

A RAPID ASSESSMENT OF DOMESTIC WORKERS IN KENYA

By
KUDHEIHA Workers
(with financial and technical support from Friedrich Ebert Foundation-Nairobi)



**FRIEDRICH
EBERT STIFTUNG**

May 2011

Acknowledgments

This study, which is a rapid assessment of the domestic workers in Kenya, was undertaken by KUDHEIHA Workers with the financial and technical support from Friedrich Ebert Foundation (Nairobi). We as KUDHEIHA Workers wish to appreciate the role played by Dr. Jacob Omolo in guiding the entire study. We also acknowledge the financial and technical support accorded to us by FES. The strides that have been made in Kenya in terms of organizing and advocating for the rights of Domestic Workers is no mean achievement. In this respect, we wish to acknowledge the dedication, commitment and unwavering resolve of Bro. Albert Njeru, the Secretary General KUDHEIHA Workers in spearheading this noble agenda. We also wish to acknowledge the invaluable effort of Sister Eva Magiri who coordinated the program, Lucy Ndungu and James Ngari for overseeing the data collection process, Emily Atieno and Gedion Thuku for data entry services, Rose Yvonne for providing excellent secretarial services and all the KUDHEIHA Workers' Branch Secretaries, Organizing Secretaries and Domestic Workers' Committee members for their dedication. To all those who contributed in one way or another in actualizing this milestone, and whom we could not individually mention by name, we appreciate and acknowledge your efforts.

Bro. Albert Njeru
Secretary General
For and on Behalf of KUDHEIHA Workers

Acronyms and Abbreviations

AAWC	Area Agricultural Wage Councils
AGF	Agriculture and Forestry
AWAB	Agricultural Wages Advisory Board
AWC	Agricultural Wages Council
BC	Building and Construction
BPO	Business Process Outsourcing
CSPS	Community, Social and Personal Services
DoL	Department of Labour
EW	Electricity and Water
FES	Friedrich Ebert Stiftung
FINREBS	Finance, Insurance, Real Estates and Business Services
GoK	Government of Kenya
GWAB	General Wages Advisory Board
GWC	General Wages Council
ILO	International Labour Office/Organization
IUF	International Union of Food
KUDHEIHA	Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied
MFG	Manufacturing
MoL	Ministry of Labour
MQ	Mining and Quarrying
MTP	Medium Term Plan
NACOSH	National Council for Occupational Safety and Health
NEB	National Employment Bureau
NESC	National Economic and Social Council
NHIF	National Hospital Insurance Fund
NLB	National Labour Board
NSSF	National Social Security Fund
TC	Transport and Communication
UNDP	United National Development Programme
US\$	United States Dollars
WC	Wage Councils

TABLE OF CONTENTS

Title	Page
Acknowledgments.....	ii
Acronyms and Abbreviations	iii
LIST OF FIGURES	v
LIST OF TABLES	vi
EXECUTIVE SUMMARY	vii
CHAPTER ONE: INTRODUCTION.....	1
1.1 Study Context.....	1
1.2 Study Objectives	2
1.3 Study Methodology.....	2
1.4 Organization of the Report.....	2
CHAPTER TWO: EMPLOYMENT SITUATION IN KENYA.....	3
2.1 Status of Employment.....	3
2.2 Wage Earnings	5
2.3 The Employment Challenge	5
CHAPTER THREE: TERMS AND CONDITIONS OF EMPLOYMENT OF DOMESTIC WORKERS	8
3.1 The Demographic Profiles of Respondents	8
3.2 Working Conditions and Labour Issues in the Domestic Services Sector.....	11
3.2.1 The Domestic Workers Convention, 2011.....	11
3.2.2 Highlights of the Domestic Workers Convention, 2011.....	11
CHAPTER FOUR: SUMMARY AND RECOMMENDATIONS.....	23
4.1 Summary	23
4.2 Recommendations.....	24
REFERENCES	26

LIST OF FIGURES

Figure 2.1: Real Average Monthly Wage Earnings Per Employee	5
Figure 2.2: Youth Unemployment in Kenya by Age Cohorts (1978-2006)	6
Figure 3.1: Study Respondents by Location	8
Figure 3.2: Marital Status of Respondents	9
Figure 3.3 Age Profile of Respondents	10
Figure 3.4: Medium of Employment	13
Figure 3.5: Employment Particulars	14
Figure 3.6: Membership with NSSF	19
Figure 3.7: Membership with NHIF	20

LIST OF TABLES

Table 2.1: Trends of Employment and GDP Growth in Kenya (1986-2009).....	3
Table 2.2: Proportion (%) of Total Wage Employment by Industry	4
Table 2.3: Unemployment in Kenya, 1978- 2005/06 (Percent).....	6
Table 2.4: Unemployment Rates in Kenya by Age Group and Gender (Percent).....	7
Table 3.1: Statutory Minimum Wages and Wage Range for Domestic Workers.....	16
Table 3.2: Labour Inspectorate Staff-Employment Ratio for Kenya.....	21

EXECUTIVE SUMMARY

The domestic services sector is a key contributor of jobs in Kenya. In 2009, for example, the sector contributed 5.2 per cent of the wage employment as compared to 4.8 per cent for finance, insurance, real estates and business services; 0.98 per cent for electricity and water; and 0.33 per cent for mining and quarrying. The sector is, however, highly invisible, undervalued and informalized. It also represents atypical employment with job insecurity, weak social security protection and other forms of decent work deficits. The ILO has developed a Convention to promote decent work for domestic workers. The Convention is due for discussion and consideration for adoption in the ILO's 100th Session due in 1st June 2011.

This study was a quick assessment of the domestic workers sector in Kenya. The study was undertaken as part of the campaign towards the adoption of the Convention. The study aimed at highlighting the provisions of the ILO draft Convention on Domestic Workers; profiling the working conditions and labour issues in the domestic workers sector in Kenya; and suggesting appropriate interventions to address the identified gaps. The study relied on primary data collected from 377 domestic workers randomly selected from Kisumu, Eldoret, Nairobi and Mombasa. The primary data was complemented by secondary data extracted from government and international publications.

Some of the key findings of the study are that majority (73.7%) of the domestic workers interviewed were married, divorced or widowed. This is consistent with the observations in the Convention that domestic workers are people with family responsibilities. The study also revealed that 56.1 per cent of the domestic workers were in the youthful category of 15-35 years with those in the 30-35 years age cohort being the largest. According to the study, the ILO Convention's definition of a domestic worker *as any person engaged in domestic work within an employment relationship* is in keeping with practice in Kenya. The domestic workers in Kenya were, however, found to be in atypical employment with 74.5 per cent of those interviewed having no job descriptions, 92.2 per cent have no written contracts and 88.2 per cent have no itemized pay statements. The popular job search methods amongst domestic workers are through relatives, direct search and employment bureau.

Kenya has a framework and mechanism for fixing minimum wages and other statutory terms and conditions of employment. In 2010, the statutory monthly minimum wages applicable in the domestic services sector ranged between Ksh. 3,597 (US\$ 42.82) payable to a domestic worker in "all other towns" to Ksh. 7,523 (US\$ 89.56) payable to a night watchman in the cities, namely Nairobi, Mombasa and Kisumu. On May 1, 2011 the Minister for Labour announced a 12.5 per cent increment in the statutory minimum wages effectively increasing the minimum wages. This shows the goodwill on the part of the government for domestic workers to earn a fair wage if not a decent wage. The survey, however, revealed that the mean wage in the domestic services sector was Ksh. 4,522.60 (US\$ 53.84), the median wage was Ksh. 4,000 (US\$ 47.62) while the modal wage stood at Ksh. 3,000 (US\$ 35.71). This shows that all these wage dispersion measures were below the applicable statutory minimum wage rates for the respective areas.

Kenya has a social security protection system that encompasses the National Social Security Fund, National Hospital Insurance Fund and occupational retirement benefit and medical schemes, which are mainly in the formal sector. As much as the domestic services sector is invisible and informal, an average of eight per cent of the domestic workers interviewed is already under the two Funds.

Kenya has a mechanism for enforcing national laws and regulations for the protection of domestic workers. The mechanism is anchored on the provisions of the Labour Inspectorate Convention No. 81 of 1947 and the Labour Administration Convention No. 150 of 1978. However, Kenya's labour inspectorate service is weak, poorly resourced and overburdened. At the same time, promotion of decent work for domestic workers in the country is faced with some key challenges, even though surmountable. These include high levels of unemployment and poverty, low social security protection and desperation in job search. Others are decentralized nature of workplaces for domestic workers, increased informalization of the sector, lack of a clear training strategy for domestic workers, low levels of awareness on the part of the labour market players and negative attitude by some employers and the general public on domestic work/workers.

Overall, the ILO Convention on Decent Work for Domestic Workers and the accompanying Recommendations presents a raft of measures, which when adopted and effectively implemented by member states would highly improve the living conditions of domestic workers. The measures contained in the regulations are consistent with the provisions that already exist in the Kenyan Constitution and the minimum terms and conditions of employment contained in the country's labour laws. The coming into effect of the ILO Convention on Decent Work for Domestic Workers would, therefore, greatly add to the impetus that is already in place towards protection of domestic workers.

Attainment of decent work status in the domestic services sector requires a strong Convention complemented by a Recommendation. To achieve this, government and trade unions need to lobby employers to support the Domestic Workers' Convention. At the same time, awareness creation, sensitization programmes and campaigns should also be staged and promoted to help educate the domestic workers, employers and the general public on the sector, its significance and role in national development. It would also be important that a clear training strategy and programme for domestic workers is developed and implemented. This would help professionalize the sector, make it a sector of choice and give it the required profile. To fortify the efforts from the Convention, it would be critical that a Domestic Workers Wages Council is established as envisaged in the Labour Institutions Act (2007). This would facilitate fixing of minimum wages and conditions of employment for domestic workers, and provide required benchmarks for their effective enforcement. Overall, the government, in collaboration with development partners and other labour market support institutions should strengthen and improve the labour inspectorate services. This would greatly enhance surveillance and enforcement of the laws, regulations, Conventions and Recommendations. The need to have a clear and comprehensive implementation strategy to facilitate smooth operation and enforcement of the Convention once ratified cannot be gainsaid.

CHAPTER ONE

INTRODUCTION

1.1 Study Context

Domestic work is one of the oldest, common and important occupations throughout the world. The origin of domestic work can be traced to the 'master-servant' relationship that characterized the colonial period. Domestic work is rooted in the global history of slavery, colonialism and other forms of servitude. Domestic work may be compared to the unpaid labour traditionally performed by many men and women within a household. This may explain why domestic work remains invisible as a form of employment in many countries besides being undervalued, informal and poorly documented.

Domestic work contributes considerably to the world economy by increasing employment and income generation opportunities. This shows the key role played by domestic work in promoting socio-economic development of countries. It is within this context that improving the terms and conditions of employment of domestic workers is viewed as an imperative for countries. The International Labour Organization (ILO) has, for example, since its early days voiced concern on the need for states to put in place legislations and frameworks to ensure improvement in the conditions of employment of this group of workers (ILO, 2009). This effort is manifested in the adoption of the resolution concerning the conditions of employment of domestic workers as early as 1948 during the 31st Session of the International Labour Conference (ILO, 2009). The ILO has also continued to undertake interventions towards promotion of decent work agenda. In this respect, the ILO has developed, and slotted for discussion and possible adoption a Convention to facilitate achievement of decent work status for domestic workers in its 100th Session due in 1st June 2011, (ILO, 2011).

In Kenya, creation of productive and sustainable employment opportunities has been the policy priority of the government since attaining political independence in 1963 (Omolo, 2010). The *Kenya Vision 2030* is, for example, anchored on creation of 703,000 jobs annually as part of its socio-economic program (GoK, 2007). At the same time, a number of legislative and institutional reforms continue to be undertaken by the country to improve terms and conditions of employment of workers. This includes guaranteeing their fundamental principles and rights at work (GoK, 2008a). Key among the reforms is the revision and subsequent enactment of five core labour laws in 2007. The laws include Employment Act (2007), Labour Relations Act (2007), Occupational Safety and Health Act (2007), Work Injury Benefits Act (2007) and Labour Institutions Act (2007). Institutional interventions are to be found in the establishment and operationalization of key social dialogue institutions. These include the National Economic and Social Council (NESC), National Labour Board (NLB), National Council for Occupational Safety and Health (NACOSH), General Wages Council (GWC), Agricultural Wages Council (AWC) and other sector-specific wage councils. The wage councils are, in this context, required to advise the Minister in charge of labour matters on the minimum rates of wages and other basic terms and conditions of employment that should be applicable to specified workers within the various sectors of the economy. This is to ensure that workers enjoy a basic minimum standard of living that is in consonant with human dignity (GoK, 2005).

Despite these interventions, Kenyan workers particularly domestic workers, continue to suffer decent work deficits. These are particularly manifested inability of the workers to obtain decent and productive work, in conditions of freedom, equality, security and human dignity.

1.2 Study Objectives

The main objective of this study is to undertake a rapid assessment of domestic workers' sector in Kenya. The specific objectives of the study were to:

- (i) Highlight the provisions of the ILO draft Convention on Domestic Workers
- (ii) Profile the working conditions and labour issues in the domestic sector in Kenya
- (iii) Suggest appropriate interventions to address the identified gaps.

1.3 Study Methodology

The development of the study presented in this Report followed an integrated and participatory approach, involving a desk analysis of secondary information, i.e., relevant literature, government policy documents, and other publications and reports published by international agencies such as the ILO. In addition, primary data was collected on 377 domestic workers randomly selected from four major towns in Kenya namely Eldoret (104), Kisumu (101), Nairobi (92) and Mombasa (80). Both qualitative and quantitative approaches were used in analysing and interpreting the data. A first draft of the study was developed and presented in a domestic workers' conference held on 16th May 2011 in Nairobi. The conference was organized by the Kenya Union of Domestic Hotels, Educational Institutions, Hospitals and Allied (KUDHEIHA) Workers and the Friedrich Ebert Foundation (FES). It was attended by representatives of trade unions, government (Ministry of Labour and NSSF), local domestic workers' capacity building institutions and the International Union of Food (IUF). The revised draft of the paper, which incorporated comments and observations made at the conference, was then forwarded for peer review by FES and KUDHEIHA. Comments received through this peer review process were used to finalize the paper.

1.4 Organization of the Report

This Report is structured into four (4) Chapters. The present Chapter has attempted to put into context domestic work and its place in promoting socio-economic development. Chapter Two provides situational analyses. It presents a documentation of the trends of formal and informal sector employment in Kenya and the contribution of the domestic services sector in employment generation in the country. It also highlights the trends in earnings. Chapter Three presents study results and discussions. It starts by highlighting the demographic profiles of the respondents and then outlines the provisions of the draft ILO Convention on Domestic Workers. The exposition of the provisions of the draft ILO Convention has been done within the context of the actual terms and conditions of employment and labour issues in the domestic sector in Kenya as established from the survey and analysis of documents. The final Chapter (Four) contains summary, conclusions and recommendations.

CHAPTER TWO

EMPLOYMENT SITUATION IN KENYA

2.1 Status of Employment

The Kenya government has, since late 1980s, pursued a number of macroeconomic interventions targeting renewed economic growth and employment creation. These include fiscal framework, which seeks to ensure that the bulk of government expenditures are met from tax revenue. It also intends to manage overall government deficit by ensuring discipline in government spending. Also implemented is the monetary policy which targets containing inflation to single digit levels and maintaining positive real interest rates; flexible exchange rate policy regime; promotion of savings and investments, including domestic funding of the bulk of the investments to reduce over-reliance on foreign financing; and prudent management of external financing portfolio, through gains from increased public and private sector investments, and the increase in exports. Table 2.1 gives a summary of the formal and informal sector employment in Kenya over the period 1986-2009.

Table 2.1: Trends of Employment and GDP Growth in Kenya (1986-2009)

Year	Total Employment (Millions)	Proportion of Total (percent)		Employment Growth (percent)	
		Formal	Informal	Formal	Informal
1986	1.537	79.4	20.6	4.00	9.72
1987	1.615	78.3	21.7	3.60	10.76
1988	1.736	77.5	22.5	6.40	11.43
1989	1.796	76.2	23.8	1.63	9.74
1990	1.894	74.4	25.6	3.07	13.08
1991	2.557	56.4	43.6	2.27	130.37
1992	2.753	53.1	46.9	1.39	15.78
1993	2.998	49.2	50.8	0.96	17.89
1994	3.356	44.9	55.1	2.03	21.55
1995	3.859	40.3	59.7	3.39	24.43
1996	4.314	37.3	62.7	3.21	17.59
1997	4.707	34.9	65.1	2.22	13.20
1998	5.100	32.9	67.1	2.17	11.66
1999	5.493	30.7	69.3	0.63	11.18
2000	5.912	28.7	71.3	0.36	10.86
2001	6.367	26.3	73.7	-1.06	11.22
2002	6.852	24.8	75.2	1.37	9.85
2003	7.330	23.6	76.4	1.65	8.73
2004	7.999	22.1	77.9	2.14	11.28
2005	8.505	21.3	78.7	2.66	7.36
2006	8.993	20.7	79.3	2.54	6.60
2007	9.479	20.1	79.9	2.80	6.08
2008	9.954	19.5	80.5	1.78	5.72
2009	10.400	19.2	80.8	2.85	4.92

Source of Data: GoK, *Economic Survey*, (various)

The data presented in Table 2.1 reveals a decreasing importance of formal sector employment and growing significance of informal sector employment to total employment in Kenya. Table 2.1 show that jobs in Kenya have increasingly become informal, moving from less than a quarter of total jobs in the country in 1986 to slightly more than four-fifths of total employment in 2009.

As alluded to earlier, domestic work is invisible, informal and undervalued. Thus, the rapid increase in informal sector employment may mirror considerable expansion in the domestic sector in the country.

Table 2.2 gives the trends in the percentage proportion of total wage employment by industry over the period 2003-2009.

Table 2.2: Proportion (%) of Total Wage Employment by Industry

Industry/Year	2003	2004	2005	2006	2007	2008	2009
Agriculture and Forestry	17.99	17.79	18.09	17.99	17.82	17.53	17.02
Mining and Quarrying	0.30	0.31	0.32	0.32	0.33	0.33	0.33
Manufacturing	13.66	13.56	13.73	13.70	13.70	13.59	13.27
Electricity and Water	1.20	1.16	1.12	1.05	0.99	0.99	0.98
Construction	4.36	4.29	4.32	4.30	4.26	4.36	4.67
Wholesale, Retail Trades, Restaurants and Hotels	9.34	9.43	9.70	10.00	10.27	10.41	10.77
Transport and Communication	4.94	5.45	6.29	7.04	7.81	8.10	8.16
Finance, Insurance, Real Estate and Business Services	4.76	4.72	4.92	4.96	4.98	4.86	4.86
Community, Social and Personal Services: of which:	41.82	41.37	41.51	40.64	39.83	39.83	39.94
<i>Domestic Services</i>	<i>5.57</i>	<i>5.47</i>	<i>5.57</i>	<i>5.56</i>	<i>5.51</i>	<i>5.26</i>	<i>5.21</i>
Others	36.26	35.90	35.94	35.08	34.32	34.56	34.73

Source of Data: GoK (2010); GoK (2008b)

The data presented in Table 2.2 reveals the significance of community, social and personal services (CSPS) industry in wage employment in Kenya. According to the table, the industry is the highest contributor of wage employment in Kenya followed by agriculture and forestry (AGF), and manufacturing (MFG) industries, respectively. Of significance is that the domestic services sector constitutes a higher proportion of the country's wage employment than key industries such as finance, insurance, real estates and business services (FINREBS); building and construction (BC); electricity and water (EW); and mining and quarrying (MQ). The transport and communication (TC) industry only surpassed the domestic services sector in contribution to employment as from 2005. The leap may be attributed to the increased regulation in the sector (through the *Michuki rules*). This ushered in increased levels of sanity in the business with positive impacts in investment and employment creation.

Ironically, even though the *Kenya Vision 2030* and the attendant Medium Term Plan (MTP, 2008-2012) and Sector Plan for Labour, Youth and Human Resource Development (2008-2012) are anchored on exploiting the country's human resource potentials vide employment creation, the blueprints do not prioritize the CSPS as one of the target industries to drive employment growth. According to the *Kenya Vision 2030* and the MTP (2008-2012), the sectors that are expected to steer the country's economic growth agenda and hence employment creation are tourism, agriculture and livestock, manufacturing, wholesale and retail trade, Business Process Outsourcing (BPO), and financial services. This reaffirms the invisibility of the domestic services sector in the national economic grid and the undervaluation of the contribution of the sector in socio-economic development.

2.2 Wage Earnings

Wages are important parameters in the socio-economic life of any group. Workers depend almost entirely on wages to provide themselves with food, clothing, shelter and other necessities of life. Figure 2.1 shows the trends in real average monthly wage earnings per industry over the period 2005-2009.

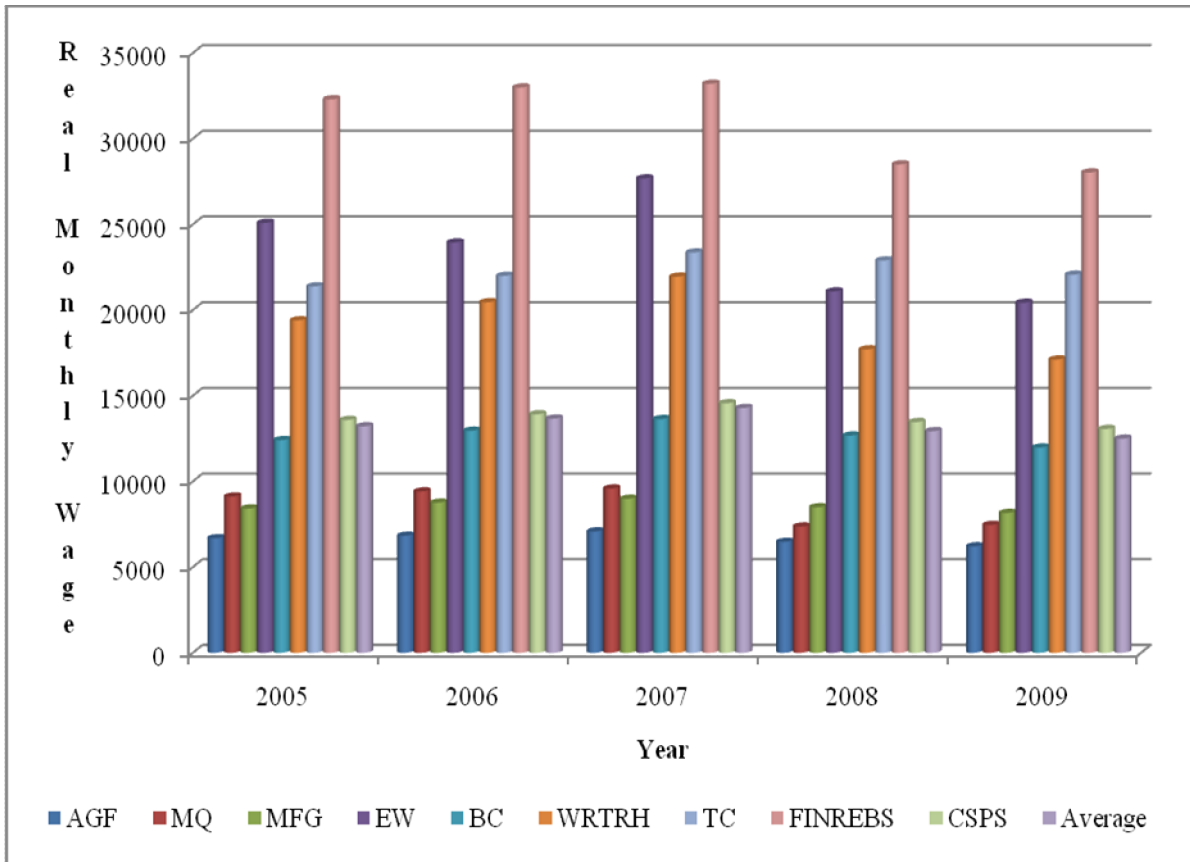


Figure 2.1: Real Average Monthly Wage Earnings Per Employee

Source of Data: GoK (2010)

Figure 1 shows that FINREBS, EW and TC have the highest real average monthly wage earnings per employee while MFG, MQ and AGF have the lowest real average monthly wage earnings per employee. According to the data presented in Figure 2.1, the real average monthly wage earnings per employee in the CSPS industry where the domestic services sector fall is slightly above average. However, the status of real average wage earnings in the CSPS and particularly for the domestic services sector may need to be interpreted within the context of the atypical employment relationships in the sector and its precarious nature of employment.

2.3 The Employment Challenge

The employment challenge in Kenya has grown over time as illustrated in Table 2.3.

Table 2.3: Unemployment in Kenya, 1978- 2005/06 (Percent)

Age Cohort	1978	1986	1998/99	2005/06
15 – 19	26.6	36.2	47	25
20 – 24	18.5	29.2	47.3	24.2
25 – 29	4.8	8.6	25.1	15.7
30 – 34	2	2.7	14.3	7.5
35 – 39	1.8	2.1	12	7.6
40 – 44	0.7	0.7	11.2	6.4
45 – 49	1.1	2	14.7	5.7
50 – 54	1.4	0.9	18.9	4.7
55 – 59	1.5	4.1	40.6	4
60 – 64	3.2		45.2	2.5
Total	6.7	9.7	25.1	12.7

GoK, *Statistical Abstract*, various

Table 2.3 shows that the level of open unemployment in Kenya increased from 6.7 percent in 1978 to 25.1 percent in 1998/1999 before easing to 12.7 percent in 2005/2006. The table also reveals considerable variations in unemployment amongst the different age cohorts, with the youth category (15-35) recording relatively higher rates of open unemployment. Overall, youth unemployment has persistently been at least double the national unemployment rate.

Figure 2.2 gives a graphical presentation of the open unemployment rates amongst the youth cohorts of 15-19; 20-24; 25-29; and 30-34 years. It also compares this trend with the total unemployment rates over time.

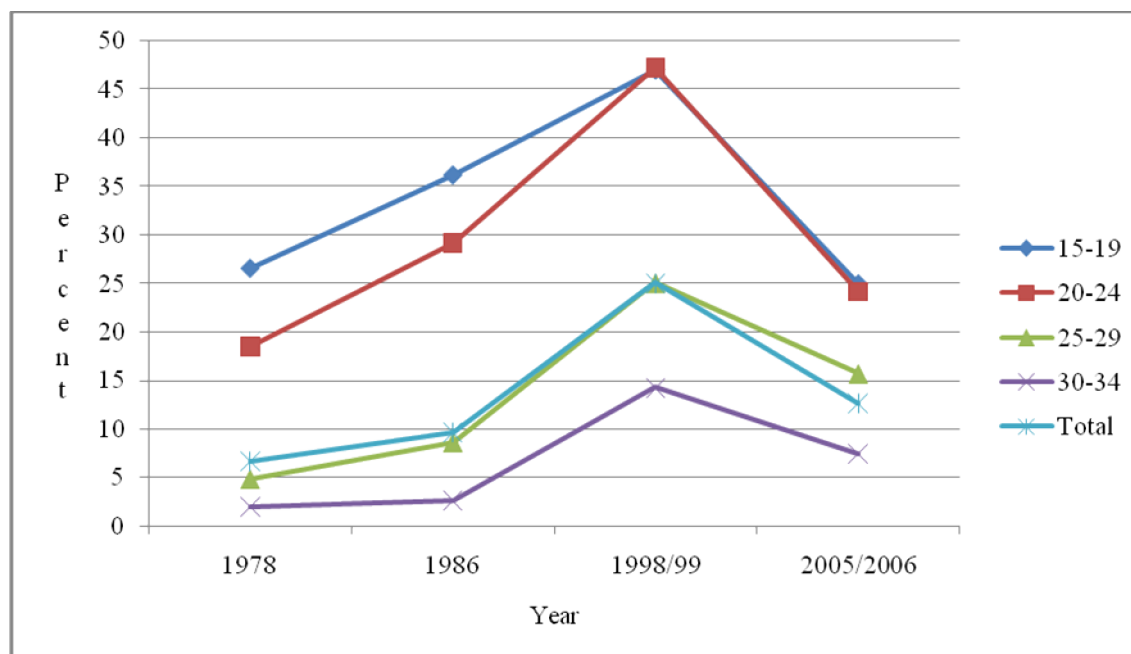


Figure 2.2: Youth Unemployment in Kenya by Age Cohorts (1978-2006)

Source of Data: GoK, *Statistical Abstract*, various issues

Figure 2.2 confirms the variation of unemployment trends of different demographic groups with youth unemployment rate being relatively higher than the total unemployment rate. In 1998/99, for example, the unemployment rate among the youth

categories of 15–19 years; 20–24 years; 25–29 years; and 30–34 years was 47 percent, 47.3 percent, 25.1 percent and 14.3 percent, respectively. Even though the unemployment rate in the economy eased in 2005/2006, the youth unemployment levels was still comparatively high at 25 percent, 24.2 percent, 15.7 percent and 7.5 percent for the youths in 15–19 years; 20–24 years; 25–29 years; and 30–34 age categories, respectively. The trends supports the assertion by Coenjaerts *et al.* (2009) that young people face specific challenges in accessing the labour market and this lowers their chances of finding decent employment. According to the authors, the youth faces three main difficulties in employment. These are higher chances of losing their jobs during economic downturns under the last in-first out approach to staff reduction, barriers to entry arising from lack of or inadequate work experience, and path dependence, which dictates that early unemployment increases the likelihood of subsequent unemployment.

Gender disaggregated data on unemployment presented in Table 2.4 shows relatively high unemployment rates for females than for males. This is true for all age groups.

Table 2.4: Unemployment Rates in Kenya by Age Group and Gender (Percent)

Age (years)	1998/99			2005/06		
	Total	Males	Females	Total	Males	Females
15 – 19	24.3	21.8	26.4	19	19.2	18.8
20 – 24	27.1	19	33.9	32.6	31.1	33.8
25 – 29	15.5	8.2	21.6	20.9	20.2	21.5
30 – 34	10.8	4.8	16.8	8.3	8.1	8.5
35 – 39	8.4	5	11.8	6.6	6.6	6.6
40 – 44	9.1	7.8	10.6	5	5.6	4.5
45 – 49	8.2	4.9	12.5	3.5	3.5	3.5
50 – 54	8.7	6.3	11.1	2.1	2.6	1.7
55 – 59	13.5	14.2	12.7	1.4	2	0.9
60 – 64	11.7	7.5	15.7	0.6	1.1	0.2
Total	14.6	9.8	19.3	12.7	11.2	14.3

Source of Data: GoK, *Statistical Abstract*, various

The data summarized in Table 2.4 shows that overall, the unemployment rates for women eased from 19.3 percent in 1998/99 to 14.3 percent in 2005/2006. However, the male unemployment increased by 1.4 percentage points from 9.8 percent in 1998/99 to 11.2 percent in 2005/2006. The UNDP (2010) citing an ILO Report of 2005 argued that female unemployment rates is underestimated in many countries, including Kenya. According to the ILO, the underestimation is attributed to:

- (i) women are disproportionately engaged in unpaid work in the home and other domestic services and hence not counted as unemployed
- (ii) women are more likely to be discouraged to actively search for a job
- (iii) official unemployment rates mask the reality that women are in the informal sector

CHAPTER THREE

TERMS AND CONDITIONS OF EMPLOYMENT OF DOMESTIC WORKERS

3.1 The Demographic Profiles of Respondents

This study covered domestic workers purposively sampled from Nairobi, Mombasa, Kisumu and Eldoret. A total of 400 domestic workers were targeted in the survey. However, only 377 were interviewed giving a response rate of 94.3 per cent. The 377 were drawn from Eldoret (104), Kisumu (101), Nairobi (92) and Mombasa (80) as illustrated in Figure 3.1.

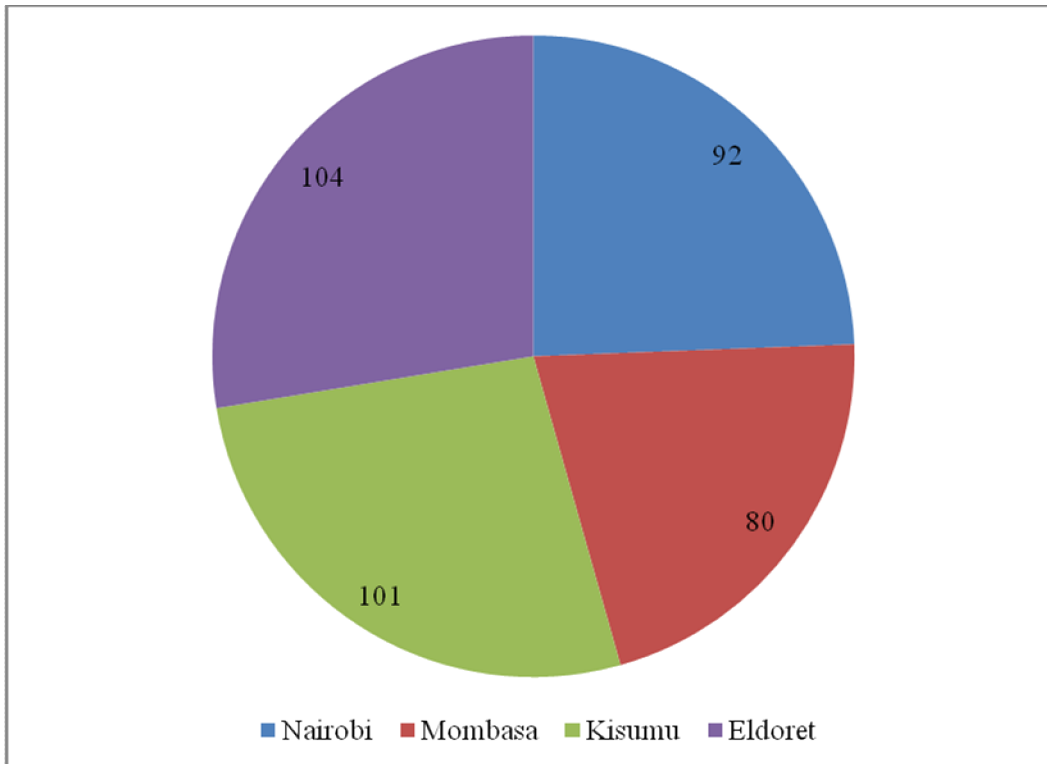


Figure 3.1: Study Respondents by Location

Of those interviewed 273 (72.4%) were females while the rest (27.6% or 104) were males. Figure 3.2 gives the distribution of the respondents according to marital status.

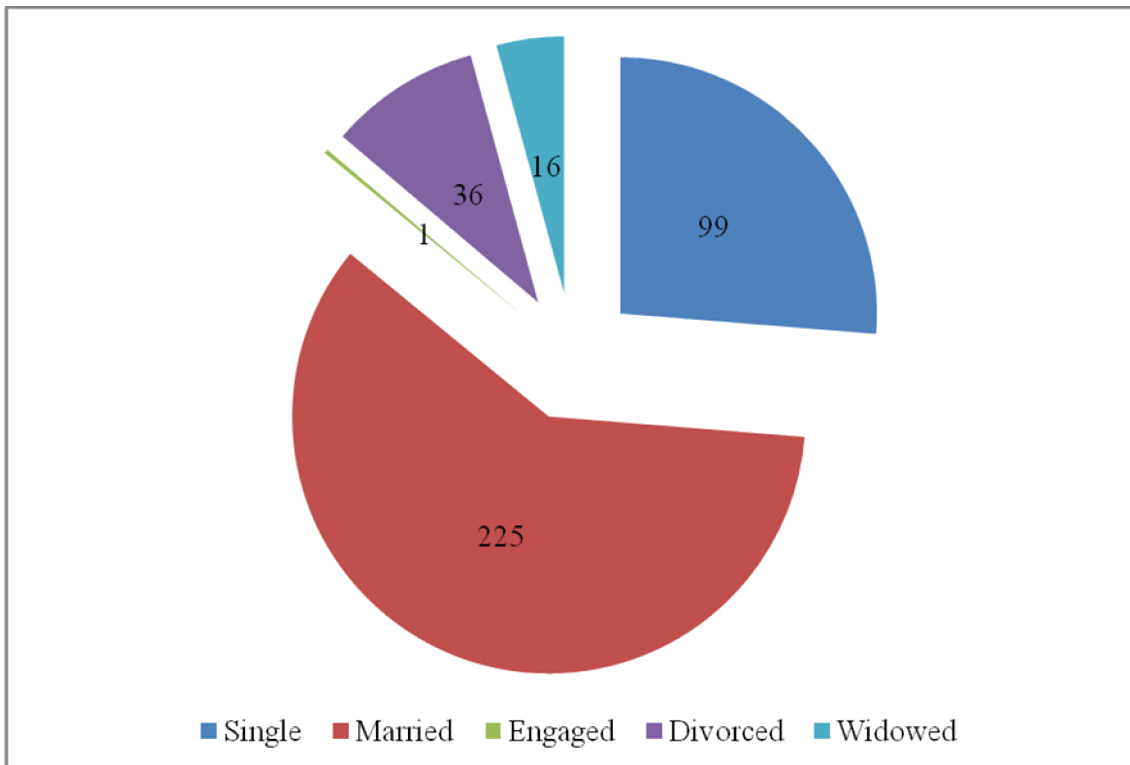


Figure 3.2: Marital Status of Respondents

Source: Survey Data (2011)

Figure 3.2 shows that majority (225 or 59.7%) of the respondents were married while slightly more than a quarter 26.3 per cent were single. According to the survey, 9.5 percent of the domestic workers interviewed were divorced, 4.2 percent widowed and 0.3 per cent engaged. It is clear from these trends that an overwhelming majority (73.7%) of the domestic workers interviewed were people who, in one way or another, have family responsibilities.

Figure 3.3 gives a schematic representation of the age profiles of the respondents.

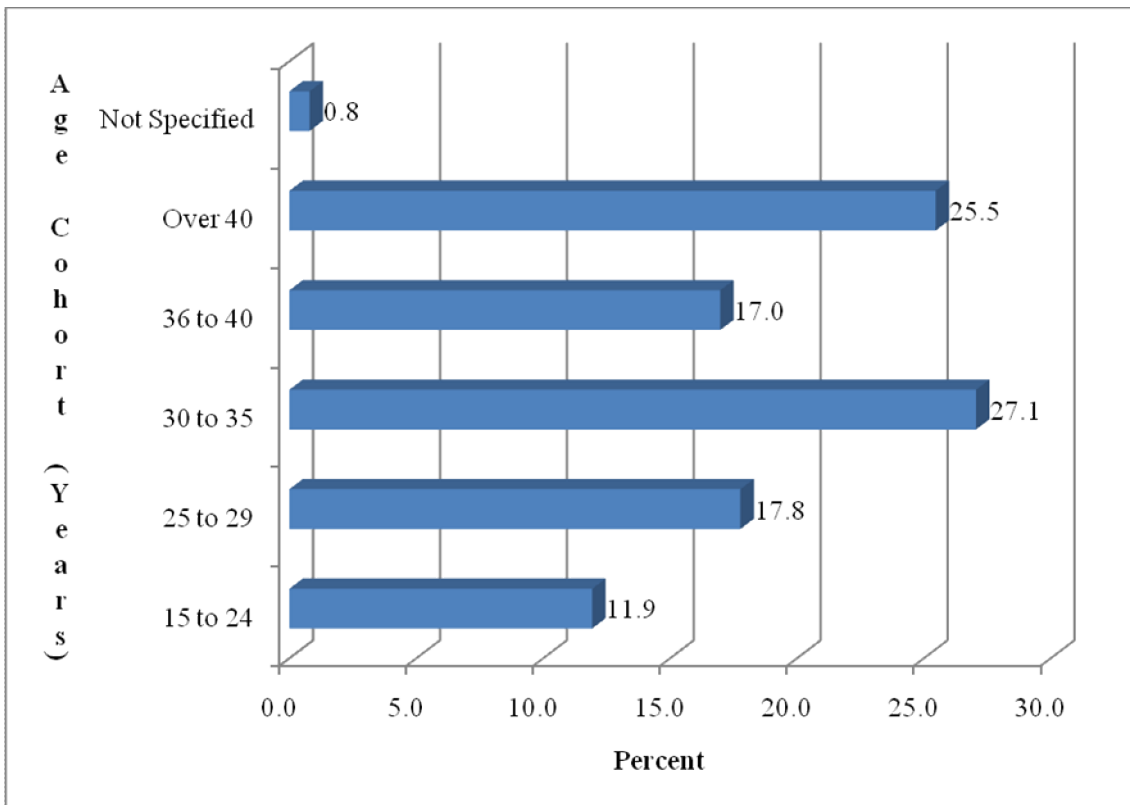


Figure 3.3 Age Profile of Respondents

Source: Survey Data (2011)

Figure 3.3 illustrates that the youth, age cohorts of 15-35 years, are the majority workers in the domestic services sector. As depicted in Figure 3.3, up to 56.1 per cent of the domestic workers interviewed were in the youthful category with those in the 30 to 35 age category being the majority.

It is important to emphasize that in Kenya and indeed many countries, domestic work is not considered as a choice job but rather as “a wait or desperation” job. This means that for young people, especially the new labour market entrants, they get into domestic services sector as a last resort and as they wait in anticipation for better opportunities elsewhere. For long-timers in the labour market, they venture into the domestic services sector after being frustrated by the long spells of unemployment with the need to provide for their families as a major push factor. In most cases, the orientation and aspiration of most people is to secure jobs in the formal sector.

The data presented in Figure 3.3 coupled with the foregoing analysis are in keeping with the employment challenges faced by Kenya’s youth. The youth constitute more than 67 per cent of the unemployed in Kenya (GoK, 2008a). However, youth unemployment is believed to cause grievances both in the labour market and within the social and political setups of a country, particularly if youth expectations are raised through expansion in education. Education not only increases the value of a person’s labour but also raises the person’s expectations of a relatively high income. This means that the educated youth experience a greater gap between expectations and actual income when they face unemployment.

3.2 Working Conditions and Labour Issues in the Domestic Services Sector

3.2.1 The Domestic Workers Convention, 2011

The ILO seeks to promote decent work for domestic workers (ILO, 2009; 2011). In this respect, the ILO in its 99th Session (2010) of the International Labour Conference discussed the question concerning decent work for domestic workers (ILO, 2011). The goal was to elaborate on the new instruments for these groups of employees. In keeping with article 39 of the Standing Orders of the Conference, the International Labour Office prepared a draft Convention and Recommendation. These drafts were shared with ILO member states and constituents for their inputs. Several member states and governments, including Kenya, gave their feedback (ILO, 2011). The same were considered and incorporated as appropriate. The revised draft Convention and Recommendations are due for discussion and consideration for adoption in the 100th Session of the Conference scheduled for June 2011.

The draft Convention on decent work for domestic workers recognizes the significant contribution of domestic workers to the global economy. It also acknowledges the undervalued and invisible nature of domestic work. The draft Convention emphasizes the vulnerable nature of domestic workers and their susceptibility to exploitation, discrimination, human rights abuses and other forms of unfair labour practices.

The Convention recognizes the existence of several ILO Conventions and Recommendations, which seek to promote and protect the interest and welfare of all workers. According to the draft Convention, there exists a number of international labour Conventions and Recommendations, which are of particular relevance to the domestic workers. These are:

- (i) The Migration for Employment Convention (Revised, 1949 (No. 97)
- (ii) The Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
- (iii) The Workers with Family Responsibilities Convention, 1981 (No. 156)
- (iv) The Private Employment Agencies Convention, 1997 (No. 181)
- (v) Employment Relationship Recommendation, 2006 (No. 198) and
- (vi) ILO Multilateral Framework on Labour Migration (2006)

The proposed Convention and Recommendations on Decent Work for Domestic Workers is meant to supplement the general ILO standards. It is aimed at facilitating the domestic workers to enjoy their rights fully, given the special conditions under which the workers operate.

3.2.2 Highlights of the Domestic Workers Convention, 2011

The Domestic Workers Convention, 2011 has a total of 19 articles and a set of accompanying recommendations. The articles focus on different areas that range from definition of “domestic work” and “domestic workers” to subtle areas such as “application” and specific terms and conditions of employment. The Recommendations are meant to supplement and reinforce the provisions of the Convention. What follows are the highlights of selected articles of the Convention.

Article 1: Defines domestic work as *work performed in or for a household or households*. In this context, a domestic worker is *any person engaged in domestic work within an employment relationship*. According to the Convention, *any person who performs domestic work only occasionally or sporadically and not as a means of*

earning a living is not a domestic worker. This article of the Convention contextualizes domestic worker in an employment relationship and situates the workplace of a domestic worker as a household(s). This emphasizes the confinement of domestic work and domestic workers to homes.

The rapid assessment of the domestic workers undertaken reveals consistency with this definition. According to the survey, all the domestic workers interviewed were found to be in an employment relationship, working within households and looking upon that engagement as a source of livelihoods. Of all those who were interviewed, 281 (74.5%) were employed as house helps, 39 (10.3%) were gardeners, 24 (6.4%) were watchmen while seven (1.9%) were serving as drivers. A further seven (1.9%) were multi-tasking in the aforementioned chores. A total of nineteen respondents did not provide responses on the area.

Article 3: This article requires each member of the ILO to:

1. *Take measures to ensure effective protection of the human rights of all domestic workers*
2. *Take, in relation to domestic workers, measures to respect, promote and realize, in good faith and in accordance with the ILO Constitution, the fundamental principles and rights at work, namely:*
 - i. *Freedom of association and the effective recognition of the right to collective bargaining;*
 - ii. *The elimination of all forms of forced or compulsory labour;*
 - iii. *The effective abolition of child labour; and*
 - iv. *The elimination of discrimination in respect of employment and occupation*

Freedom of association and the right to collective bargaining is a fundamental principle and rights at work. Article 36 of Kenya's Constitution guarantees the right to freedom of association. The same is emphasized in Article 41(2) on labour relations. This right is also provided for in Section 4 of the Labour Relations Act (2007).

According to the survey, up to 89.3 per cent of the domestic workers interviewed recognized the institution of trade unions as the best place to go to in the event of a violation of one's worker rights. At the same time, they identified absence of freedom of association as one of the key violations in their work places.

It is critical to mention that despite the legal provisions, key challenges still exist towards enjoyment of the fundamental principles and rights at work, particularly the freedom of association and the right to collective bargaining in the domestic sector in Kenya. Domestic workers in Kenya and indeed in many parts of the world are in atypical employment, more often in the confines of private homes. They are engaged by numerous, highly decentralized and independent employers. In most cases, the working relationship is non-formal with no written contracts and serious employee-employer power imbalances. At the same time, some domestic workers are either employed by their relatives or were assisted by their relatives to get the jobs. Results of the survey showed, for example, while a paltry four per cent of the domestic workers interviewed were related to their employers, about half (50.2%) got the jobs with the help of their relatives (Figure 3.4)

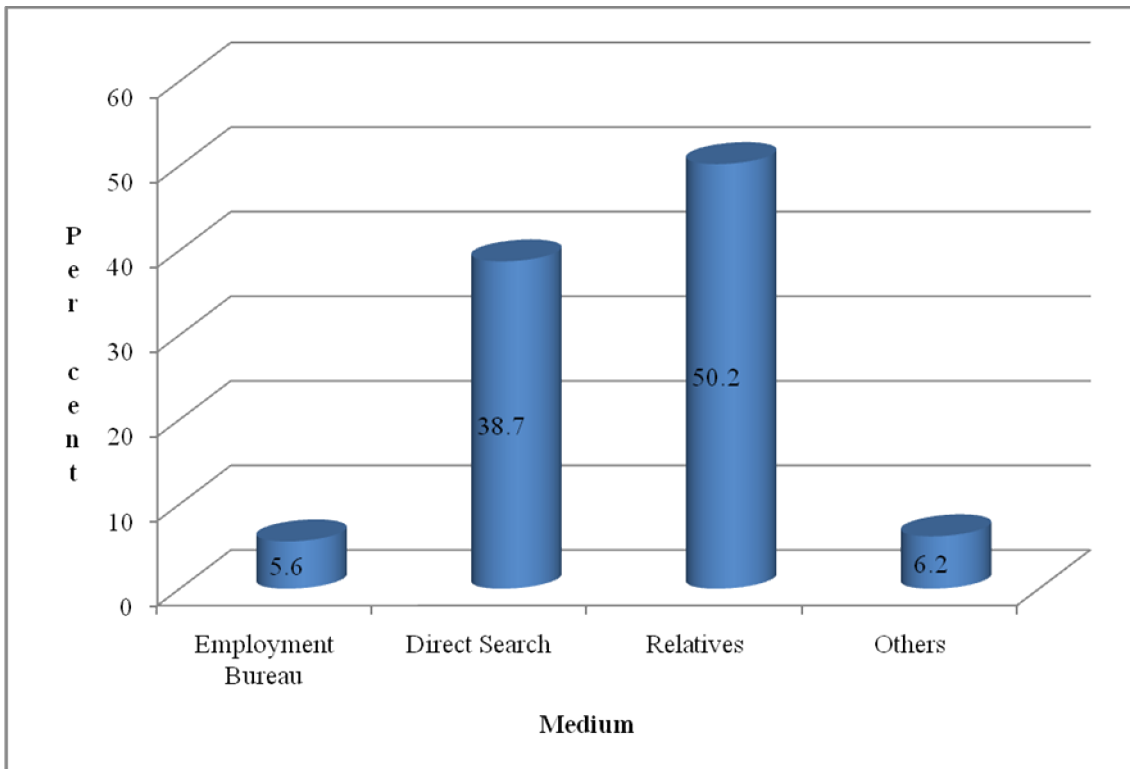


Figure 3.4: Medium of Employment

Source: Survey Data (2011)

The modes of employment search and access used by the domestic workers illustrated in Figure 3.4 has significant implications on the extent to which the workers can exercise free will. Unlike in other employment fields, domestic work is characterized by high levels of back and forth reference. In most cases, employers or potential employers of domestic workers always insist on any person seeking domestic work to have been referred to them by a person whom they know. In this case, the referee acts as a guarantor of the good conduct of the employee. Further, in the event of any misconduct, the referee is most likely to be the first person with whom the complaint will be lodged even before any action is taken. Thus the referee is, in the circumstance, used as a worker disciplining device. The foregoing greatly limits the ability of workers to exercise and/or demand for their rights. It also limits the interventions by trade unions to reach out to them, organize and recruit them into trade union membership. The challenge by trade unions is heightened by the weak internal and external capacities of the trade unions.

Article 6: This article of the Convention requires each member to *take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible through written contracts in accordance with the national laws and regulations in particular.* The accompanying Recommendation Clause 5(2) elaborates on this area. It requires that the terms and conditions of employment of domestic workers should include:

- (i) A job description
- (ii) Paid annual leave
- (iii) Daily and weekly rest
- (iv) Sick leave and any other personal leave
- (v) The rate of pay for overtime work
- (vi) Any other cash payments to which the domestic worker is entitled

- (vii) Any allowances in kind and their cash value
- (viii) Details of any accommodation provided
- (ix) Any authorized deductions from the workers' wages, and
- (x) Period of notice required for termination by either a domestic worker or the employer

The survey results showed that 74.5 percent of the domestic workers interviewed do not have job descriptions. At the same time, up to 92.2 per cent do not have any written contract with their employers. For those domestic workers with written contracts with their employers, only 10 per cent were made to understand the contract before signing. Consistent with this finding, only 11.8 per cent of the respondents get itemized pay statement from their employers. However, 38.1 per cent confirmed the existence of some framework of signing for their pay. Figure 3.5 illustrate these variants.

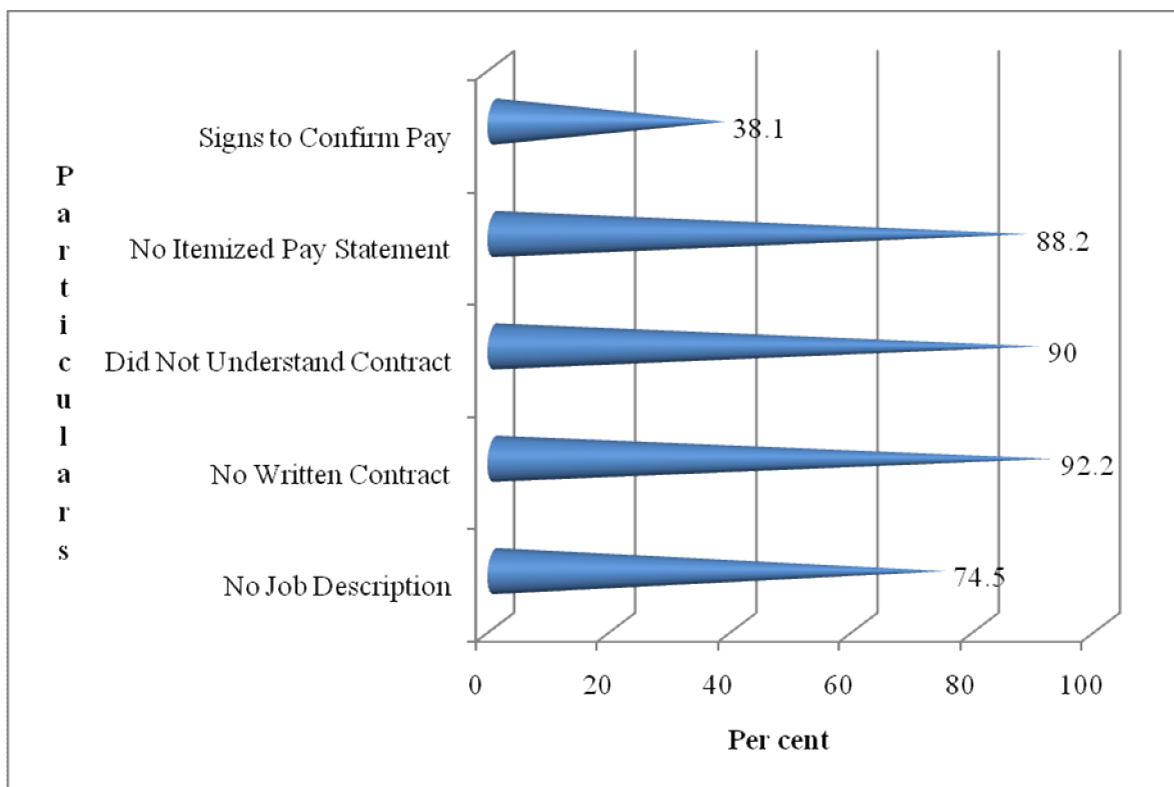


Figure 3.5: Employment Particulars

Source: Survey Data (2011)

Article 5: Each member shall take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions which respect their privacy

Article 11: Each member shall take measures to ensure that domestic workers enjoy minimum wage coverage, where such coverage exists, and that remuneration is established without discrimination.

Articles 5 and 11 as consistent with the other articles emphasize the need for domestic workers to enjoy fair terms and conditions of employment in keeping with decent work agenda. The welfare of workers is enshrined in the wages and other terms and conditions of employment.

Kenya practices a system of minimum wage fixing whose evolution dates back to 1932 (Husband, 1955). According to Husband (1955), the decision by the government to fix minimum wages was triggered by the absence of effective action by workers and/or their associations to improve the level of wages. In this regard, the government legislated the 1932 Minimum Wage Ordinance to accord workers the required protection. The Ordinance empowered the Governor-in-Council to make orders fixing minimum wages in any occupation or geographical area where they were considered to be unreasonably low. The 1932 Ordinance was followed by the Minimum Wage Ordinance of 1946. This provided for a Central Minimum Wage Advisory Board to recommend wage levels to the Governor-in-Council (Husband, 1955). In 1951, the Regulation of Wages and Conditions of Employment Act was legislated (GoK, 1989). This Act of Parliament provided for a wider range of advisory and negotiating bodies to fix minimum wages and other conditions of employment for workers. It provided for establishment of General Wages Advisory Board (GWAB), Agricultural Wages Advisory Board (AWAB), Area Agricultural Wage Committees (AAWC) and Wage Councils (WCs). In this respect, a total of fifteen sector-specific WCs, including that of Domestic Servants, were established under the Act (GoK, 1989). The councils were to fix minimum wages and statutory terms and conditions of employment in specific trades, industries or occupations as may be required.

Kenya enacted a revised set of labour laws in 2007 (GoK, 2008a). The review was necessitated by the outdated nature of the existing laws and attendant enforcement difficulties (GoK, 2008a). The review was also meant to make the Kenyan laws dynamic and responsive to the needs and aspirations of the labour market participants, the aspiration for regional integration, and the changing global economy. Consequently, as at the year 2011, minimum wage fixing is governed under the Labour Institutions Act (2007). Section 43 of the Act empowers the Minister in charge of labour matters to establish general, agricultural and sectoral wages councils. These councils are expected to advise the Minister on appropriate levels of minimum wages and other statutory terms and conditions of employment.

The general Wages Order, as was gazetted in May 2011, contains minimum wage levels for fifteen occupational categories, with different rates of pay for cities, municipalities and all other towns. This implies existence of forty five sets of minimum wages under this Wage Order. The agricultural order, on the other hand, contains minimum wages for eleven different occupations. This order provides for national statutory minimum rates of pay for all workers in the agricultural sector. However, the other WCs such as that of the Domestic Servants have largely been inactive (Omolo and Omiti, 2004). In this case, the workers in the trades, industries or occupations under the jurisdiction of the WCs in question are covered by the general wages order.

In 2010, the statutory monthly minimum wages applicable in the domestic services sector ranged between Ksh. 3,597 (US\$ 42.82)¹ payable to a domestic worker in “all other towns” to Ksh. 7,523 (US\$ 89.56) payable to a night watchman in the cities, namely Nairobi, Mombasa and Kisumu. However, on May 1, 2011 the Minister for Labour announced a 12.5 per cent increment in the statutory minimum wages. This effectively increased the minimum wages to Ksh. 4,046.60 (US\$ 48.17) being the lowest rate applicable in “all other towns” to Ksh. 8,463 (US\$ 100.75) payable to a night watchman in the cities. As from May 1, 2011 the minimum statutory rates of pay for the lowest category of a domestic worker in Nairobi, Mombasa and Kisumu is Ksh. 7,585.90 (US\$ 90.31); Ksh. 6,998.60 (US\$ 83.32) in all Municipalities; and Ksh.

¹ All the computations have been based on an exchange rate of US\$=Ksh. 84

4,046.60 (US\$ 48.17) in “all other towns”. Within the context of the General Wages (Amendment) Order, the lowest category of a domestic worker are the general labourers, including cleaner, sweeper, gardener, children’s ayah, house servant, day watchman and messenger.

The survey, however, revealed that the mean wage in the domestic services sector was Ksh. 4,522.60 (US\$ 53.84) with the median wage being Ksh. 4,000 (US\$ 47.62). The modal wage or the most frequently paid wage was Ksh. 3,000 (US\$ 35.71). It is clear that all the wage dispersion measures for the sampled workers were below the applicable statutory minimum wage rates for the respective areas. This shows the extent of underpayment netted on domestic workers and the violation of the statutory minimum wage laws. More importantly is that according to the survey data, one of the domestic workers in Eldoret is being paid a monthly wage as low as Ksh. 720 (US\$ 8.57). This is compared to the area’s statutory minimum wage rate of Ksh. 6,998.60 (US\$ 83.32).

Table 3.1 gives a summary of the statutory minimum wages for four key occupations in the domestic services sector and the actual wage range earned by the workers interviewed in the respective towns.

Table 3.1: Statutory Minimum Wages and Wage Range for Domestic Workers

Occupation	Towns/Actual Wage Rates (Range)			
	Cities (Nbi; Msa;Ksm)		Municipalities (Eldoret)	
	MW	Wage Range	MW	Wage Range
House help	7,586	1,500-10,000	6,999	720-10,000
Gardener	7,586	1,800-8,500	6,999	1,800-7,200
Watchman (Day)	7,586	1,800-17,000	6,999	1,800-10,000
Cook	8,193	1,500-10,000	7,269	720-10,000
Night Watchman	8,463	1,800-17,000	7,846	1,800-10,000
Driver	10,239	5,000-10,000	9,450	5,000-10,000

Source: Survey Data (2011)

The above scenario presents massive underpayment besides being an outright violation of Article 41 of the Constitution of Kenya, 2010. Kenya’s Constitution recognizes the rights of workers to fair labour practices (Article 41(1)), fair remuneration (Article 41(2a)), and reasonable working conditions (Article 41(2b)). Table 3.1 shows the changes in the estimated food and basic needs poverty lines in Kenya over the period 1997 and 2005/2006.

Table 3.1: Estimated Food and Basic Needs Poverty Lines (KSh): 1997- 2005/6

Year	Rural		Urban	
	Food	Basic needs	Food	Basic needs
1997	927.1	1238.8	1253.9	2648.0
2005/6	988.0	1562.2	1474.4	2912.8

The data presented in Table 3.1 that Kenya’s rural food poverty line increased from Ksh. 927.1 in 1997 to Ksh. 988 in 2005/06. This is compared to a basic need poverty line of Ksh. 1,562.2 in 2005/06 up from Ksh. 1,238.8 in 1997. For urban areas, the food and basic need poverty lines were Ksh. 1,474.4 and Ksh. 2,912.8, respectively in 2005/06.

Minimum wages, inclusive of other statutory basic terms and conditions of employment have to be enforced if they are to be effective as economic and social policy tools. One of the challenges faced in Kenya is effective enforcement of the regulations. This is compounded by the high levels of unemployment, weak and poorly capacitated labour inspectorate services, low levels of awareness, low incomes and the culture of impunity. These aspects are illustrated in the extracts of an employment letter issued to a domestic worker, in Kisumu, under oath and duly signed by the prospective employee, employer and advocate! Identities of the parties involved have been withheld for purposes of confidentiality.

<i>Letter Head of Employer</i>	
<i>Name of Employee</i>	<i>5th May, 2011</i>
<i>Identification Card Number</i>	
<i>Dear Madam,</i>	
<i>RE: CONTRACT OF EMPLOYMENT AS A DOMESTIC WORKER</i>	
<i>I am pleased to inform you that I have offered you employment as a domestic worker with effect from 5th May, 2011 under the following terms and conditions of service:</i>	
<ul style="list-style-type: none"><i>a) Your salary will be Kshs. 3,900 (Three Thousand Nine Hundred Shillings) per month</i><i>b) You will be entitled to one day's off duty in every seven days worked, each week preferably on a Sunday</i><i>c) You will be entitled to Twenty One (21) days of annual leave, every 365 days worked or every one year worked</i><i>d) You will be entitled to 30 days notice or one month's salary in lieu of notice in case your services will no longer be needed or required by me, and vice versa</i><i>e) You will be required to report at my house for work at exactly 8.00 am every morning and leave the house at 5.00 pm every day of work</i><i>f) You will be entitled to one free lunch, breakfast and evening tea every day of work and you will also be expected to wear work clothes or dress while at work and therefore, two (2) pairs of work dresses will be provided to you, free of charge at my own expense</i><i>g) You will also be expected to be obedient and polite to my wife, who will also be your immediate supervisor, and to other members of my house at all times</i><i>h) You are further notified that this work contract will only be valid for only one (1) year from 5th May, 2011 and it will be subject to renewal by mutual agreement</i>	
<i>Please note that should you find the above terms and conditions of work acceptable to you, you are hereby required to sign at the bottom hereof, as a sign of your acceptance thereof.</i>	
<i>Yours faithfully,</i>	
<i>Signed</i>	
<i>Employer</i>	
<i>Identification Card Number</i>	
<i>I accept the above terms/conditions as stated herein above</i>	
<i>Name of Employee/ID No/Signature/Date</i>	
<i>Signed before me at Kisumu the 5th day of May 2011</i>	
<i>COMMISSIONER FOR OATHS (Official Stamp and Signature of Advocate)</i>	

As discussed under Figure 3.5, the above are one of the few employers (7.8%) who issue domestic workers with letters of contract. As to whether the domestic worker in question understood the contents of the contract before signing is to be verified. As shown in the extract, the above employer is also one of the few who attempts to accord domestic workers the basic statutory terms and conditions of employment as provided for in the Employment Act (2007). However, a key outstanding issue is that the monthly wage of Ksh. 3,900 (US\$ 46.43) offered is 48.59 per cent below the statutory monthly minimum wage rate of 7,585.90 (US\$ 90.31) applicable in Kisumu and other cities. At the same time, the contract does not talk of the housing entitlement of 15 per cent of the basic wage as provided for in the General Wages (Amendment) Order. Other issues such as medical, maternity, sick leave, rate of pay for overtime, social security membership and contributions are all not stated. Despite these shortcomings, the letter of contract was duly signed by the employer and the employee before an advocate. It is not conceivable that both the employer and the advocate are ignorant of the law but blatant act of violation and impunity.

Article 14: Each member shall take appropriate measures, with due regard to the specific characteristics of the domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including respect to maternity.

Social security is one of the pillars of decent work agenda. It is an integral part of national development and a fundamental requirement for improved productivity and industrial competitiveness. Kenya operates numerous and un-integrated social security protection interventions, broadly categorized into state social safety nets, and community and family safety nets. The coverage and magnitudes of these interventions are limited to formal sector employees, thereby exposing the growing majority of informal sector workers and entrepreneurs, unpaid family workers, domestic workers and the unemployed to great levels of vulnerability and destitution.

The key social security institutions in Kenya are the National Social Security Fund (NSSF), which provides for social protection at old age and in the event of death and/or incapacitation. The country also has a National Hospital Insurance Fund (NHIF), which takes care of the medical needs of the society. There are also a host of occupational retirement benefit and medical schemes.

Figure 3.6 illustrates the state of NSSF coverage amongst the study respondents.

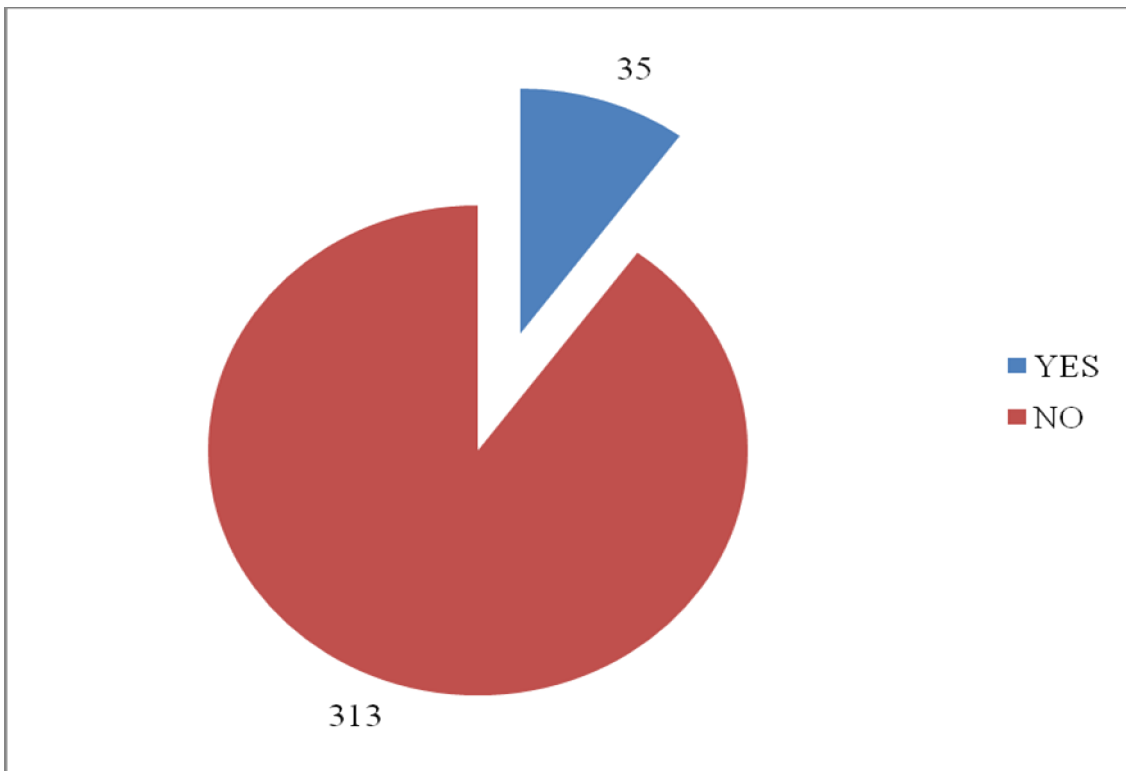


Figure 3.6: Membership with NSSF

Source: Survey Data (2011)

Figure 3.6 shows that only a paltry 35 (10.1%) of the domestic workers interviewed are registered with the NSSF. Majority (54.3%) of those registered are house helps. The category of the domestic workers with the lowest level of coverage are the drivers (5.7%). According to the survey data, Eldoret has the highest relative proportion of domestic workers not registered with the NSSF (30%). This is followed by Kisumu (26.5%), Nairobi (22.9%) and Mombasa (21.6%).

As for the NHIF, the survey data shows that only 20 (5.9%) of the 338 domestic who responded to this question are members of the scheme as illustrated in Figure 3.7.

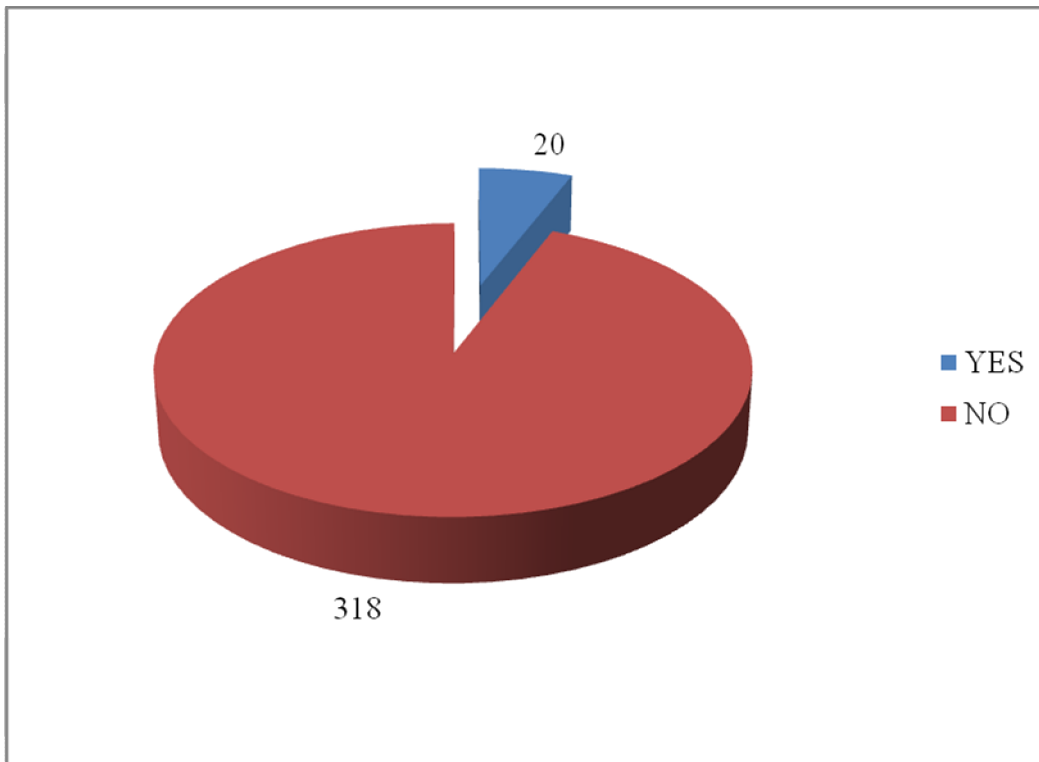


Figure 3.7: Membership with NHIF

Source: Survey Data (2011)

Consistent with the membership in the NSSF, the category of domestic workers with the highest proportional membership in the NHIF are house helps, watchmen, gardeners and drivers in that order. Similar to the findings under NSSF, Eldoret has the highest relative proportion of domestic workers not registered with the NHIF at 29.8% followed by Kisumu (27.1%), Mombasa (22%) and Nairobi (21.7%).

Both the NSSF and NHIF are statutory social security schemes. As much as the domestic services sector is invisible and informal in nature, it is gratifying that at least some workers in the sector are covered under the schemes. However, the low level of coverage amongst the domestic sector manifests a high level of risk, vulnerability and destitution that the workers are exposed to. At the same time, it implies the weak enforcement of the regulation. It is also important to clarify that both schemes have provisions for voluntary membership. It is evident that this window of opportunity is also not being exploited by the workers. This may be attributed to low levels of earnings and awareness by the workers and their employers.

Article 16: Each member shall establish effective means of ensuring compliance with national laws and regulations for the protection of domestic workers.

Just like any other policy or statute, national laws and regulations must be effectively implemented and enforced if they are to achieve the intended objectives. The rate and ease with which decent work for domestic workers will be achieved depend on the effectiveness of the country's enforcement mechanism. In Kenya, enforcement of national laws and regulations for the protection of workers, including domestic workers rests with the Ministry of Labour (MoL). This responsibility is particularly bestowed on the Department of Labour (DoL), which has a complement of labour officers, labour inspectors and industrial relations personnel to undertake surveillance and continuous monitoring activities. Under this framework, workers and their unions play the role of

watchdogs. The implication is that effective enforcement of the national laws and regulations, inclusive of the Convention highly depends on the policy, legal and institutional capacity of the MoL, DoL and trade unions. It also depends on the sensitivity of the workers themselves and their capacity to identify and report violations as appropriate. Compliance with the national laws and regulations also depends on the will by employers to undertake self regulation and the will be government to penalize violators.

Labour inspection is anchored on provisions of Labour Inspection Convention No 81 of 1947, and the Labour Administration Convention No. 150 of 1978. The Conventions give the purpose of labour inspection as ensuring compliance with legislation, minimum standards and terms of any collective agreements that contain relevant standards. According to the instruments, labour inspection is also meant to guarantee that the greatest possible number of problems relating to the protection of workers is resolved at the workplace. Kenya is a member of the ILO and a signatory to the Labour Inspection Convention. Within this context, the country has to observe the provisions of the Convention and guarantee fundamental principles and rights at work. In this respect, Kenya's Presidential Circular No. 1 of 2008 gives MoL the mandate for enforcement of minimum wage legislation, among other inspectorate services. This mandate is executed by DoL.

In this study, effectiveness of labour inspectorate services was assessed in terms of the labour inspectorate staff-employment ratio. The ILO, in its Report of 2006, developed a benchmark that provides an optimal ratio of the number of workers per labour inspector. The benchmark depends on the state of the economy. The ILO (2006) benchmark is one labour inspector per 10,000 workers in the case of industrialized and market economies, one inspector per 20,000 workers in transition economies, and one inspector per 40,000 workers in developing economies such as Kenya. Table 3.2 gives the trends of labour inspectorate staff-employment ratio for Kenya for the period 1996-2010.

Table 3.2: Labour Inspectorate Staff-Employment Ratio for Kenya

Year	Total Employment (Millions)	Inspectorate Staff (Nos.)	Inspectorate Staff/Employment Ratio	Variance
1996	4.314	116	37,284	- 2,716
1997	4.707	114	41,214	1,214
1998	5.100	112	45,506	5,506
1999	5.493	114	48,181	8,181
2000	5.912	115	51,755	11,755
2001	6.367	116	55,257	15,257
2002	6.852	116	59,197	19,197
2003	7.330	115	63,702	23,702
2004	7.999	117	68,363	28,363
2005	8.505	112	75,938	35,938
2006	8.993	107	84,050	44,050
2007	9.479	104	91,143	51,143
2008	9.946	93	106,948	66,948
2009	10.439	96	108,735	68,735
2010	10.958	90	121,752	81,752

Source of Data: Republic of Kenya. *Economic Survey* (various), MoL and own computation

The data presented in Table 3.2 shows that while total employment in the economy has been growing, the number of labour inspectorate staff has exhibited a declining trend for most of the years. Consequently, the labour inspectorate staff-employment ratio has declined from a vantage point of one labour inspector per 37,284 employees in 1996 to a worsening position of an inspector for every 121,752 employees in 2010. This ratio is projected to be worse in 2011. While there has been no employment of the inspectorate staff, some officers have been lost particularly through death and retirement. At the same time, the level of employment in the economy has increased.

It is clear from Table 3.2 that as of 2010, Kenyan labour inspectorate staff were overburdened by up to 204 percent by international standards. This is manifested in the increasing gap between the country's labour inspectorate staff-employment ratio and the international benchmark. The high labour inspectorate staff-employment ratio shows that the workload of a typical labour inspectorate staff has increased over time. This is particularly so since employment growth has not been matched with similar growth in employment of the labour inspectorate staff and/or their capacitation. In addition, the labour market reforms have been slow implying that no much service pressure has been eased off from the labour inspectorate staff. Furthermore, budgetary allocations towards operations and maintenance have been dwindling with significant effects on provision of requisite tools and equipment necessary for service delivery at DoL. This state of affairs makes the labour inspectorate staff to focus on worker-oriented inspections as opposed to programmatic inspections, which are known to be effective.

CHAPTER FOUR

SUMMARY AND RECOMMENDATIONS

4.1 Summary

This was a quick assessment of the domestic workers sector in Kenya. The specific objectives of the study were to highlight the provisions of the ILO draft Convention on Domestic Workers; profile the working conditions and labour issues in the domestic sector in Kenya; and suggest appropriate interventions to address the identified gaps. The study relied on primary data collected from 377 domestic workers randomly selected from Kisumu, Eldoret, Nairobi and Mombasa. The said data was complemented by secondary data extracted from government publications.

The domestic services sector is a key contributor of jobs in Kenya. In 2009, for example, the sector contributed 5.2 per cent of the wage employment as compared to 4.8 per cent for finance, insurance, real estates and business services; 0.98 per cent for electricity and water; and 0.33 per cent for mining and quarrying.

The survey results showed that majority (73.7%) of the domestic workers interviewed were married, divorced or widowed. This is consistent with the observations in the Convention that domestic workers are people with family responsibilities. According to the study, majority (56.1%) of the domestic workers were in the youthful category of 15-35 with those in the 30-35 years age cohort being the largest. From the results of the survey, the ILO Convention's definition of a domestic worker as any person engaged in domestic work within an employment relationship is consistent with practice in Kenya. The workers were found to be in atypical employment 74.5 per cent of those interviewed having no job descriptions, 92.2 per cent have no written contracts and 88.2 per cent have no itemized pay statements. The popular job search methods amongst domestic workers are through relatives, direct search and employment bureau.

Kenya has a framework and mechanism for fixing minimum wages and other statutory terms and conditions of employment. In 2010, the statutory monthly minimum wages applicable in the domestic services sector ranged between Ksh. 3,597 (US\$ 42.82) payable to a domestic worker in "all other towns" to Ksh. 7,523 (US\$ 89.56) payable to a night watchman in the cities, namely Nairobi, Mombasa and Kisumu. However, on May 1, 2011 the Minister for Labour announced a 12.5 per cent increment in the statutory minimum wages. This effectively increased the minimum wages to Ksh. 4,046.60 (US\$ 48.17) being the lowest rate applicable in "all other towns" to Ksh. 8,463 (US\$ 100.75) payable to a night watchman in the cities. As from May 1, 2011 the minimum statutory rates of pay for the lowest category of a domestic worker in Nairobi, Mombasa and Kisumu is Ksh. 7,585.90 (US\$ 90.31); Ksh. 6,998.60 (US\$ 83.32) in all Municipalities; and Ksh. 4,046.60 (US\$ 48.17) in "all other towns". Within the context of the General Wages (Amendment) Order, the lowest category of a domestic worker are the general labourers, including cleaner, sweeper, gardener, children's ayah, house servant, day watchman and messenger. The survey, however, revealed that the mean wage in the domestic services sector was Ksh. 4,522.60 (US\$ 53.84), the median wage was Ksh. 4,000 (US\$ 47.62) while the modal wage stood at Ksh. 3,000 (US\$ 35.71). All these wage dispersion measures were below the applicable statutory minimum wage rates for the respective areas.

Kenya has a social security protection system that encompasses the NSSF, NHIF and occupational retirement benefit and medical schemes, which are mainly in the formal

sector. As much as the domestic services sector is invisible and informal, a few domestic workers (average of 8%) interviewed are already under the NSSF and NHIF schemes.

National laws and regulations for the protection of domestic workers must be enforced to ensure compliance and resultant benefits to the targeted. In Kenya, enforcement of ILO Conventions, Recommendations and Standards, and national laws and regulations is bestowed with the MoL, particularly the DoL. This activity is grounded on the provisions of the Labour Inspectorate Convention No. 81 of 1947 and the Labour Administration Convention No. 150 of 1978. Though in existence, Kenya's labour inspectorate services is weak, poorly resourced and overburdened. The country's labour inspectorate staff-employment, for example, was 1: 121,752 in 2010 as compared to the ILO benchmark of 1: 40,000. This ratio is expected to have worsened in 2011 given the staff attrition and increase in the level of employment in the economy.

Promotion of decent work for domestic workers in Kenya is faced with some key challenges, albeit surmountable. These include high levels of poverty/low incomes, which make it difficult for domestic workers to be paid the minimum wages and terms, high levels of unemployment, low social security protection and desperation in job search. Others are decentralized nature of workplaces for domestic workers, increased informalization of the sector, weak labour inspectorate services, lack of a clear training strategy for domestic workers, low levels of awareness on the part of the labour market players and negative attitude by some employers and the general public on domestic work/workers.

Overall, the ILO Convention on Decent Work for Domestic Workers and the accompanying Recommendations presents a raft of measures, which when adopted and effectively implemented by member states would highly improve the living conditions of domestic workers. The measures contained in the regulations are consistent with the provisions that already exist in the Kenyan Constitution and the minimum terms and conditions of employment contained in the country's labour laws. The recently repealed Regulation of Wages and Conditions of Employment Act (Cap. 229) Laws of Kenya provided for Domestic Servants Wages Council. It is expected that a similar and more capacitated wage council for domestic workers would be established under the country's new labour law dispensation. Thus, the coming into effect of the ILO Convention on Decent Work for Domestic Workers would add to the impetus that is already in place towards protection of domestic workers.

4.2 Recommendations

To improve the plight of domestic workers in Kenya and move towards attaining the decent work status in the sector, the following is critical:

- (i) The need to have a strong Convention supported and/or supplemented by a Recommendation. This would greatly complement the country's labour laws and provide the required impetus
- (ii) Government and trade unions should jointly lobby employers to support the Domestic Workers' Convention
- (iii) There is need for employers and the general public to change their attitudes towards domestic work and its workers
- (iv) Awareness creation, sensitization programmes and campaigns should be staged and promoted to help educate the domestic workers and employers on the rights and obligations of each party

- (v) Need to have a clear training strategy and programme for domestic workers. This would help professionalize the sector, make it a sector of choice and give it the required profile
- (vi) Need to establish and strengthen the Domestic Workers Wages Council as provided for under the Labour Institutions Act (2007). This would facilitate fixing of minimum wages and conditions of employment for domestic workers, and provide required benchmarks for their effective enforcement
- (vii) The government, in collaboration with development partners and other labour market support institutions should strengthen and improve the labour inspectorate services. This would greatly enhance surveillance and enforcement of the laws, regulations, Conventions and Recommendations
- (viii) In the end, a clear and comprehensive implementation strategy needs to be developed and implemented to facilitate smooth operation and enforcement of the Convention once ratified

REFERENCES

- Coenjaerts, C.E., Ernst, C., Firtuny, M., and Rei, D. (2009). "Youth Employment", *Youth Employment Network*, OECD.
- Government of Kenya (1989). *The Regulation of Wages and Conditions of Employment Act (Chapter 229), Laws of Kenya*. Nairobi: Government Printer.
- Government of Kenya (2005). Wage Guidelines, Nairobi: Ministry of Finance
- Government of Kenya (2007). *Vision 2030 Strategy for National Transformation: Accelerating Equitable Economic and Social Development for a Prosperous Kenya*, Ministry of State for Planning, National Development, Nairobi.
- Government of Kenya (2008a). *Sector Plan for Labour, Youth and Human Resource Development, 2008-2012*, Ministry of Labour, Nairobi
- Government of Kenya (2008b). *Statistical Abstract*, Nairobi: Government Printer
- Government of Kenya (2010). *Economic Survey*. Nairobi: Government Printer.
- Husband, J.I (1955). " Wage Fixing and the Role of Workers' and Employers' Unions in Collective Bargaining in Kenya", *The East African Economics Review*, Vol.2 No.1, pp. 18-23.
- International Labour Organization (2006). Report of the Committee on Employment and Social Policy. GB.297/14(Rev.), 297th Session, Geneva.
- International Labour Organization (2009). Decent Work for Domestic Workers. Report IV(1), 99th Session 2010, Geneva.
- International Labour Organization (2011). Decent Work for Domestic Workers. Report IV(2B), 100th Session 2011, Geneva.
- Omolo, O.J and Omiti, J (2004). *Is Minimum Wage Policy Effective in Kenya?*, IPAR Discussion Paper Series, No. 54/2004. Nairobi: Institute of Policy Analysis and Research.
- Omolo, O.J. (2010). *The Dynamics and Trends of Employment in Kenya*, IEA Research Paper Series, No. 1/2010, Nairobi: Institute of Economic Affairs.
- United Nations Development Programme (2010). *Kenya National Human Development Report 2009: Youth and Human Development-Tapping the Untapped Resource*, Kenya