. Critics argue that the trade between these two countries is uneven, as Kenya buys more than it sells to China.[66] In 2018, Kenyatta banned import of Chinese fish, after a public outcry over Kenyan fishermen lamenting on how the foreign fish had flooded the struggling Kenyan fishing industry. China subsequently threatened to start a trade war by pulling out of funding a standard gauge railway between Mombasa and Nairobi.[67] Three months later the ban was lifted.[68]

TRADE UNION RIGHTS VIOLATIONS

Violations of trade union rights are widespread in Kenya. The country is ranking 4 out of 5+ (5 is worst) on the Global Rights Index in 2018 and is characterized by systematic violations of rights, i.e. the government and/or companies are engaged in serious efforts to crush the voice of workers putting fundamental rights under threat.[69] In 2017, Kenya ranked 3 and has therefore seen its rankings worsen in 2018. Especially, collective action was systematically repressed in Kenya.

ITUC registered 13 cases on the systematic violations of rights' in 2015, none in 2016, two in 2017, five in 2018, and two in 2019 (March).[70] Cases in 2019 relate to courts sacking workers for engaging in union activities and how the Teachers Service Commission of Kenya uses court and not social dialogue to avert strike.

Kenya is ranked as number 41 out of 167 countries on the Global Slavery Index from 2018. This index measures modern slavery, i.e. slavery-like practices (such as debt bondage, forced marriage, and sale or exploitation of children), human trafficking and forced labour. Around 328,000 people are living in modern slavery in the country. Thus, the country faces challenges in terms of modern slavery, making it more difficult to reach the global Sustainable Development Goal 8 on Decent Work targeting effective measures to eradicate all forms of forced labour, modern slavery, human trafficking, and child labour (see also the SDG Table, Indicator 8.7.1, on Page iv).

The violence of rights among a large number of Kenyan migrant workers in the Middle East is a critical issue, primarily working as domestic workers.[71] According to Kenya's Ministry of Labour, Social Security and Services, 57,000-100,000 Kenyans travel to the Middle East every year, most of them going to work as domestic workers.[72] In 2012, Kenya banned employment agencies from recruiting Kenyans for domestic work in Kuwait and other countries in the Middle East after reports of imprisonment, violence, sexual harassment, confiscation of passports by employer, starvation and even death of Kenyan migrant workers in the Middle East.[73] In 2017 the ban was lifted and bilateral agreements have been made to protect the rights of domestic workers (See the sub-section Migration).

No cases in the ILO's Freedom of Association are active or follow-up cases. Seven cases are closed.[74]

WORKING CONDITIONS

In Kenya, the minimum wage differs according to sector and area. Overall, the minimum wages in urban areas are almost double as high as in rural areas, and the same goes for skilled workers compared to non-skilled workers. To adjust inflation, the General Wage (Amendment) Order 2017 increased the minimum wage with 18%.[75] This was a result of consultations between Wage Councils, employers' organisations and COTU (K). In 2018, the minimum wage was raised 5%.[76] The inflation in 2018 dropped to 5% from 8% in 2017, which reduced slightly the pressure on incomes' purchasing power. In many cases, the increasing cost of living and inflation in consumer prices often outpaced the wage growth.

Kenya has some of the highest minimum wages in the East African region. In 2017, the monthly nominal average wage was KSh 57,008 (US$566). The minimum wage for a general labourer was set at KSh 13572 (US$131) per month. The average minimum wage for skilled workers was set at KSh 18,274 (US$181).[77] Around 84% of the workforce is not covered by the minimum wage as they operate in the informal economy. The average wage experienced a steady growth on 25% from 2013 to 2017. Similarly, from 2013 to 2018, the nominal minimum wage has steadily increased 24% in the agricultural sector and non-agricultural sector. With a growth of 32% the lowest minimum wage in cities has increased the most (Table 5).

Table 5: Monthly salary and minimum wage in Kenya, Ksh, 2013-2018

	Current KSh	Current US$
Nominal average wage (2017)	57,008	551
Nominal average wage, deflated in inflation (2017)	52,456	507
Lowest minimum wage, general workers and others, cities (2018)*	13,572	128
Highest minimum wage, cashiers and others, cities (2018)	29,169	288
Lowest minimum wage, agriculture (2018)	6,416	63
Highest minimum wage, agriculture (2018)	11,574	114
Growth in nominal average wage (2013-2017)	25 %	
Average growth in minimum wages (2013-2018)	24 %	

Source: WageIndicator.org, Minimum Wage - Kenya, and Trading Economics

Labour inspectors employed by the Ministry of Labour, Social Security, and Services (MLSSS) monitor working conditions. Low salaries and lack of resources have made it difficult for labour inspectors to do their work, as well as making the inspectors vulnerable to bribes and consequently fines are generally insufficient to deter violations.[78]

The law puts the normal workweek to 52 hours (60 hours for night workers).[79] Agricultural workers are excluded from the limitations. An employee in the non-agricultural sector has the right to one rest day per week and 21 days of combined annual and sick leave. The law also requires that total hours worked (regular time plus overtime) in any two-week period do not exceed 120 hours (144 hours for night workers). The law also provides premium pay for overtime. The government does not effectively enforce the law, as limitations on overtime and hours in the workweek have been violated[80]. A quick overview of the working conditions regulations in Kenya is available in Table 6.

Table 6: Status of Working Conditions in Kenya

Fixed-term contracts prohibited for permanent tasks	No
Maximum length of a single fixed-term contract (months)	No limit
Standard workday	8 hours
Premium for night work (% of hourly pay)	0 %
Premium for overtime work (% of hourly pay)	50 %
Paid annual leave (average for working days with 1, 5 and 10 years of tenure, in working days)	21

Minimum length of maternity leave	90
Recieve 100% of wages on maternity leave	Yes
Five fully paid days of sick leave a year	Yes
Unemployment protection after one year of employment	No

Source: World Bank, Doing Business, Labor Market Regulation Kenya

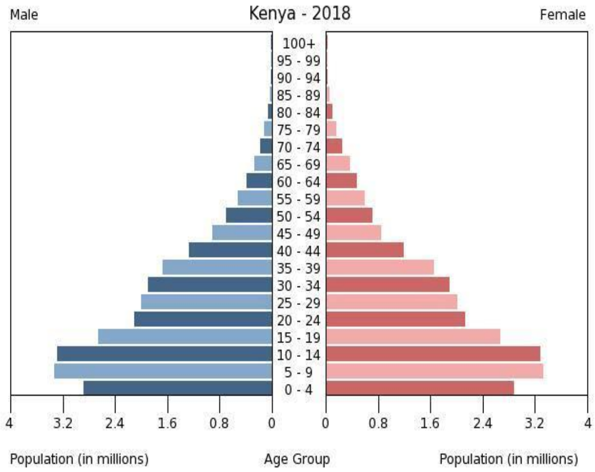
HIV/AIDS constitutes a serious public health problem with negative repercussions in the labour market. With more than 1.5 million Kenyans living with HIV/AIDS, and an annual increase of new HIV infections by more than 44,000 people, Kenya has the 4th largest HIV epidemic globally.[81] The prevalence of AIDS/HIV positive adults is concentrated along Lake Victoria with concentrations up to 21% of the county population.[82] About a million are currently having antiretroviral treatment and the prevalence rate declined in 2017 to 4.9% (5.2% among women, 4.5% among men). Women aged 15-24 years has the highest prevalence rate on 2.6%. National AIDS Control Council (NACC) has a vision of halting the epidemic, with zero new infections and eliminating the impact of the AIDS epidemic through evidence-based interventions.[83]

Although many people living with HIV face high levels of stigma and discrimination, HIV/AIDS awareness is high in Kenya, which in recent decades has been a huge prevention success story in the region in line with Vision 2030.[84] To mitigate the pandemic, workplaces are encouraged to mainstream HIV/AIDS policies. Counterfeit drugs supplied by unregistered or fake medical personal has been an increasing problem.

WORKFORCE

Kenya's total population was estimated 48.4 million in 2019 out of which 19 million form the workforce.[85] In 2017, the total population living in urban areas reached 27%, which is a steady increase of 4 percentage points since 2007.[86] More than 40% of the population are under the age of 15 because of sustained high fertility, early marriage and lack of family planning.[87] However, Kenya's fertility rate has decreased from eight children per woman to four children per woman over the last four decades. Today, the nation has the lowest fertility rate in East Africa, at 3.9 births per woman. In contrast, Uganda's fertility rate stood at 5.7 children per woman, Tanzania 5.1, Ethiopia 4.3, and Rwanda 4.0. Kenya's population pyramid in Figure 3 below visualises how the tempo of the population growth is curbed in the child segment (0-4 years old).

Figure 3: Population pyramid based on Age-Sex structure of the population in Kenya



Source: CIA, The World Factbook, Kenya

Table 7 shows the status of employment-to-population ratio. First, this ratio was at 60% in Kenya in 2019, and stays significantly lower than the Eastern African region with 14 percentage points. Second, the youth's ratio was estimated very low at 29% in the country in comparison with the region average at 58%. One of the reasons for this low youth employment rate is related to the relatively high enrolment in primary and secondary education as well as high youth unemployment. Third, there are some minor gender gaps (see more in the sub-section: Gender). Not to mention, in 2018, 45% of the total population was not active in the workforce.[88] The inactive segment is most often people who take care of housework, students, people with disabilities and those who have retired from employment.

Table 7: Estimations of employment-to-population ratio in Kenya and Eastern Africa, Age and Sex distribution, 2019

Sex	Age		Kenya	Eastern Africa
Total	Total	15+	60 %	74 %
	Youth	15-24	29 %	58 %
Men	Total	15+	63 %	79 %
	Youth	15-24	31 %	61 %
Women	Total	15+	58 %	69 %
	Youth	15-24	27 %	55 %

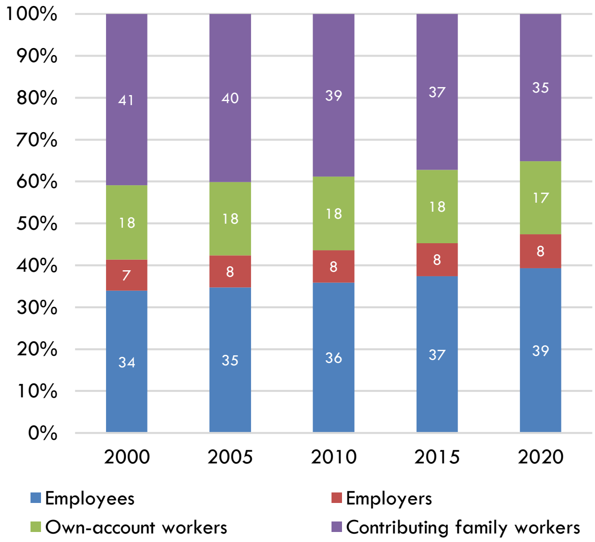
Source: ILO, Key Indicators of the Labour Market (KILM)

ILO statistics standards divide the status of employment into four aspects: employers, employees (paid employment jobs), own-account workers (self-employed), and contributing family workers (those who hold self-employment jobs in an establishment operated by a related person, with a too limited degree of involvement in its operation to be considered a partner).[89] As depicted in Figure 4, Kenya has experienced structural changes on the margin in the status of employment since 2000. The most significant difference is the decline of contributing family workers from 41% in 2000 to projected 35% in 2020. This group is overhauled by the now largest group, namely 'employees', which in 2020 is projected to cover 39% of the total employment.

The third most common status of employment is among own-account workers. Together with the group of contributing family workers, which is known as vulnerable employment, this group is less likely to have formal work arrangements and are therefore often characterised by inadequate earnings, low productivity and difficult conditions of work that undermine workers' fundamental rights. On the positive side, the amount of own-account workers and contributing family workers has experienced declining trend (minor for own-account workers) since the 2000s.

With a labour market famous for its entrepreneurial environment, the last group employers, covers comparably quite a big proportion of the total employment with around 8% of employers in the country (Figure 4). In comparison, the average share of employers in East Africa is in 2020 estimated to be 2.3%.[90]

Figure 4: Estimations and projections of status of employment in Kenya, %, 2000-2020



Sources: *ILO, Key Indicators of the Labour Market (KILM)*

Other data from the national Economic Survey illustrates that out of a workforce (excluding small-scale agriculture and pastoral activities) of 17.8 million workers, the share of wage employees reached 15% in 2018. This clearly indicates that most employees work in the small-scale and pastoral sector. The wage employees have increased of 15% in absolute terms in the period from 2014 to 2018. In the same period, the total employment grew by 17%. Thus, the ratio of wage employment to the total employment dropped by one percentage point (Table 8).

Table 8: Total and wage employment in Kenya, 15-64 age, 2014-2018

	2014	2018	Change, %
Wage employment	2,401,800	2,765,100	15 %
Total employment	15,203,100	17,783,200	17 %
Ratio of wage employment to total employment	16%	15%	-1 p.p.

Sources: *Kenya National Bureau of Statistics, Economic Survey 2019*

Wage employment has largely grown equally in the private and public sector from 2014-2018 with respectively 15% (Table 9). The private sector constituted in 2018 70% of the of the total wage employment.

Table 9: Wage Employment by Industry in Kenya, 2014-2018

	2014	2018	Change %
Private sector	1,669,300	1,922,200	15 %
Public sector	732,400	842,900	15 %
Total wage employment	2,401,800	2,765,100	15 %

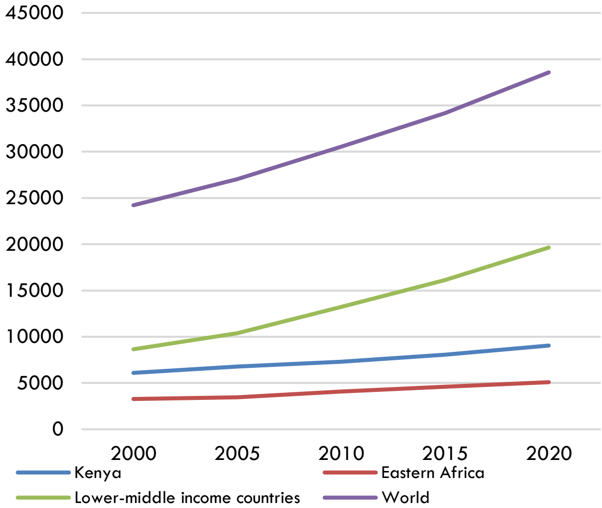
Sources: *Kenya National Bureau of Statistics, Economic Survey 2019*

Labour productivity reflects the ability to generate higher income or value-added. It refers to how efficiently resources are used and increased through coordination, a smarter, harder, and faster workforce, as well as better technology and reduced waste. Also employees have an interest in high productivity as a way to increase their value, as means to pursue better working conditions, and as a sustainable route out of working poverty.[91]

There is a linkage in the status of employment and labour productivity. First, employees in the formal sector often have more access to capital, finance and training. Second, own-account workers and contributing family workers often operates in informal micro- or small-enterprises with low productivity activities.

The relatively high employees' segment (in contrast to contributing family workers and own-account workers) in the country suggests high labour productivity. Data reveals some contrast, though. Figure 5 below shows that the labour productivity in Kenya has been on a constant moderate increase since the 2000s. The level of productivity in the Eastern African region has experienced a similar trend, though half as large a starting point. Kenya is staying well below the average for lower-middle income countries and far below the World average. These two latter trends have been increasing steeper. The relatively low labour productivity is connected to high informality, low developed vocational skills and training.

Figure 5: Estimations and projections of labour productivity trend, 2000-2020



Note: Labour productivity is defined as output per worker (GDP constant 2011 international $ in Purchasing Power Parity (PPP)).
Source: [ILO, Key Indicators of the Labour Market (KILM)]

Unemployment and underemployment

Unemployment is a critical issue in Kenya. In order to accommodate national comparisons, ILO uses a specific definition of unemployment: the so-called 'strict' unemployment rate. This rate covers everyone who does not exceed working more than one hour per week.[92] Estimations of total unemployment and youth unemployment in Kenya stand at 9% and 18% in 2019, respectively, indicating a huge youth gab. Conversely, there is no gender gab when it comes to strict unemployment rate in Kenya. Compared to the East African average, the strict unemployment rate in Kenya is substantially higher: 6 percentage points for total unemployment and 12 percentage points for youth employment (Table 10).

Table 10: Unemployment and underemployment in Kenya and Eastern Africa average, 2018

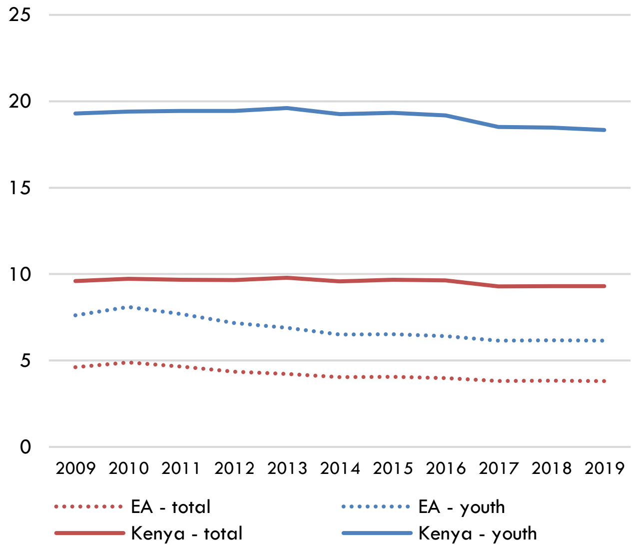
Type		Kenya	Eastern Africa
Unemployment	Total	9.3 %	3.8 %
	Men	9.4 %	3.6 %
	Women	9.2 %	4.1 %
Youth Unemployment (age 15-24)	Total	18 %	6.2 %
	Men	18 %	6.0 %
	Women	18 %	6.4 %
Underemployment *	Total	20 %	N/a
	Youth (15-24)	80 %	N/a

** Visible underemployment rate: The ratio of the number of working people working involuntarily less than 28 hours per week to the total employed.*
Source: [Kenya Economic Survey 2018] and [ILO, Unemployment rate – ILO modelled estimates, Nov. 2018]

Strict unemployment rate is shadowed by a significant underemployment (or overemployment) rate, e.g. people who are willing and able to work more than they do. As depicted in Table 10, the youth underemployment is close to staggering 80% (see more in sub-section: Youth). For the total workforce, the underemployment rate is around 20%. High levels of underemployment also explain the relatively low labour productivity and informality of the labour market.

The strict total unemployment trend shows a steady flat rate during the last decade at around one out of ten. The strict youth unemployment trend has also been steady around one out of five (Figure 6). As in Figure 6, data reveals how the strict unemployment rate trend stayed significantly higher than that of the region.

Figure 6: Unemployment trend in Kenya and Eastern Africa (EA), Total and Youth, %, 2009-2019



Sources: [ILO, Unemployment rate – ILO modelled estimates, Nov. 2018]

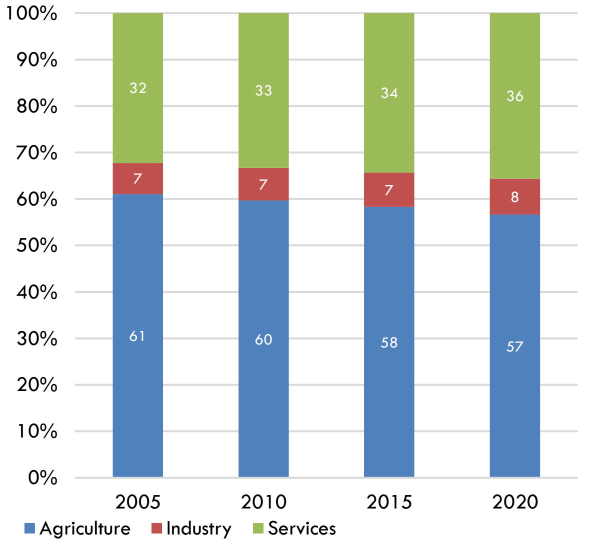
In a report from 2015/2016, the Kenyan National Bureau of Statistics has been criticised for downplaying unemployment, as the report concluded that the unemployment has been declining over the past 10 years.[93] In order to reach SDG 8, Kenya has to decrease its unemployment rates (see SDG table, Indicator 8.5.2, on Page iv)

The low formal job creation in Kenya keeps many workers in poverty. There are initiatives to tackle Kenya's high youth unemployment through a better collaboration between the private sector, academia and government to develop innovative business models such as entrepreneurship, industry-relevant curricula and enabling national policies.[94]

Sectoral Employment

Kenya has experienced limited changes in the composition of employment by sector during the last two decades. The agricultural sector's share of employment is estimated to decrease 4 percentage points from 61% in 2000 to projected 57% in 2020 and remains by far the biggest sector measured by numbers of employed (Figure 7). In the same time span, the service sector has increased 4 percentage points to 36%. The industry sector has remained its size from 7% share in 2005 to projected 8% share in 2020.

Figure 7: Estimations and projections of employment by aggregate sector in Kenya, 2005-2020



Source: ILO, Employment by sector – ILO modelled estimates, Nov. 2018

Table 11 below presents data from the national Economic Survey in terms of the total wage employment by industry. Almost two out of three (63%) are men who dominate most sectors, except in the 'other services' sector. The sector 'community, social and personal services' has the highest employment share of 40% of the total employment, which covers 1,091,400 workers with a slight men dominance of 55% of the sector employment. The next most dominating sector employment is the agriculture sector (12%), trade and hotel/restaurant sector (12%) followed by the manufacturing sector (11%) (see more sector employment in Table 11). Wage employment represents the formal employed; it is to a large degree excluding workers from the informal economy, mainly in the agricultural sector, which covers 84% of the total employment (see also the section: Informal Economy). It furthermore explains why the segment of agricultural workers in Table 11 is low in comparison to the employment by aggregate sector in Figure 7 above.

Table 11: Wage Employment by Industry in Kenya, estimations, 2018

Sector	Total sector employment	Sector employment share, %	Ratio of men in sector employment, %
Agriculture	336,600	12 %	63 %
Mining & quarrying	15,400	0,6 %	83 %
Manufacturing	307,600	11 %	80 %
Electricity, gas & water	34,100	1.2 %	74 %
Construction	171,600	6.2 %	69 %
Trade, restaurants & hotels	342,200	12 %	72 %
Transport, storage & communication	221,800	8 %	68 %
Finance, real estate & business services	79,900	2.9 %	62 %
Community, social and personal services *	1,091,400	40 %	55 %
Other services **	160,600	5.8 %	47 %
Total	2,765,200	100 %	63 %

Note: Wage employment excludes the majority (84%) of total workforce; namely the informally employed.
** This sector includes: Professional, scientific and technical activities; Administrative and support service activities; Public administration and defence; compulsory social security; Education; and Human health and social work activities.*
*** Other sources include: Arts, entertainment and recreation; Other service activities; activities of households as employers; undifferentiated goods- and services-producing activities of households for own use; and Activities of extraterritorial organizations and bodies.*
Sources: Kenya National Bureau of Statistics, Economic Survey 2019

Table 12 below shows that the agricultural sector is the largest sector that contributes to 34% of Gross Domestic Product (GDP) in 2018. The second and third main sectors are Finance, real estate and business services sector and Community, social and personal services sector – both on 13%. Both sectors have decreased slightly, respectively with 1.5 and 2.5 percentage points. Both the trade, restaurants and hotels sector, transport, storage and communication sector, and community social and personal services sector, each share roughly a tenth of the total GDP and have all been shrinking between 2014-2018 between 0.5 and 1.8 percentage points. In addition, despite the fact that Kenya is the most developed country in East Africa, the manufacturing sector is still not a main contributor to its GDP and on a substantial declining trend. This is furthermore challenging the unionism in the country as well as to reach the global SDG on manufacturing employment (see more in SDG table, Indicator 9.2.2. on page iv).

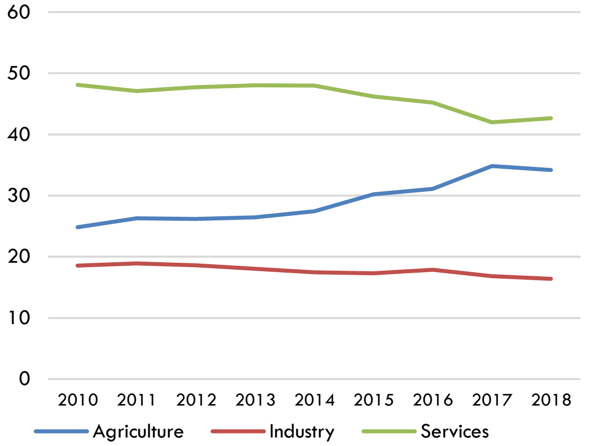
Table 12: GDP share by sector (%) and GDP growth (p.p.), estimations, 2014-2018

Sector	GDP share by sector, %, 2018	Change GDP share, p.p., 2014-2018
Agriculture	34 %	6.7
Mining & quarrying	0.8 %	0.0
Manufacturing	7.7 %	-2.3
Electricity, gas & water	2.5 %	0.7
Construction	5.4 %	0.5
Trade, restaurants & hotels	8.1 %	-0.8
Transport, storage & communication	9.3 %	-0.5
Finance, real estate & business services	13 %	-1.5
Community, social and personal services	13 %	-2.5
Other services *	11 %	-0.1
Total / average	100 %	

** Other sources include: Arts, entertainment and recreation; Other service activities; activities of households as employers; undifferentiated goods- and services-producing activities of households for own use; Activities of extraterritorial organizations and bodies; and taxes on products.*
Source: Kenya National Bureau of Statistics, Economic Survey 2019

Figure 8 shows how the agricultural sector's share of GDP from 2010 to 2018 has increased of 9 percentage points. The two other sectors, industrial and service sector, have decreased slightly. The agricultural sector's share of GDP remains more than double as high in Kenya in comparison to the rest of the sub-Saharan Africa region. Correspondingly, the two others sectors are smaller in Kenya than in the rest of the region.

Figure 8: Aggregate sector share in Kenya, % of GDP, 2010-2018



Note: Based on the limitations of data availability, the three sectors do not sum up to 100%
Source: World Bank, World Development Indicators

Migration

The net migration has changed during the last 15 years in Kenya. A positive value of the net migration (i.e. more people coming into Kenya than leaving) was estimated at 25,144 persons in the period 1998-2002. Since then, negative net migration has characterised Kenya (Figure 9). Especially from 2003 to 2007, almost 200,000 more migrated out of than into Kenya. This fluctuation was mainly due to unrest triggered by a disputed presidential election in 2007. It was estimated that 500,000 fled their homes seeking refuge in either other places in Kenya or neighbouring countries, mostly Uganda.[95] It was estimated that around 12,000 Kenyans sought refuge in Uganda.[96] In 2015-2016, some of these externally placed Kenyans returned home.

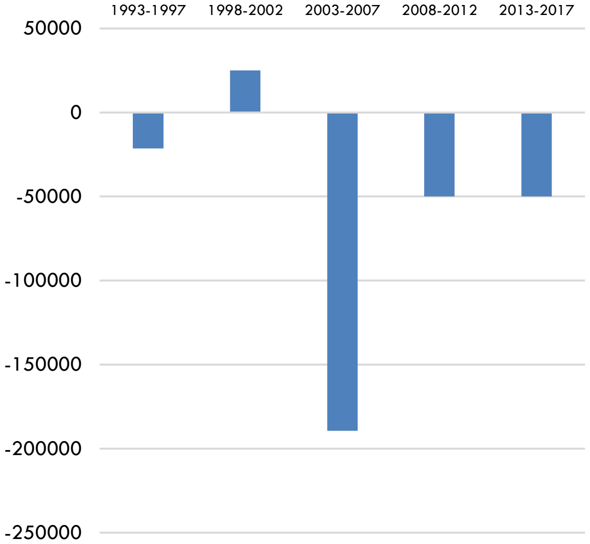
Data demonstrate that personal remittances received were 2.5% of GDP in the period from 2013 to 2017 on average, and it is in line to the sub-Saharan region average (Table 13). It suggests that the out-migration is not a strong part of the economy.

Table 13: Status of Migration in Kenya

Net number of migration (2013-17)	Kenya	- 50.000 *
Personal remittance (received), % of GDP (2013-2017, av.)	Kenya	2.4 %
	Sub-Saharan Africa	2.5 %

** Net migration is the net total of migrants during a period of five years, i.e. the total number of immigrants less the annual number of emigrants, including both citizens and non-citizens.*
Source: World Bank DataBank

Figure 9: Net migration trend in Kenya, 1993-2017



Source: [World Bank, World Development Indicators]

Some key characters of Kenya's migration trends are related to the fact that the country is a regional hub for irregular migration as a destination, origin and transit country towards South Africa, the Middle East and North Africa, West Africa, Europe, and North America. Statistics from the United Nation High Commission for Refugee (UNHCR) show that 6.4% of Kenya's population (almost 500,000 people) was composed of refugees as of January 2018. In 2017, Kenya hosted the third largest number of refugees (489,071) in Africa, exceeded by the neighbours Ethiopia and Uganda.[97] The vast majority of immigrants in Kenya are from other African countries; the majority originates from Somalia, Ethiopia, Democratic Republic Congo, and South Sudan. Most of the refugees are hosted in camps. In February 2019, the government announced plans of closing the Dadaab refugee camp within six months. [98] Dadaab is among one of the largest refugee camps in the world being home to nearly a quarter of a million people. The camp is three decades' old, sheltering mostly Somalis who fled the civil war at the beginning of the 1990s, and later on Somalis who fled drought and famine in 2011. In 2016, the government also tried to close the camp but was stopped by High Court in 2017.

Furthermore, Kenya is affected by internal displacements as a result of conflict, natural disasters, climate change and environmental degradation, forced evictions, and finally traditional migration flows linked to nomadism and pastoralism.[99]

The emigration flow has been driven by a search for employment and education opportunities in top-destinations like the United Kingdom, the United States of America and also neighbouring United Republic of Tanzania and Uganda. Another issue is that under-development in western Kenya has made many workers migrate towards the urban zones. The relatively high youth unemployment has been a main push of rural–urban migration and youth emigration. As previously mentioned, the urbanisation rate in 2017 was 27%.

Kenyan migrant workers often lack formal organisation and miss benefits of collective bargaining. In 2016, the government deployed labour attaches in Qatar, Saudi Arabia and the United Arab Emirates (UAE) to coordinate and regulate contracts of Kenyan migrant workers and to promote overseas job opportunities.[100] The Ministry of East African Community also provided assistance in understanding terms and conditions for work agreements for migrant workers before going abroad to prepare them to work in a foreign country.
As a mean to protect Kenyan domestic workers from unfair labour practices abroad, particularly in the Gulf countries, a Migrant Workers' Bill was approved into law in 2016, while the Ministry of Labour deployed labour attaches to the affected countries. Saudi Arabia and Qatar have signed bilateral agreements with Kenya for employment opportunities. Negotiations with UAE continues (2019). The government established a directorate to regulate the conduct of labour agents for Kenyan migrant workers, including requiring the payment of a performance guarantee bond on 500,000 KSh (US$ 5,000) for each Kenyan migrant worker.

Informal Economy

The labour market is divided into a formal sector and informal economy in Kenya. First of all, ILO defines the informal economy as "all economic activities by workers and economic units that are – in law or in practise – not covered or insufficiently covered by formal arrangements; and does not cover illicit activities".[101] Often wages and insurances in the informal economy are lower than the one in the formal economy.[102]

Second, the formal sector is a minority (16%) in terms of the total employment in 2018. In contrast, informal employment was estimated at 84% of the total employment in 2017 (Table 14). It is worthwhile to mention that this data excludes those engaged in small scale agriculture and pastoralist activities. The ratio of informal workers compared to formal workers has from 2014-2018 increased by one percentage point. Kenya's informal employment rate is near the sub-

Saharan Africa average that was estimated at around 80% of the labour force.[103]

Approximately a third of Kenya's GDP was generated in the informal economy in 2014 (Table 14). The amount of informal workers covered by National Hospital Insurance Fund (NHIF) has increased with 10 percentage points from 2014-2017. This impressive increase has to do with NHIFs quest to achieve universal health coverage.[104] Health care is one of the four pillars of the Big Four agenda as a universal right, together with food security, affordable housing and manufacturing.[105]

Table 14: Total and informal employment in Kenya, 2014-2018

	2014	2018	Change, %
Informal employment *	11,851,000	14,865,900	25 %
Total employment *	14,355,800	17,783,200	24 %
Ratio of informal workers in total employment	83 %	84 %	1 p.p.
Informal employment covered by NHIF **	13 %	21 %	8 p.p.
Informal economy contribution to the GDP (%)	30-35 %		N/a

** These numbers exclude those engaged in rural small scale agriculture and pastoralist activities. ** Own calculations based Kenya National Bureau of Statistics, Economic Survey 2019*

Sources: Kenya National Bureau of Statistics, Economic Survey 2019 and IMF Working Paper, The Informal Economy in Sub-Saharan Africa: Size and Determinants, 2017

Out of the around 14.9 million workers in the informal economy (excluding those working in small scale farming and pastoralist activities) in 2018, almost 60% are working in wholesale and retail trade, hotels and restaurants sector.[106] In 2018, 84% of new jobs were created in the informal economy (762,100) compared to the formal sector (110,000).[107] The job creation ratio has largely been like this since 2013.

Both employers' organisations and trade union federations are increasingly finding interest in the informal economy as new membership recruitment. In the National Labour Board and the Wage Councils, informal workers are represented. The informal workers are becoming more organised into associations, cooperatives, and unions to negotiate wage and work conditions matching the government's minimum wage guidelines and representation in the Employment and Labour Relations Court.[108] Despite this, the minimum age for work does not reach children working in the informal economy and especially women working informally are subject to discrimination and harassment from the authorities.

Through affiliated unions such as KUDHEIHA, COTU (K) is increasingly engaging, representing and organising informal workers through social dialogue.[109] In 2017, COTU (K) had 16,510 members in the informal economy.[110] COTU have in recent years conducted workshops in order to identify informal groups and their needs.[111]

There is a series of challenges of taxing enterprises in the informal economy, e.g. mistrust and weak structural dialogue between informal economy and government as well as tax evasion and corruption as normal way of doing business (see Appendix Table 23).

Due to a lack of a legal framework that supports tripartite social dialogue in the informal sector, most of the dialogue is bipartite. The dialogue is usually either a union engaging with the informal economy employer or the informal economy associations engaging with government agencies.

Child Labour

The constitution gives children legal protection from hazardous or exploitative labour as well as the Children's Act from 2001 explicitly prohibits forced labour, trafficking, and other practices similar to slavery.[112] The minimum age for work is 16 (apart from apprenticeships, which is allowed from the age of 13), for hazardous work 18. However, the government lacks sufficient resources to monitor the law's implementation in practice and does not extend to those working informally. It is estimated, that only 63% of births are officially registered.[113] Combined with a large informal economy, the exact extent of child labour in Kenya is difficult to monitor.

According to a UNICEF study from 2016, 26% (almost 5 million) of children up to the age of 14 are engaged in child labour. Other data suggests the percentage is up to 36%.[114] Following data from UNICEF, the percentage of child labourers among all children is the same in Kenya and the Eastern and Southern region in Africa (Table 15).

Table 15: Working Children, proportion of all children ages 5-17

Region	Year	Type	Proportion
Kenya	2016	Child labourers*	26 %
		Hazardous work	2.5 % **
Eastern and Southern Africa	2017	Child labourers	26 %
		Hazardous work	13 %**

** Children aged 5-11 years involved in child labour activities: doing at least one hour of economic activity or at least 28 hours of domestic work. For children aged 12-14 the working hours are respectively 14 and 42, source for definition: UNICEF. ** This is data from 2008.*
Source: UNICEF 2016, ILO, Accelerating action against child labour, International Labour Conference, 99th Session 2010 and Bureay Of International Labor Affirs, Child Labor and forced Labor Reports, Kenya

Most of the Kenyan child labourers work on family agriculture plots, in mining, as domestic servants, in fishery, as vendors or scavengers in the cities or in the worst cases commercial sexual exploitation. The amount of working girls compared to boys is roughly the same.[115]

A list of specific jobs considered hazardous that would constitute the worst forms of child labour was published in February 2014. In 2017, the government launched a national online database system to collect, aggregate and report on child protection data that informs policy making and budgeting for orphans and vulnerable children; The Child Protection Information Management System.[116]

At a national level, 8.4% of children were in 2015 orphans, partly due to HIV/AIDS.[117] Two Child Rescue Centres were established in 2017, bringing the total number of these centres to eight. At the centres, child labourers can withdraw to rehabilitate and receive counselling and life skills training.[118]

In Kenya, households with children (34%) have a higher probability of being poor compared to those without children (14%).[119] Under two programs National Safety Net Program for Results and Decent Work Country Program, the government pays households sheltering orphans and vulnerable children to deter them from engaging in forced labour or dropping out of school.[120]

The government collaborates with COTU, FKE and donors to eliminate child labour. Among others, they participate in the National Steering Committee on the Elimination of Child Labour, and they meet quarterly together with other stakeholders such as NGOs. The government has in 2003 introduced free and compulsory primary education and the same for secondary school in 2017, making child labour more less attractive (see also the section: Education).

The National Policy on Child Labour was approved in October 2016 after 15 years of lobbying. This policy is informed by the ILO Conventions 138 and Convention 182 and moves Kenya closer to achieve the SDG8 with reference to eradicating all forms of child labour before 2025. However, as mentioned, the child labourers' rate stays high and challenging the SDG8 target (see also SDG table, Indicator 8.7.1, on Page iv).

Gender

The 2010 constitution provides a powerful framework for addressing gender equality. The law prohibits discrimination based on gender and bills to improve conditions for breastfeeding mothers were in 2017 adopted (see section: National Labour Legislation). However, in practise, the Kenyan labour market has a wide range of gender gaps that most often disfavour women in various ways. The workplace has traditionally been men dominated, especially at higher management levels where policy issues are discussed. But women's voices are gradually becoming more and more heard.[121] On the other hand, the percentage of women engaged in vulnerable employment is with 29 percentage points significantly higher than for men. The employment rate is slightly higher for men, and the rate for unemployment is equal across gender (Table 16).

Table 16: Workforce key indicators gender gaps estimations in Kenya, 2019

	Men	Women	Difference men/women, percentage point (p.p.)
Employment	63 %	58 %	5 p.p.
Unemployment	9.4 %	9.2 %	0.2 p.p.
Employees	54 %	23 %	31 p.p.
Vulnerable employment*	39 %	68 %	-29 p.p.

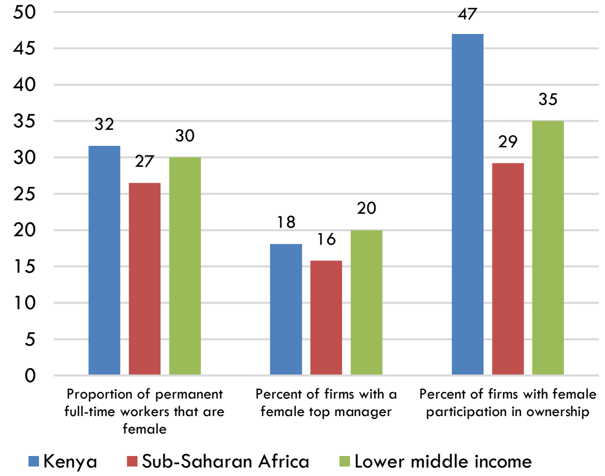
** Aggregate own-account workers and contributing family workers*
Source: ILO, Key indicators of the Labour Market (KILM)

The Global Gender Gap Index – measuring gaps rather across gender – ranked Kenya as number 76 out of 144 countries (1 is highest) in 2018. On economic participation and health access, Kenya had its best scores and the worse rankings in educational attainment and political empowerment.[122] The other international Gender Inequality Index – measuring health, empowerment and economic status – ranked the nation with medium human development as number 131 out of 151 countries (1 is highest).[123] What keeps this ranking low is the relatively high maternal mortality ratio (319 deaths per 100,000 live births) and low percentage of women in parliament (13%).

Largely in line with ILO's standard, the Employment Act provides 3 months of paid maternity leave for new mothers paid by the employer, and women are ensured rights to return to a job at the similar level (if not the same job) after the maternity leave. In terms of implementation, a study revealed that women in the formal sector generally are able to get the 3 months leave. On the other hand, the salary during maternity leave is paid by the employer and this raises the risk of discrimination based on gender, i.e. having a women staff on maternity leave creates additional salary cost for the employer, thus making women staff of reproductive age on non-temporary contracts a liability for the employer. This may lead to employers preferring men staff to women staff. The Employment Act provides for 2 weeks of paternity leave immediately upon the birth, with full pay by the employer. However, many men do not take their paternity leave, which is related to socio-cultural attitudes of masculinity as well as general sentiment of making work a priority.[124]

A 2018 Enterprise Survey reported that 47% of firms had woman participation in ownership, which is higher than the sub-Saharan Africa average at 35%. Firms with women managers remain low in Kenya, which is also the case for the sub-Saharan region and lower middle income countries in general (Figure 10).

Figure 10: Women participation in employment, top management and ownership in the Kenya, %, 2018



Source: [ILO, Key indicators of the Labour Market (KILM)]

Through the enactment of the National Gender and Equality Commission Act from 2011, the National Gender and Equality Commission (NGEC) has been established.[125] This commission has the mandate to promote gender equality and freedom from discrimination. [126]

Youth

With a youth unemployment rate on 18%, youth underemployment on staggering 80% and youth employment-to-population ratio on just 29%, Kenya is challenged. In absolute numbers, young women in rural locations constitute the largest share of unemployed Kenyan youth, while young men in urban areas are most likely to be unemployed in relative terms.[127] Unemployment is according to a household survey the main concern for the Kenyan youth.[128] The youth largely feel that they are being discriminated against in the labour market, because of their youth.[129] Compared to its Tanzanian counterpart, the Kenyan youth is more pessimistic when it comes to their employment situation. The SDG targets to achieve full employment by 2030 (see more on SDG Table, Indicator 8.5.2, on Page iv). To achieve this, youth unemployment and underemployment have to be reduced drastically.

The youth (15-24) makes up almost 20% of the total population, and each year 500,000 to 800,000 young Kenyans enters the job market.[130] Out of this group, it is estimated that only about 15% of them are successful in securing formal jobs.[131] This youth bulge further complicates access to the labour market, as competition is harsh.

The NEET rate, meaning the number of youth (15-34) neither in education, employment or some sort of training, was estimated at 29% in 2013. Women youth was disproportionally represented within the group (42%), significantly higher than men (14%). This further confirms that access to employment and opportunities for obtaining a living in Kenya are cut along age and gender lines.[132]

The Kenyan government has not been able to provide the necessary amount of employment opportunities for its young population as recent employment growth largely has benefitted the older population. As youth unemployment is a rising problem, this is a matter of priority for both government, unions and employers' organisations. A proposed solution to decrease youth unemployment is to make agriculture more attracting for the youth.

A high rate of youth underemployment rate happened meanwhile the university enrolment more than doubled from 2012 to 2016.[133] The education system in Kenya has been criticised for not preparing the students adequately for the labour market (See section: Education).[134]

In 2016, the government launched the process of reviewing the somewhat out of date National Youth Policy. This includes focusing on improving the employment issues for the youth in Kenya. So far, the previous youth policy had identified skills development of the youth through vocational training and imparting life skills as an important issue. Although the enrolment in schooling is on a rise on all levels, Kenya has a very low participation rate in vocational training (see more in the sub-section: Vocational training). It is also cumbersome starting a business with some improvements in recent years, though (see also Appendix Table 23. On the positive side, Forbes Africa recently released a list of Africa's 30 best entrepreneurs under 30 years. It is notable that seven out of the 30 entrepreneurs are Kenyan.[135]

The Youth Enterprise Development Fund (YEDF) financed over 157,000 youth enterprises and contributed to create over 300,000 jobs within five years.[136] However, an analysis of YEDF concluded that most youth have not been properly informed on how the fund can be accessed as well as low repayment rates. Moreover, the lack of monitoring and capacity building is insufficient concerning gender imbalance.[137]

Many youths have become discouraged and have begun to leave the labour market entirely. On this background, the COTU (K) called attention to the youth seeking employment abroad due to the high youth unemployment rate, and the risk of ending up in slavery and servitude despite assurance from some government officers and a clique of unscrupulous employment agents and bureaus.[138]

The Government of Kenya's Youth Employment Scheme Abroad aims to match Kenyan youth to employment opportunities abroad.

EDUCATION

Kenya's national education system is structured on eight years of basic education (beginning at the age of six), four years of secondary education and four years of undergraduate studies.[139] The government spent 17% of their total expenditure on education in 2017.[140]

Up to the age of 13, education is tuition free and compulsory, though mandatory attendance has not been enforced.[141] In 2003, the government instituted free primary education, and in 2009, free – yet not compulsory – secondary education.[142] Language of instruction in the first three years of primary school is in either local language (more than 42 different languages) or Kiswahili, while English is the language of instruction after grade 3.[143]

Kenya allows pregnant girls to continue their education until after giving birth, though NGOs have reported that schools often do not respect this right.[144]

Data shows an increasing net enrolment in primary school since 2006 after it was made compulsory and free in 2003. This large influx of pupils not previously enrolled in schools results in unprecedented numbers of graduates competing for limited seats in secondary schools.[145]

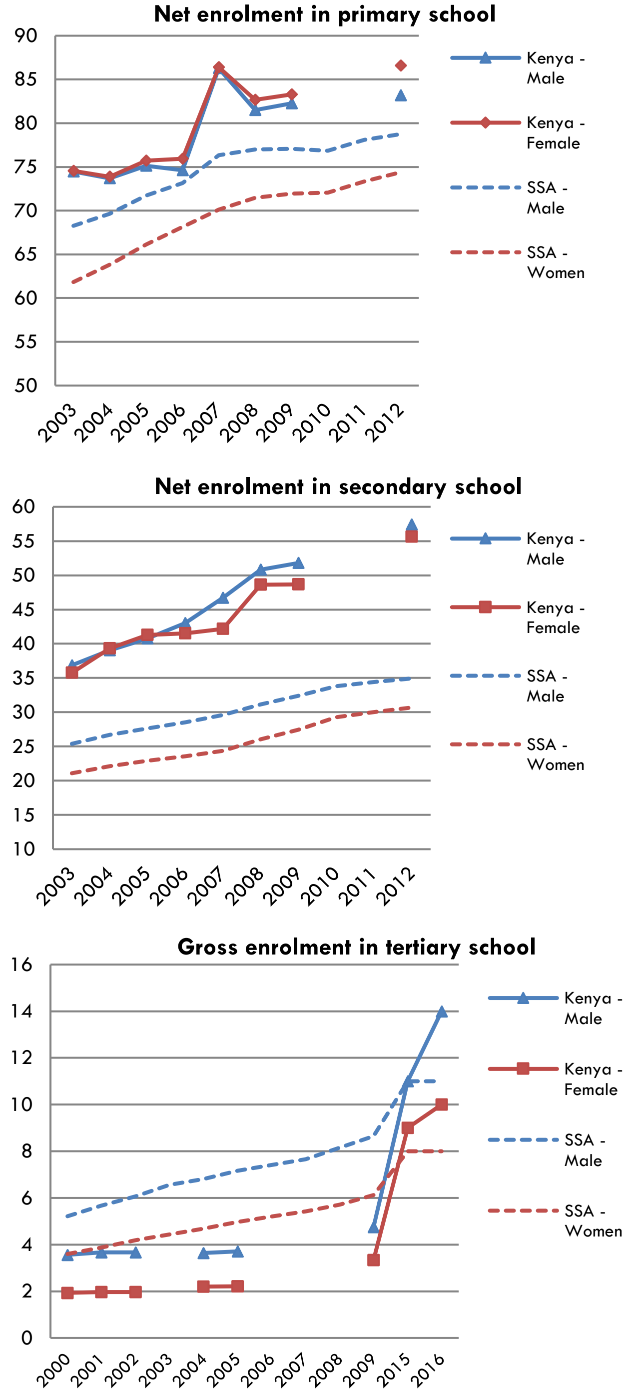
Kenya has since then been hovering far above the sub-Saharan Africa average, with slightly more females enrolled than males in recent years (Figure 11). It is to some extent reflected by the marginally higher segment of male working children than for females. Kenya's free primary education is still constrained by insufficient school infrastructure, overcrowding in schools, late or non-disbursement of funds by some development partners, regional enrolment disparities and the devastating impact, which HIV has had on the sector.[146]

The enrolment in secondary school was also high in Kenya and continued on a fast enrolment increase that peaked above 55% in 2012. Thus, it is much higher than the sub-Saharan Africa average (Figure 11).

In recent years, Kenya has overhauled the regional average when it comes to gross enrolment in tertiary schools. Sub-Saharan Africa and Kenya in particular has from 2009-2015 experienced a large increase in the tertiary gross enrolment and while the enrolment from 2015-2016 flattened out in the region, it continued to increase rapidly in Kenya.

Around 26% of those who have attained university level of education are inactive.[147] This share is higher than of those who have attained a middle level (college) which is 13%.

Figure 11: Enrolment in Primary, Secondary and Tertiary schools, Male and Female, Kenya and sub-Saharan Africa (SSA), %, 2000-2016



Note: Net enrolment is the ratio of children of official school age, who are enrolled in school to the population of the corresponding official school age. Gross enrolment is the ratio of total enrolment, regardless of age, to the population of the corresponding official school age. Gross enrolment can therefore be higher than 100 percent, but with tertiary or university education, the age of the pupils is more diverse.
Source: [World Bank, Education Statistics]()

According to an analysis, education was not an obstacle for entry into agricultural employment. Low education levels significantly raised the probability of informal economy entry while higher education levels discouraged entry. Instead higher education levels increased chance of entering wage employment. This suggested that educational expansion would increase females' access to the wage sector. For males, more education would increase access into the public sector. In addition, education has impacted positively on incomes in the public sector, the private sector, and the informal economy.[148] Here, the challenge remained that the formal sector did not create sufficient decent jobs. Among others, this has been related to the fact that public sector job opportunities were shrinking due to public sector reforms during the 2000s as well as a fast growing labour force. Not to mention, it was also reflected by the relatively high youth unemployment in Kenya.

Vocational training

Vocational training is on an upsurge in Kenya. The structural stance of the labour market keeps skills gained from vocational schools used in the informal economy. The government acknowledge the central position vocational training holds for the implementation of Vision 2030 and Big Four agenda.

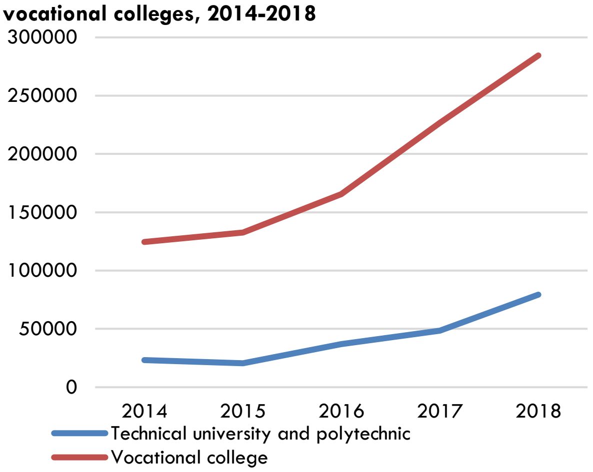
Technical and Vocational Education and Training Authority (TVETA) is a State Corporation under the Ministry of Education and is established under the Technical and Vocational Education and Training (TVET) Act from 2013.[149] TVETA regulates, coordinates, promotes and develops technical and vocational education.

In 2018, TVETA presented its strategic plan for 2018-2022, which seeks to achieve a modern and labour market-responsive TVET system for Kenya.[150] To improve accessibility to technical educations, the government plans to establish technical institutions at every constituency and vocational centres at each ward level.[151] In 2019, TVETA has accredited 980 public and private institutions, with more than 250 awaiting accreditations and 180 institutions recommended for improvement.

Governmental resources allocated to vocational training is increasing and expenditure of vocational training is expected to grow 156% from KSh 2.5 billion (US$24.8 million) in 2017/2018 to KSh 6.4 KSh (US$63.5 million) in 2018/2019.[152] This explosive growth is caused by the transfer of technical teachers from Teachers Service Commission (TSC) to the State Department. The recurrent expenditure for TSC is expected to account for 56% of the total recurrent expenditure for the Ministry of Education in the review period.

From 2017-2018, public vocational training centres grew 27% to 1,502 centres, making it the fastest growing category in the education sector.[153] In line with this trend, the amount of students enrolled in vocational colleges has since 2014-2018 grown 128% from hosting almost 50,000 students to more than 125,000 students (Figure 12). The highest growth of student enrolments, though numerically lower than in vocational colleges, has been in technical universities and polytechnics on 274% from 2014-2018.

Figure 12: Pupils in technical universities, polytechnics and vocational colleges, 2014-2018



Source: [Kenya National Bureau of Statistics, Economic Survey 2019](#)

The share of females in vocational education has grown few percentage points from forming 37% in 2014 to 41% in 2018. The same tendency in technical universities and polytechnics.[154]

Some of the main challenges of technical and vocational education training in Kenya are coupled with a bias against technical courses among youth because many believe that they are of lower value than other professional courses which promise a higher paying job as well as a higher social status.[155]

As depicted in the previous Figure 11, the net enrolment rate in secondary schools is high compared to the sub-Saharan Africa. But in 2017, 49% of official secondary school age students were out of school.[156] A suggestion to improve the education system is to incorporate technical training at all levels of learning in Kenya, equipping school leavers with skills required for effective participation in the labour market. In general, vocational training is seen as a way to decrease the high youth unemployment rate.[157]

SOCIAL PROTECTION

Recently the Kenyan government has made significant progress in developing its national social protection system, not least because of increased political commitment in line with Vision 2030.[158] The country invests more in social protection than many richer middle-income countries and is the leading investor in the region.

Overall, 10% of the population is covered by at least one social protection benefit in 2016 (Table 17). There are no specific interventions that directly address unemployment benefits. This challenges the country's SDG target in implementing nationally appropriate social protection systems and measures for all, and by 2030, achieve substantial coverage of the poor and the vulnerable (see SDG Table, Indicator 1.3.1, on Page iv).

Table 17: Benefits schemes, Kenya, %, 2016

Benefit schemes	%
Children covered by social benefits (Contingency)	8.1 %
Persons above retirement age receiving a pension (Contingency)	25 %
Population covered by at least one social protection benefit (Contingency)	10 %
Unemployed receiving unemployment benefits (Contingency)	0 %
Vulnerable persons covered by social assistance (Contingency)	5.8 %

** The average covers the entire Africa region.*
Source: [ILO, SDG labour market indicators](#)

A National Social Protection Policy (NSPP) was in 2011 developed under the then Ministry of Gender, Children and Social Development with the aim of ensuring that all Kenyans are able to live with dignity despite shocks and risks they may face during their lifetime. Here, dignity includes access to decent work, affordable healthcare, social security and social assistance.[159] In 2013, the Social Assistance Act was passed to establish NSPP, which would identify and provide social assistance to disadvantaged persons such as disabled, poor, orphans and vulnerable children, unemployed and widows or widowers. The act has never been implemented.[160]

In Kenya, social protection is entrenched in three ways: i) through cash transfer programs improving food security, retention of children in schools, and access to basic health care; ii) through NSSF which provides protection to formal and informal workers in form of lump sum payment upon retirement; iii) and through NHIF which provides social health insurance to orphans and vulnerable children, persons with severe disabilities and elder persons.[161] Limitations exist in the implementation and reach of social protection programs and none of them attain universality. Referring to the three channels of social protection, in 2016, 813,381 households received lump-sum payment, NSSF reached 4.6 million members, and NHIF covered 2.7 million contributing members. [162]

Through the National Safety Net Program (NSNP), Inua Jamii (Kiswahili for Community) provides cash transfer to orphans and vulnerable children, older persons, persons with severe disabilities and those affected by hunger unsafely.[163] In 2013, the Inua Jamii Cash Transfer Programme was launched, providing cash payment to the elderly.[164] According to the Kenyan government, this programme has been a success and increased from slightly over 200,000 beneficiaries in 2013 to 1.3 million in 2019. Inspired by the Inua Jamii programme, the government is in 2019 planning to launch the KSh 33 billion (US$328 million) Kenya Social and Economic Inclusion Programme aiming to boost ongoing efforts to transform the socioeconomic wellbeing of Kenyans.[165]

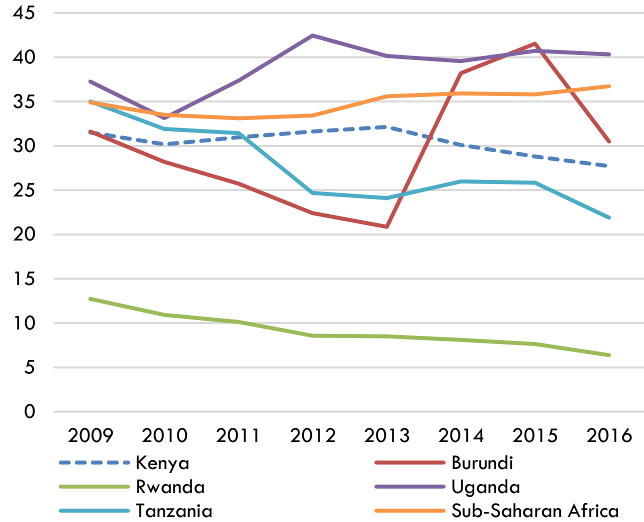
Senior Citizen's scheme was in 2018 under Inua Jamii introduced, aiming at providing universal pension to everybody above 70 years on KShs 2,000 (US$20) and free medical cover through NHIF.[166] According to ILO, the coverage rate of persons above retirement age receiving a pension was at 25% in 2016.

There is a wide range of health related interventions, e.g. NHIF which provides hospital coverage for members and their dependants. The Kenyan Constitution safeguards that the population has the right to the highest standard of health, but NHIF only covers 7.7 million Kenyans (16% of the population).[167] While almost all formal workers are enrolled (98%), only 16% of informal workers are enrolled in the Fund.[168][169] Principal membership for NHIF stood in 2018 at 7,657,463 compared to 6,817,888 in 2016/17.[170] In addition, NHIF does not provide a full range of services relevant to Sexual and Reproductive Health and Rights (SRHR) – e.g. Antiretroviral treatment (ARV) is available for persons living with HIV/AIDS and STI testing is included, while family planning is not included. Employers are not required to provide any additional health insurance or health services to their employees. Nevertheless, some do voluntarily. There are no guidelines for such voluntary provision of additional health services. Consequently, the range and quality of the employer-provided insurance varies – e.g. some include family planning while others do not.

Based on a mapping of workplace general provisions, employers' responsibility to protect safety and health of workers have low gaps on policies, but with some gaps in their implementation. Also prevention along OHS management principles and practice together with elimination if discrimination based on gender have low gaps on the policy level while high gaps in the implementations.[171]

Kenya has a medium health-care expenditure not financed by private household's out-of-pocket payments on 28% in comparison with the Eastern African countries. This difference, signalled in Figure 13 below, shows that health out-of-pocket expenditures is on a slightly decreasing trend in Kenya and is situated below the sub-Saharan average which is slightly increasing.

Figure 13: Out-of-pocket expenditure (% of current health expenditure), %, 2009-2016



Note: Out of pocket expenditure is any direct outlay by households, including gratuities and in-kind payments, to health practitioners and suppliers of pharmaceuticals, therapeutic appliances, and other goods and services whose primary intent is to contribute to the restoration or enhancement of the health status of individuals or population groups. It is a part of private health expenditure.
Source: World Bank, World Development Indicators

ECONOMIC PERFORMANCE

Kenya is the largest economy as well as one of the most dynamic members of East Africa Community (EAC). It is a transport regional hub based on a strong private sector. Inadequate infrastructure remains a hindrance for improved economic growth. Around a tenth of the land is agricultural land and permanent pasture represents 37% of the total area. Agriculture remains the backbone of the Kenyan economy, contributing one-third of the GDP and occupying three out of five of the workforce. Other large occurrences of natural resources include different minerals and hydropower. Despite political turmoil and terrorist activities, tourism also plays a significant role in Kenya's economy with up to 20% of GDP.[172]

GDP grew by 5.6% on average from 2009 to 2018 (Table 18). The prolonged election in 2017 has hurt the economy and slowed GDP growth, which nonetheless in 2019 is projected higher (5.8%) than the average.[173] In contrast to all its neighbouring countries, Kenya is not a low-income country, but a lower-middle income country with a GDP per capita (current US$) of US$1,711; ranking 187 out of 228 countries (1 is highest).

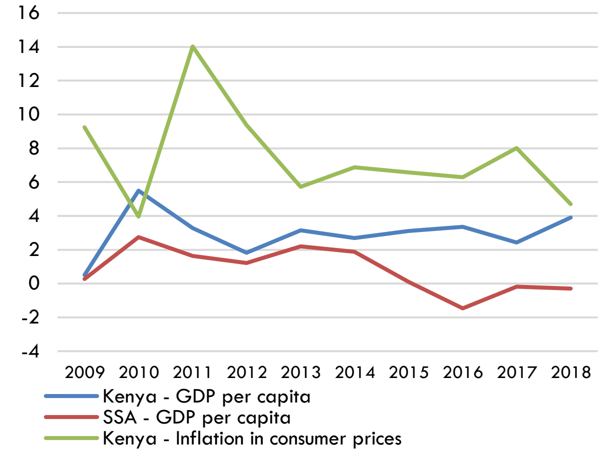
Table 18: Key economic data in Kenya, 2018

GDP	US$ 87.1 billion
GDP per capita (current US$)	US$ 1,711
GDP real Growth (av., 2009-2018)	5.6 %
Inflation in consumer prices (av., 2009-2018)	7.5 %
Tax revenue (% of GDP) (2017)	15.7 %

Source: World Bank, World Development Indicators

The GDP per capita growth has the last decade been higher in Kenya compared to the sub-Saharan average, especially since 2016 when the sub-Saharan region began to experience negative GDP per capita growth (Figure 14). In 2018, the GDP per capita growth in Kenya was 3.9%, which is 1.5 percentage points higher than the 2017 value of 2.4%. Since 2013, the inflation has remained within the government's preferred band of 2.5-7.5%. The inflation has in recent years largely been driven by food inflation and was 4.7% in 2018. Kenya continues to benefit from low fuel prices, rebound in tourism, a stable macroeconomic environment, eased political uncertainties, good weather, stable remittance inflows, and a government-led infrastructure development initiative.[174]

Figure 14: GDP per capita growth and inflation rate, Kenya and the sub-Saharan Africa (SSA), %, 2009-2018



Source: World Bank, World Development Indicators

Generally, the economy created 840.600 new jobs in 2018. The number of persons engaged, excluding those in rural small-scale agriculture and pastoralist activities, rose by 5.0% to 17.8 million persons in 2018.[175] Employment in the public sector went up from 833.100 persons in 2017 to 842.900 persons in 2018. The private sector, which accounted for 70% of the total employment, grew by 3.0% in 2018.

Foreign Direct Investment (FDI) inflows – i.e. the value of an inward direct investment made by non-resident investors in the reporting economy – is very low in Kenya scoring lower (0.3% of GDP) compared to the sub-Saharan average (0.8% of GDP).[176] This clearly suggest weaknesses on attracting FDI, not only to increase investment in the economy, but also to maintain external stability. It is furthermore reflected in the industry sector's declining GDP share and its continuous low employment rate (revisit the sub-sector: Sectoral Employment).

The country has a relatively high level of income inequality of 23 out of 158 countries (1 is most unequal).[177] On the positive side, according to the Gini Index, the inequality in the distribution of family income has experienced a drop from 49% in 2005 to 41% in 2015. It is also gratifying that the Human Development Index (HDI) from 1990-2017 has increased slightly and steadily on a total increase of 26%.[178] The HDI value for 2017 is on 0.59 putting the country in the medium development category positioning 142 out of 189 countries (1 is best).

Even though Kenya has experienced steady economic growth, the share of working poor has not decreased. While extremely working poor and near poor from

2000-2020 is projected to decrease one percentage point, the moderately poor is projected to increase one percentage point (Table 9). Meanwhile the share of middle-class is projected to only increase two percentage points.

Table 19: Estimation and projection of employment by economic class in Kenya, PPP, %, 2000-2020

Year	Extremely poor (<US$1.9)	Moderately poor (>=US$1.9 & <US$3.2)	Near poor (>=US$3.2 & <US$5.5)	Middle class (>=US$5.5)
2000	30 %	27 %	24 %	18 %
2010	36 %	29 %	21 %	15 %
2020	29 %	28 %	23 %	20 %

Note: Data in this table exclude the economically inactive population that covers around 40% of working age population.
Sources: ILO, Key Indicators of the Labour Market (KILM)

In contrast to Kenya that overall is projected to have the same grouping distribution in 2020 as in 2000, East Africa in general has in the same period experienced a considerable reduction of the extremely and moderately poor share from 80% to 62% and an increase of those who earn more than US$3.2 from 20% to 38%. Factually, Kenya has the last decades had a smaller share of poor and a bigger share of middle-class in comparison with both the East African and sub-Saharan Africa average, but has not been part of the regional poverty alleviation, but instead projected in 2020 to find itself at 2000 status quo.[179] In 2020, the extremely and moderately poor are projected to be only 5 percentage points larger in East Africa compared to Kenya (see also SDG Table, Indicator 1.1.1, on Page iv).

Attempts of poverty alleviation in Kenya have been supported by the relatively high minimum wage increases along with the coverage of health social protection, social safety nets and enrolment in education. It explains, to some extent, the just mentioned decreasing inequality in the country. However, this report has also shown that the wage employment has not increased, confronting a relatively high unemployment rate and a large majority of the labour force continues to operate in the informal economy. On this background, the drop of the middle-class during the 2000s is a signal that the labour market does not include the continuous high influx of workers into the modern formal sector. This is linked to the correlation between higher wages and formal work. This challenges the evolution of the middle-class during the rest of the 2010s and onwards.

Kenya continues to improve business conditions notably according to the Doing Business Index: Kenya is indexed as 61 out of 190 countries in 2019, which is an substantial improvement from being 92 in 2017 and 113 in 2016 (Appendix Table 23). Kenya continues to score better than the sub-Saharan Africa average, only overhauled by Rwanda (29). The impressive improvement has, among other things, to do with the fact that the country has resolved insolvency and a simplified process of providing value added tax information by enhancing its existing online system.[180] Out of ten indicators, the country scores lowest on dealing with construction permits (128), starting a business (126) and registering property (122). Kenya scores best at getting credit (8) and protecting minority investors (11).

Kenya plays an important role in East Africa as a regional centre for trade and finance. The country has a quite visible trade gap with an unfavourable balance of trade, i.e. an export of 19% of GDP and import of 31% in 2018. Kenya's export continues to be relatively low (10 purchasing power lower) in comparison with the sub-Saharan average.[181]

Export Processing Zones (EPZ)

Investors at EPZs in Kenya are entitled to a 10 year-corporate tax holiday and 25% tax thereafter, a 10-year withholding tax holiday on remittances to non-residents, 100% investment deduction on initial investment applied over 20 years and VAT exemption on industrial inputs.[182] The investors are restricted to selling only 20% of their produce to the Kenyan market while 80% is exported.[183]

The gazetted EPZs in Kenya increased from 42 in 2010, to 52 in 2014 and to 71 in 2018, whereas 24 are situated in Mombasa.[184] The EPZs are mainly in the sectors of horticulture, clothing/garments manufacturing, pharmaceuticals, and processing of tea.[185] EPZ exports goes among other places to the United States under AGOA.

The amount of employed in EPZ grew by 33% (2010-2017) from 31,502 in 2010, to 46,738 in 2014, to 54,764 in 2017 (which equals 2.1% of total wage employees).[186] Export authority listed 131 enterprises operational in 2018 at the headquarters while another 42 have been approved.[187] Overall, union membership of workers within the EPZs has remained low, i.e. an estimated 14% of workers were unionised.[188] As an example, the Kenya Textile Workers' Federation states that getting workers to join a union is difficult because the managers in EPZ companies use nonregistered organisations to recruit casuals on their behalf.[189]

Prior to 2003, the Kenyan government did not allow EPZ workers the freedom to unionise or engage in collective bargaining.[190] It triggered strikes during the 2000s. Due to reforms of the labour laws, including the right to organise and bargain collectively, this applies in the EPZs, but labour standards are often worse in EPZs. For instance, the average wage in the Kenyan EPZs for locals (KSh 15,322 (US$152)) in 2017 is 3.7 times lower than the nominal average wage.[191]

The Factories Act deals with the health, safety and welfare of an employee, who works in a factory. Many exemptions to the labour law are made, for example a law that prevents women from working in industrial activities at night. Firms in EPZs have still refused to recognise trade unions and obstructed their efforts to organise workers. The use of temporary employment has an effect on workers' ability to unionise.[192]

A study from 2013 investigated the effect of trade unions on employees' welfare with a specific focus on EPZ Tailors and Textile Workers Union affiliated companies in the area of Athi River. The study revealed that collective bargaining has affected employees' wages and benefits positively.[193] It was estimated that wages within the EPZs on average were 22% higher than the minimum wage. Although the average wage in Kenyan EPZs is lower than in many other African EPZs, it is still higher than in Asian countries, such as Bangladesh, China, and India.

Collective bargaining in Kenyan EPZs is still fragile and improvements of working conditions remain critical, e.g. workers within the Kenyan EPZs have put up with long hours, unpredictable work and many are only hired on a casual basis.
In 2018, large scaled corruption within Export Processing Authority (EPZA) was revealed. The scandal included procurement irregularities involving billions of Ksh where 13 companies received money for goods and services they never delivered. Three senior managers have been suspended for 90 days while investigations are taking place.[194]

East African Community partner states negotiated to reach a consensus on the access threshold in EPZ products to the regional market. It failed in June 2018. Kenya pushed to remove restrictions on investors, allowing them to sell near half of their annual products to the regional market.[195] However, Uganda, Tanzania, Rwanda and Burundi stayed firm on their long-standing positions on the EPZ market access threshold. EPZ/SEZ producers are allowed to sell 20% of their total annual production within the EAC.

APPENDIX: ADDITIONAL DATA

Table 20: Registered Trade Union membership in Kenya, 2018

Trade unions	Total members	Women members
Central Organisation of Trade Unions (COTU (K))		
Amalgamated Union of Kenya Metal Workers	6,817	1,230
Kenya Petroleum Oil Workers Union	9,771	750
Bakery, Confectionery Manufacturing & Allied Workers Union	28,500	12,500
Kenya Building, Construction, Timber, Furniture & Allied Trades Employees Union	71,800	3,810
Kenya Chemical & Allied Workers Union	3,760	800
Kenya Engineering Workers Union	35,100	150
Kenya Game Hunting & Safari Workers Union	6,340	910
Kenya Union of Printing, Publishing, Paper, Manufacturing & Allied Workers	4,715	840
Kenya Plantation & Agricultural Workers Union	735,550	345,550
Kenya Scientific, Research, International, Technical & Allied Institutions	3,230	2,615
Banking Insurance & Finance Union	7,240	4,290
Communications Workers Union (CWU)	10,023	7,773
Railway Workers Union	765	670
Tailors & Textiles Workers Union	253,610	62,610
Transport & Allied Workers Union	12,502	12,152
Kenya Union of Entertainment & Music Industry Employees	2,280	1,400
Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals & Allied Workers	304,400	124,700
Kenya Union of Sugar Plantation Workers	188,017	122,017
Kenya Local Government Workers Union	193,540	11,440
Kenya Shipping, Clearing & Warehouses	3,116	2,286
Seafarers Workers Union	262	209
Kenya Quarry & Mine Workers Union	14,512	11,792
Kenya Electrical Trades Allied Workers Union	65,066	53,751
Kenya Shoe & Leather Workers Union	6,452	5,208
Kenya Jockey, Betting Workers Union	1,280	470
Union of National, Research Institutes	16,189	13,339
Kenya National Private Security Workers Union	161,539	119,039
Kenya Salon and Beauty Union	9,910	2,560
Kenya Hotels & Allied Workers Union	3,145	2,935
Kenya Union of Commercial, Food & Allied Workers	111,758	43,058
Kenya Aviation and Allied Workers Union	560	510
Kenya Union of Journalists	6,060	3,610
Kenya Long Distance Truck Drivers and Allied Workers Union	2,847	2,757
Kenya National Union of Nurses	62,900	25,900
Kenya Glass Workers Union	7,800	4,790
Kenya Water and Sewerage Workers Union	4,763	2,673
Kenya Union of Pre-Primary Education Teachers	1,640	890
Kenya Union of Post-Primary Education Teachers	93,200	43,000
Kenya Aviation Workers Union	2,975	725
Kenya Airline Pilots Association	450	375
Kenya Medical Practioners & Dentists Union	10,100	6,500
Kenya Private Universities Workers Union	950	730
Kenya Dock Workers Union	3,910	3,180
Kenya National Union of Teachers *	300,000 *	-
Trade Union Congress of Kenya (TUC-Ke)		
Union of Kenya Civil Servants	22,600	13,100
University Academic Staff Union	3,530	1,760
Kenya Universities Staff Union	2,046	396
Independent Informal Economy Unions / associations partnering with COTU (K)		
Matatu Workers Association	1,810	1, 700
Women in Music Association	-	-
Jua Kali Traders Association	1,785	1,773
Gikomba Traders Association	800	785
Public Transport Operators Union	1,600	1,580
Matatu Workers Union	1,150	1,140
Matatu Drivers and Conductors Workers Association	-	-
Nairobi Bodaboda Riders Association	1,120	1,120
Kenya Tuktuk and Boda boda Workers Union	1,300	1,300

** KNUT registered 83,500 members in 2018 while as re-affiliated to COTU-K it triggered an upsurge up to 300,000 in the middle of 2019.*
Source: COTU, TUC-Ke, and DTDA research.

Table 21: List of approved labour related legislations in Kenya, 2014-2018

Type of legislation	Legislation
2014	
General provisions	Persons Deprived of Liberty Act, 2014, No. 23 of 2014
	Statute Law (Miscellaneous) (Amendment) Act, No. 18 of 2014
Education, vocational guidance and training	Kenya National Qualifications Framework Act, 2014, No. 22 of 2014
Specific categories of workers	National Police Service (Amendment) Act, No 11 of 2014
	National Police Service Commission (Amendment) Act, No 3 of 2014
Two types of legislation: i) Elimination of child labour, protection of children and young persons, and ii) Equality of opportunity and treatment	Trans Nzoia County Youth and Women Development Fund Act (No. 2 of 2014)
2015	
General provisions	Protection Against Domestic Violence Act, No. 2 of 2015
	Ethics and Anti-Corruption Commission (Amendment) Act, 2015 (No 12 of 2015)
	Special Economic Zones Act, 2015, No. 16 of 2015
	Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 (No 19 of 2015)
	Companies Act, 2015 (No 17 of 2015)
	Prohibition of Anti-Personnel Mines Act, 2015 (No 21 of 2015)
Specific categories of workers	Public Service (Values and Principles) Act, 2015, No. 1A of 2015
Employment security, termination of employment	Insolvency Act, 2015 (No 18 of 2015)
	Companies and Insolvency Legislation (Consequential Amendments) Act, 2015 (No 19 of 2015)
2016	
General provisions	Bribery Act, 2016 (No. 47 of 2016)
	Access to Information Act, 2016 (No. 31 of 2016)
Two types of legislation: i) General provisions and ii) Freedom of association, collective bargaining and industrial relations	Political Parties (Amendment)(No.2) Act, 2016 (No 21 of 2016)
	Political Parties (Amendment) Act, 2016 (No. 14 of 2016)
Employment policy, promotion of employment and employment	National Employment Authority Act, 2016 (No. 3 of 2016)
Indigenous and tribal peoples	Protection of Traditional Knowledge and Cultural Expressions Act, 2016 (No. 33 of 2016)
Specific categories of workers	Mining Act, 2016 (No 12 of 2016)
	Kenya Defence Forces (Amendment) Act, 2016 (No 44 of 2016)
2017	
Minimum Wage	Legal Notice No. 111, Labour Institution act
Minimum Wage	Legal Notice No. 112, Labour Institution act
Maternity leave	Employment Act 2007, Amendment of section 29 of No. 11 of 2007, Bill No. 14 of 2017
Working conditions for breastfeeding mothers	Breastfeeding Mothers Clauses Bill, 2017
2018	
Industrial action	Statute Law Miscellaneous Amendments Bill No. 12 of 2018

Source: *ILO, NATLEX, Kenya* and COTU (K)

Table 22: Ratified ILO Conventions in Kenya, 2018

Subject and/or right	Convention	Ratification date
Fundamental Conventions		
Freedom of association and collective bargaining	C087 - Freedom of Association and Protection of the Right to Organise, 1948	1964
	C098 - Right to Organise and Collective Bargaining Convention, 1949	Not ratified
Elimination of all forms of forced labour	C029 - Forced Labour Convention, 1930	1964
	C105 - Abolition of Forced Labour Convention, 1957	1964
Effective abolition of child labour	C138 - Minimum Age Convention, 1973	1979
	C182 - Worst Forms of Child Labour Convention, 1999	2001
Elimination of discrimination in employment	C100 - Equal Remuneration Convention, 1951	2001
	C111 - Discrimination (Employment and Occupation) Convention, 1958	2001
Governance Conventions		
Labour inspection	C081 - Labour Inspection Convention, 1947	1964
	C129 - Labour Inspection (Agriculture) Convention, 1969	1979
Employment policy	C122 - Employment Policy Convention, 1964	Not ratified
Tripartism	C144 - Tripartite Consultation (International Labour Standards) Convention, 1976	1990
Up-to-date Conventions		
Working time	C014 - Weekly Rest (Industry) Convention, 1921	1964
Wages	C094 - Labour Clauses (Public Contracts) Convention, 1949	1964
	C131 - Minimum Wage Fixing Convention, 1970	1979
Migrant workers	C097 - Migration for Employment Convention (Revised), 1949	1965
	C143 - Migrant Workers (Supplementary Provisions) Convention, 1975	1979
Social security	C118 - Equality of Treatment (Social Security) Convention, 1962	1971
Rural workers and industrial relations	C135 - Workers' Representatives Convention, 1971	1979
	C141 - Rural Workers' Organisations Convention, 1975	1979
Vocational guidance and training	C140 - Paid Educational Leave Convention, 1974	1979
	C142 - Human Resources Development Convention, 1975	1979
Seafarers	C146 - Seafarers' Annual Leave with Pay Convention, 1976	1990
	MLC - Maritime Labour Convention, 2006	2014
Specific categories of workers	C149 - Nursing Personnel Convention, 1977	1990

Note: Fundamental Conventions are the eight most important ILO conventions that cover four fundamental principles and rights at work. Equivalent to basic human rights at work.
Governance Conventions are four conventions that the ILO has designated as important to building national institutions and capacities that serve to promote employment. In other words, conventions that promotes a well-regulated and well-functioning labour market.
In addition, there are 71 conventions, which ILO considers "up-to-date" and actively promotes.
Source: ILO, NORMLEX

Table 23: Ease of Doing Business in Kenya, 2019

Topics	2019
Overall	61
Starting a Business	126
Dealing with Construction Permits	128
Getting Electricity	75
Registering Property	122
Getting Credit	8
Protecting Minority Investors	11
Paying Taxes	91
Trading Across Borders	112
Enforcing Contracts	88
Resolving Insolvency	57

Note: Doing Business 2019 indicators are ranking from 1 (top) to 190 (bottom) among other countries. The rankings tell much about the business environment, but do not measure all aspects of the business surroundings that matter to firms and investors that affect the competitiveness of the economy. Still, a high ranking does mean that the government has created a regulatory environment conducive to operating a business.
Source: World Bank & IFC, Ease of Doing Business 2019 in Kenya

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