

**Strathmore University**

*Centre for Intellectual Property and  
Information Technology Law*

# **AI and the African Gig Economy: Assessing the Applicability of Employment Laws for Data Annotators and Platform Workers**





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**Prepared by;**

**The Centre for Intellectual Property and Information Technology Law (CIPIT)**

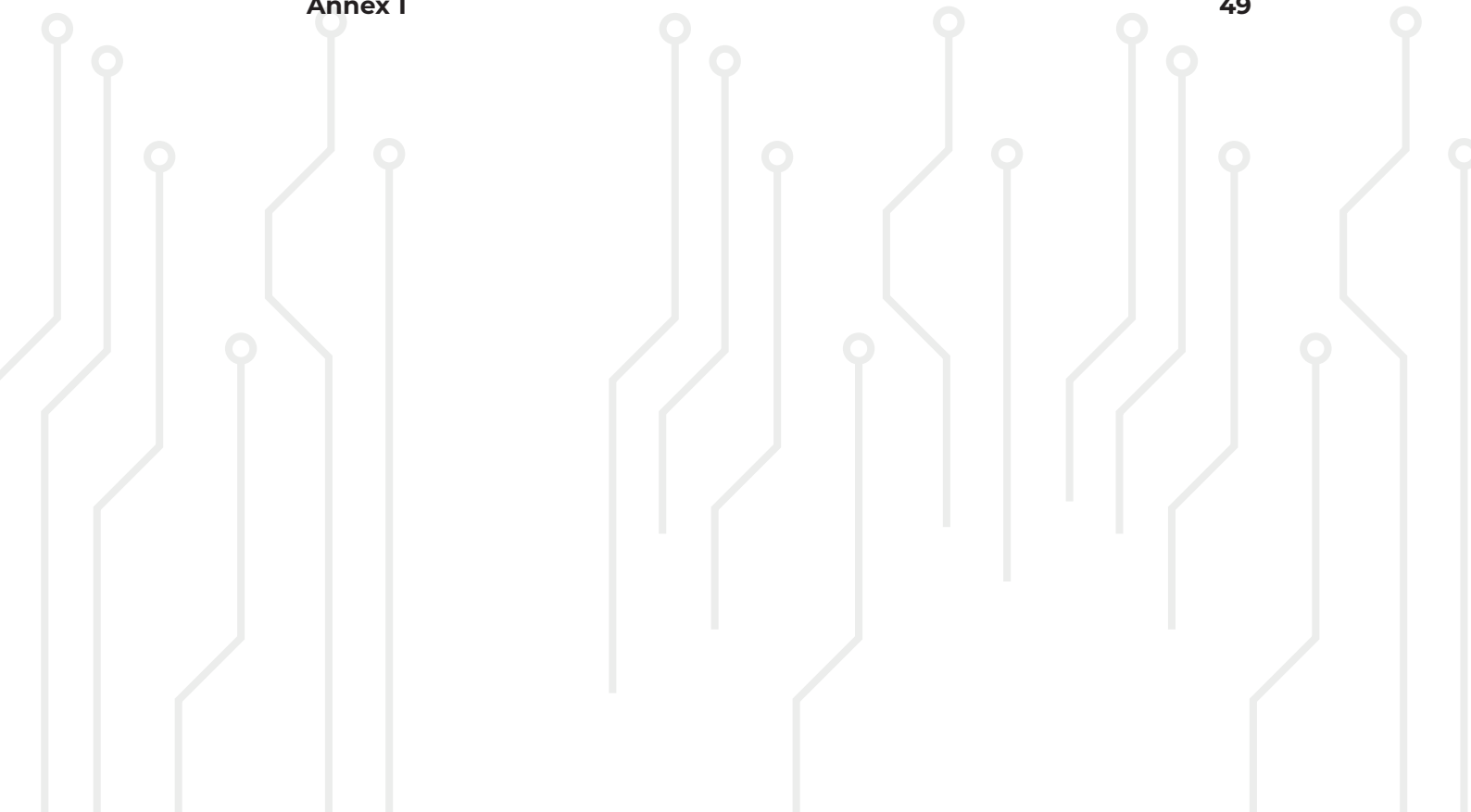
# Acknowledgment

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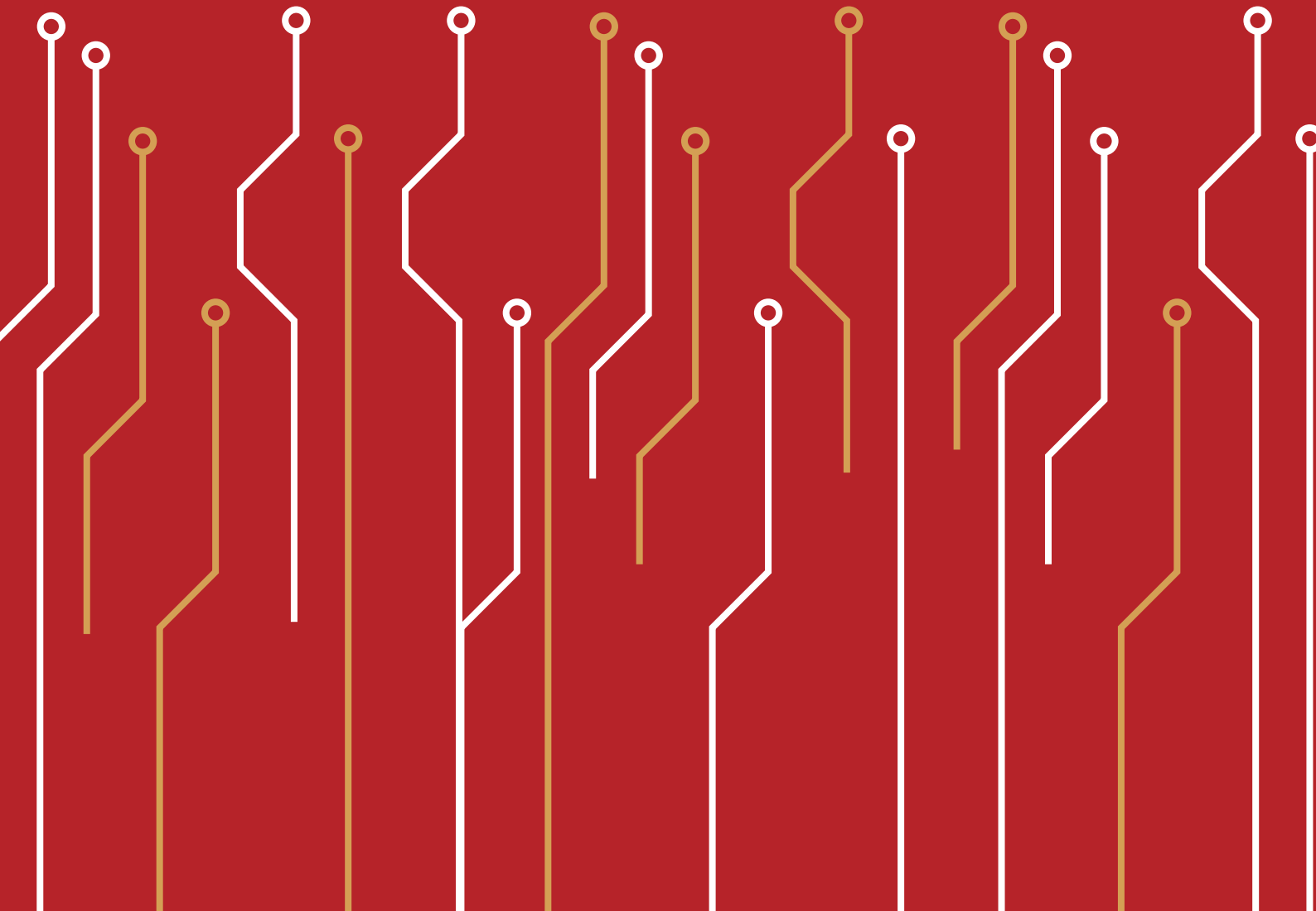


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# 1.0 Introduction



The gig economy in Africa is experiencing rapid expansion, characterised by advances in AI and emerging technologies and an increasing demand for flexible work arrangements.<sup>1</sup> This has further been propelled by internet penetration, internet access, smartphone adoption and digital platforms, informing new opportunities for income generation.<sup>2</sup> Within the context of the AI Value chain, data annotation is a critical component of AI development and has emerged as a significant area of focus in this economy. Despite their pivotal role, these workers frequently operate under precarious conditions, characterised by job insecurity, limited protections, and an invisibility in accountability frameworks that overlook their ongoing contributions.<sup>3</sup> Regulatory protections deriving from employment laws, for gig workers in Africa, remain nascent or non-existent, raising concerns about the working conditions of gig workers engaged in data annotation.<sup>4</sup> This research project aims to assess the applicability of existing employment laws as a regulatory framework for data annotation workers within the gig economy in Africa, with primary focus on Kenya, and highlights from Nigeria, noting similarities and differences. Notably, neither country represents the entire continent; however, they speak to similarities in advancing protections for gig

workers within the African ecosystem. By analysing the applicability of regulatory frameworks at a continental level and nationally in Kenya and Nigeria and providing context through the exploration of jurisdictions with advanced laws, such as the European Union, the research will identify gaps in existing legislation and inform the development of appropriate policy recommendations. This research report provides a comprehensive assessment checklist to guide contractual relations and develop an ethical framework for evaluating the fairness and adequacy of current regulations. Furthermore, it has the potential to significantly impact policy and practice by providing evidence-based recommendations for enhancing the working conditions and rights of data annotators in the gig economy.

This research study relies on qualitative data derived from public reports, legal documents, and case narratives. This is leveraged to present a critical legal and comparative analysis assessing the applicability of existing employment laws and their application in providing protections for gig workers within the African ecosystem. The focus of work in the gig economy is related to data annotators, content moderators, and platform workers. Primary emphasis is placed on the legal and practical realities of Kenya, with additional insights from Nigeria providing context for work in the African gig economy. This effort aims to identify legislative gaps and inform

1 The Brookings Institution, 'Africa's Growing Gig Economy: What Is Needed for Success' (2025) 4-5 <<https://www.brookings.edu/articles/africas-growing-gig-economy-what-is-needed-for-success/>> accessed 30 July 2025

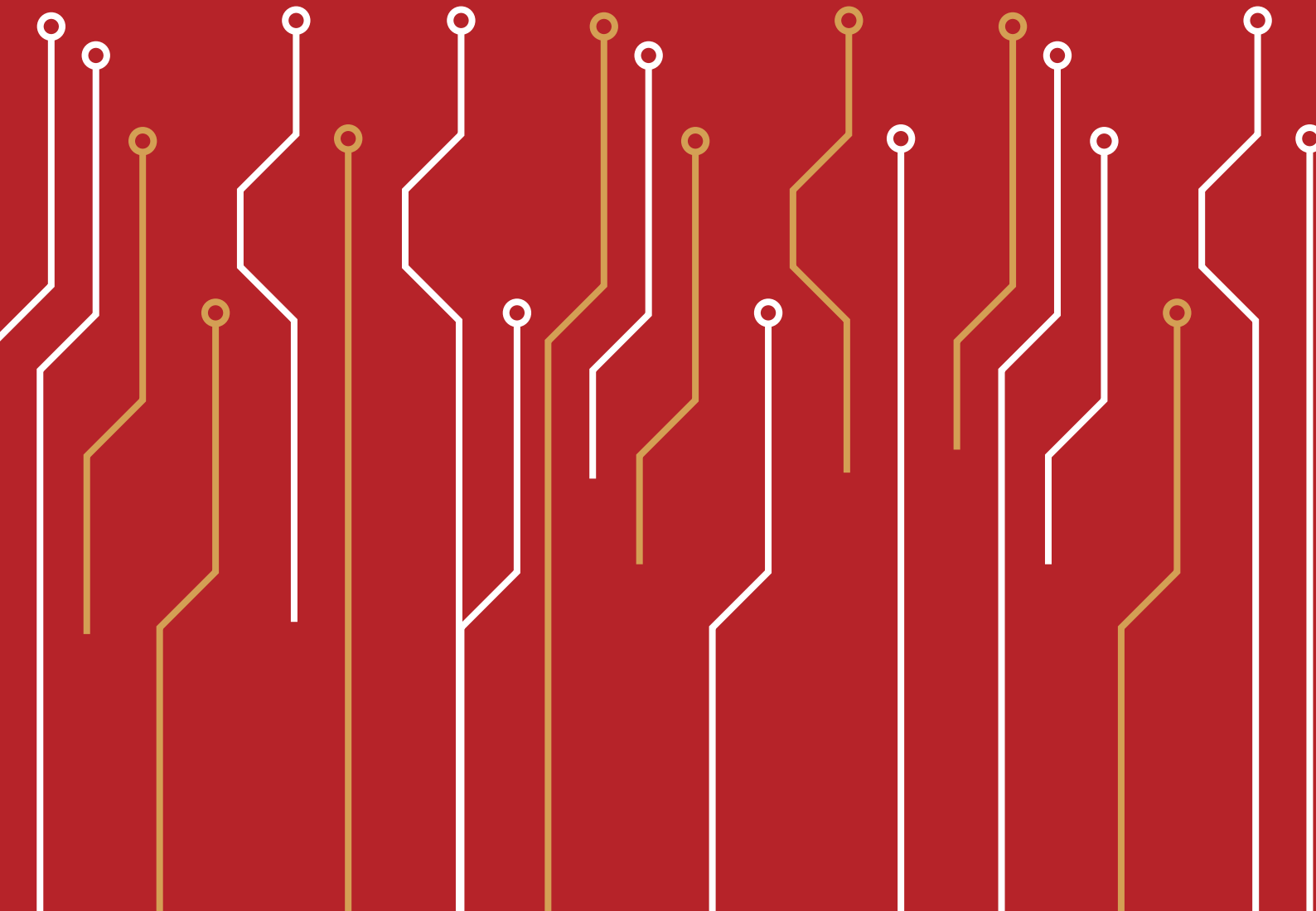
2 *ibid*

3 Rodrigo José-Gomes and Maura Vello, 'The Precariousness of Platform Work: An Integrative Review of the Gig Economy (2020-2024)' <[10.13140/RG.2.2.26682.25285](https://doi.org/10.13140/RG.2.2.26682.25285)> accessed 30 July 2025

4 *ibid*

the development of policy. An analysis of the European Union (EU) regulatory frameworks addresses established regulations that can offer solutions to the identified gaps in relation to algorithmic transparency, worker classification, and mandated social protection.

## 2.0 Understanding the Gig Economy- Global and National Perspectives



The global gig economy has transformed labour markets worldwide with digital platforms connecting freelancers to clients for short-term and flexible work.<sup>5</sup> AI relies on a complex supply chain beyond physical resources such as labour and infrastructure, but also critical inputs such as data annotation, which ensures AI functionality.<sup>6</sup> Data annotation involves humans in the loop who label data and take part in content moderation, an aspect that determines an AI system's reliability and outcomes.<sup>7</sup> These workers are often from developing nations, which face economic disparities compared to platform owners located in advanced economies like the European Union (EU).<sup>8</sup> In 2024, the gig economy was valued at \$ 556.7 billion and was projected to triple by 2030 due to technological innovation and economic uncertainty.<sup>9</sup> This sector encompasses the critical field of data annotation, which serves as the backbone of AI development. The digital gig workforce in Kenya grew from approximately 638,400 workers in 2019 to over 2.4 million in 2023, with 60% being the youth and nearly half being women, connecting them to global markets while exposing them to several risks.<sup>10</sup> Kenya remains a powerhouse

of the gig economy and has recorded a 216% growth in online freelancers over the past five years, surpassing Nigeria and South Africa.<sup>11</sup> Due to the high unemployment rate of around 26.4% among the youth, many young people are pushed to have gig work as their sole source of income, making it a key segment to Kenya's economy.<sup>12</sup> Workers are employed by global firms such as Scale AI, Remotasks, Sama and Appen.<sup>13</sup>

These platforms capitalise on digital skills and labour characterised by power asymmetries. The workers face low wages below Kenya's minimum wage, poor working conditions, lack of social protection and often have no formal contracts, raising an ethical concern in AI governance frameworks in Africa.<sup>14</sup> This power imbalance is further amplified by algorithmic management systems, which control the performance evaluation, task allocation, and remuneration without the worker's input or transparency.<sup>15</sup>

The existing employment and labour laws in Kenya are designed for traditional employment relationships and do not fully cover platform-based labour. Data annotators remain independent contractors, excluding them from fundamental protections such

5 Alauddin F D, Aman A, Ghazali M F and Daud S, 'The Impact of Digital Platforms on Gig Workers: A Systematic Review' (2025) 11 Heliyon e41491. <<https://doi.org/10.1016/j.heliyon.2024.e41491>> accessed 30 July 2025

6 ATL Translate, 'Data Annotation: the Next Big Thing in Supply Chain and Logistics' (12 July 2023) <https://www.atltranslate.com/ai/blog/data-annotation-the-next-big-thing-in-supply-chain-and-logistics> accessed 30 June 2025.

7 'How Human-in-the-Loop Boosts AI-driven Data Annotation' (Habile Data, 2025) <https://www.habiledata.com/blog/how-human-in-the-loop-boosts-ai-data-annotation/> accessed 30 June 2025.

8 CIPIT, 'Data from the South, AI in the North: An Uneven Distribution of Value' (27 March 2023) <https://cipit.strathmore.edu/data-from-the-south-ai-in-the-north-an-uneven-distribution-of-value/> accessed 30 June 2025.

9 Harnessing the Gig Economy as a Future Workplace Pathway (KIPPRA 2025) <<https://kippra.or.ke/harnessing-the-gig-economy-as-a-future-workplace-pathway>> accessed 30 July 2025.

10 Mercy Corps, 'Towards a Digital Workforce: Kenya Gig Economy Report 2019' (January 2020) 5 [https://www.mercycorps.org/sites/default/files/2020-01/Youth\\_Impact\\_Labs\\_Kenya\\_Gig\\_Economy\\_Report\\_2019\\_0\\_0.pdf](https://www.mercycorps.org/sites/default/files/2020-01/Youth_Impact_Labs_Kenya_Gig_Economy_Report_2019_0_0.pdf) accessed 30 June 2025. Kenya Private Sector Alliance (KEPSA), 'The Future Works Online: Kenya Digital Workforce Survey 2023' (2023) 60-61 <https://admin.kepsa.or.ke/public/files/docs/17436026242.pdf> accessed 30 June 2025.

11 JobLeads, 'Kenya Leads in Gig Economy in Africa with 216% Growth in Online Freelancers in 5 Years' (11 April 2025) <https://bitcoinke.io/2025/04/kenya-leads-the-gig-economy-in-africa/> accessed 30 June 2025.

12 Genesis Analytics, 'An Assessment of the Current State and Future Outlook of the Gig Economy in Kenya' (2023) <https://www.genesis-analytics.com/projects/an-assessment-of-the-current-state-and-future-outlook-of-the-gig-economy-in-kenya/> accessed 30 June 2025.

13 MIT Technology Review, 'How the AI Industry Profits from Catastrophe' (20 April 2022) <https://www.technologyreview.com/2022/04/20/1050392/ai-industry-appen-scale-data-labels/> accessed 30 June 2025.

14 Fairwork Kenya, 'Labour Standards in the Gig Economy 2021' (2021) 7 <https://fairwork/wp-content/uploads/sites/17/2021/12/Fairwork-Kenya-2021-report-accessible.pdf> accessed 30 June 2025.

15 *ibid.*

as minimum wage and leave. Laws are not tailored for the digital economy and leave workers vulnerable to unsafe working conditions as well as exploitation.<sup>16</sup> Additionally, data protection laws do not address algorithmic transparency and platform accountability in the gig economy.<sup>17</sup> This regulatory gap allows minimal oversight and governance of the platforms, leading to unfair treatment and arbitrary account suspensions. Such workers cannot claim compensation for these inequalities due to a lack of recognition and protection under existing statutes.

Algorithmic management remains vital in the gig economy but poses challenges, especially with data annotation across Africa. Digital platforms use these algorithms to assign tasks, evaluate performance, and calculate pay in a manner that is not transparent.<sup>18</sup> They operate as black boxes, and workers are unable to access the criteria used to assign tasks or evaluate their performance or rate them, an aspect that renders it impossible to object to the unfair treatment. Due to power imbalances evident through the unilateral control of the platforms, Kenya gig workers cannot influence the algorithms and face precarious employment conditions such as abrupt account deactivations and income disparities without explanation.<sup>19</sup> Moreover, economic and social inequalities already existing in

Africa are exacerbated by the gender specific challenges affecting women gig workers. These challenges include women facing exposure to harmful content and lack of maternal care, societal inequalities, biases and exploitation are amplified due to the lack of algorithmic accountability and transparency, disproportionately affecting women and entrenching the existing inequalities.<sup>20</sup>

Contextually, the critical role played by the gig economy, by data annotators and content moderators, underscores the urgent need for labour practices that consider the dynamics of the gig economy. The lack of inclusive policies continues to perpetuate social and economic inequalities across Africa, undermining the continent's digital transformation and subsequently its economic growth.

Observations indicate that the growth of the gig economy presents both opportunities and challenges for Africa's digital future. While it has created new pathways for employment and economic participation, particularly among youth and women, it has also exposed structural weaknesses in labour regulation, data governance, and social protection systems. To safeguard the dignity and rights of gig workers, there is an urgent need for a comprehensive policy and legal framework that recognises platform-based labour as a distinct form of employment deserving

16 *ibid.*

17 Tanzania and Kenya Digital Economy Partnership, 'Regulation of Digital Platforms for a Socially-Just Gig Economy in Kenya' (BM2 Digital, May 2023) <https://www.bm2-digital.global/wp-content/uploads/2023/05/Kwanya-T-Wakunuma-K-2023-Regulation-of-Digital-Platforms-for-a-Socially-Just-Gig-Economy-in-Kenya.pdf>, accessed 30 June 2025.

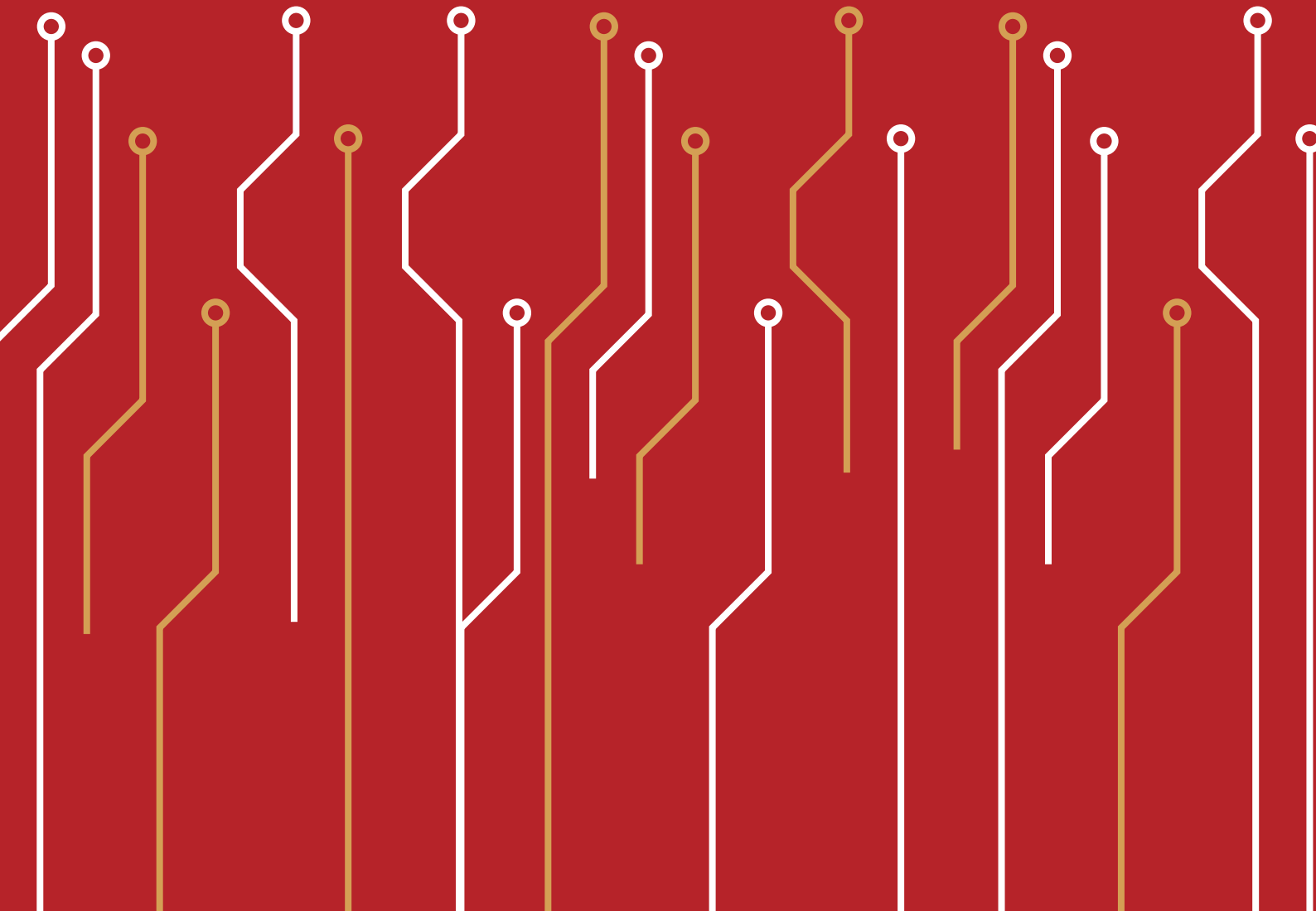
18 *ibid.*

19 *ibid.*

20 AlgorithmWatch and ITUC, 'Algorithmic Transparency and Accountability in the World of Work' (February 2023) [https://algorithmwatch.org/en/wp-content/uploads/2023/02/20challenges23\\_AlgorithmWatch\\_ITUC\\_Reportopportunities.pdf](https://algorithmwatch.org/en/wp-content/uploads/2023/02/20challenges23_AlgorithmWatch_ITUC_Reportopportunities.pdf), accessed 30 June 2025.

of protection. Such frameworks should promote fair remuneration, access to social benefits, and mechanisms for accountability in algorithmic management. Moreover, collaboration among governments, digital platforms, and worker associations is essential to ensure transparency, inclusivity, and equity in this evolving digital landscape. Addressing these governance gaps will not only improve working conditions but also strengthen Africa's position in the global digital economy, fostering sustainable and just technological development.

## 3.0 Legal and Regulatory Frameworks



Regulatory frameworks on the gig economy, including data annotation and content moderation, which underpin AI development, vary globally. The regulations form the foundation for AI development, not only by protecting such workers but also ensuring the integrity and reliability of AI system outcomes throughout the AI cycle. This is achieved by ensuring that data used to train AI systems is properly and ethically labelled, thereby reducing biases and discrimination, as well as through effective content moderation, which filters out harmful content. Furthermore, AI platforms create new jobs and are essential to ensure transparency and accountability in algorithmic management to prevent both exploitation and economic disparities.<sup>21</sup> The holistic ethical approach from data labelling to deployment and use of AI systems strengthens the trust in AI technologies and fosters sustainable development.<sup>22</sup> Observed from a global perspective, the European Union (EU) has established critical frameworks for the role of gig workers, particularly platform workers, which apply to a wider scope of gig workers, i.e. data annotators and content moderators. From the African perspective, regulation can be inferred from conventions established by the African Union. A keen focus is given to analysing the Kenyan and Nigerian context, presenting a comparative analysis of the regulatory approach, highlighting key converg-

ing and diverging points. The need for effective regulation for gig economy workers is particularly characterised by the rise in complaints from data annotators, which often stem from low wages, job insecurity, lack of social security and opaque algorithms, consequently driving diverse considerations and action through regulation.<sup>23</sup>

### 3.1. European Union Regulatory Framework

The EU has developed comprehensive frameworks for protecting gig workers and ensuring fair labour practices in digital platforms.<sup>24</sup> This analysis aims to illustrate the extent to which regulations can adapt to address changes in work resulting from technological advancements, thereby providing insights into policy considerations. The frameworks are structured to address worker classification, particularly noting gig workers as employees rather than independent contractors, further offering social protection as well as algorithmic accountability.<sup>25</sup> The frameworks are distilled as follows.

#### a. The Platform Work Directive (PWD)

The [Platform Work Directive](#), adopted in 2023, is the key framework in regulating gig workers, including data annotation in the EU.<sup>26</sup> The key protections and safeguards offered by the

21 Pareto AI, 'Data Annotations Role in Shaping Ethical AI Governance Post-AGI' (11 November 2024) <https://pareto.ai/blog/data-annotation-ethical-governance-post-agi> accessed 1 July 2025.

22 ibid

23 Eric Mugambi, 'Low-Wage, Highly Experienced Data Annotation, Teams in Africa' LinkedIn (20 February 2025) <https://www.linkedin.com/pulse/low-wage-highly-experienced-data-annotation-teams-africa-eric-mugambi-chhsf> accessed 1 July 2025.

24 KPMG, 'European Union – Employment Status of Platform Workers' (30 September 2024) <https://kpmg.com/xx/en/our-insights/gms-flash-alert/flash-alert-2023-250.html> accessed 1 July 2025.

25 Global Workplace Law and Policy, 'Implementing Article 20 of the EU Platform Work Directive: Communication Channels' (20 February 2025) <https://global-workplace-law-and-policy.kluwerlawonline.com/2025/02/20/implementing-article-20-of-the-eu-platform-work-directive-communication-channels/> accessed 1 July 2025.

26 Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

PWD are as follows.

### **i. Algorithmic transparency and accountability requirements**

The directive requires disclosure by digital platforms of how the platforms assign tasks, calculate pay and evaluate worker performance.<sup>27</sup> The platforms ought to provide clear and accessible information on how algorithms function and the criteria they use to enable the workers to understand how key decisions affecting them are made and the grounds for such decisions.<sup>28</sup> This disclosure applies to actions such as account restriction, suspension, termination and refusal to payment decisions and any other decisions on their contractual status or those that have a detrimental effect.<sup>29</sup>

Article 10 of the directive calls for the mandatory human oversight over the automated decision-making that has a significant impact, such as account suspension or activation, as well as pay reductions.<sup>30</sup> This makes it possible for the workers to seek protection through review and challenging of such decisions, solving the black box challenge of algorithms.<sup>31</sup> This is also in alignment with the General Data Protection Regulations (GDPR), which prohibit automated decision-making in making significant decisions without the consent of a person and human oversight.

This protects the privacy of persons and ensures that decisions are not discriminatory or biased.<sup>32</sup> By adhering to transparency requirements, arbitrary, biased, and punitive automated decisions, such as unexplained account restrictions and suspensions, are reduced in relation to gig workers. Deliveroo was compelled by the Supreme Court of the Netherlands to submit an algorithmic management system for regular audits as a means of enforcing the directive.<sup>33</sup>

### **ii. The Presumption of Employment for Gig Workers**

The PWD presumes that persons performing work through digital platforms, for instance, gig workers, are employees where there is direction and control unless proven otherwise by the digital labour platforms.<sup>34</sup> This protection aims to prevent the reclassification of workers in the gig economy, thereby denying them employment benefits such as paid leave and insurance. Spain, in enforcement of this requirement, fined Glovo 250 million Euros for non-compliance, leading to the reclassification of riders as employees.<sup>35</sup> The effectiveness of the presumption is to ensure that gig workers can enjoy the fundamental benefits and protections afforded to employees under employment law, such as access to social secu-

27 Article 9, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

28 Article 9, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

29 *ibid.*

30 Article 10, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

31 Article 11, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

32 Article 22, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679> accessed 1 July 2025.

33 *Deliveroo Nederland BV v FNV* (Supreme Court of the Netherlands, 4 September 2023)

34 Article 5, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

35 Spain fines Delivery Hero's Glovo a total of €205 million for alleged labour law breaches (Business & Human Rights Resource Centre, 27 January 2023) <[567-million-euros-for-alleged-violating-laws-on-hiring-riders/](https://www.bhrcc.org/news/567-million-euros-for-alleged-violating-laws-on-hiring-riders/)> accessed 1 July 2025.

ity, labour rights, and minimum wage provisions. This addresses the issue of platform control and direction, which is similar to traditional employment relationships despite being labelled as independent contracts.<sup>36</sup> The vulnerabilities of gig workers are protected, which in turn ensures ethical AI governance by safeguarding critical actors in AI development, such as data annotators.

### iii. Cross-border protection and joint social funding to strengthen worker rights

The PWD is extraterritorial in nature, applying to all digital platforms operating in the EU, including international platforms, irrespective of the platform's country of registration.<sup>37</sup> The directive also emphasises the safety and health of platform workers.<sup>38</sup> This involves the evaluation of the risk associated with the systems, including psychological and ergonomic risks and introducing preventive and protective measures.<sup>39</sup> Such measures include the adoption of a joint social funding, a mechanism requiring participation in the financing of social security benefits like pension, paid leave and healthcare insurance for gig workers.<sup>40</sup> Additionally, collective bargaining and dialogue between workers and platforms are highly encouraged.<sup>41</sup> Spain, for instance, after the reclassification of Glovo riders, has

implemented joint social funding as well as cross-border protections in accordance with the directive. The collective agreements require the digital platforms to contribute to social security funds to cover health insurance and pensions for the benefit of the riders. The impact of formalising the previously informal sector is the improvement of economic security and social welfare for the workers. Platforms also have clearer obligations, ensuring responsible business practices and ensuring that the EU is not disadvantaged by inconsistencies in labour laws through the extraterritorial application of the directive, ensuring legal certainty.<sup>42</sup> The measures, as highlighted, aim to strike a balance between flexibility in work and security, while also providing fundamental benefits that are traditionally associated with employment, serving as a benchmark for labour standards and ethical AI governance in the gig economy.

### e. Enforcement and Penalties

To ensure compliance, the EU directive provides for enforcement mechanisms.<sup>43</sup> The EU member states have strict compliance measures such as regulatory oversight and financial sanctions.<sup>44</sup> For instance, in 2023, France fined Uber 17 million Euros for misclassifying drivers as independent contractors rather than employees.<sup>45</sup>

36 *ibid.*

37 Recital 3, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

38 Article 12, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

39 *ibid.*

40 *ibid.*

41 Article 13, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

42 Article 24, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1.

43 Article 18, Directive (EU) 2024/2831 of the European Parliament and of the Council of 23 October 2024 on improving working conditions in platform work [2024] OJ L2831/1is a.

44 *ibid.*

45 Conseil des Prud'hommes, Lyon, 20 January 2023, Uber ordered to pay €17 million to drivers for misclassification <<https://www.business-humanrights.org/en/latest-news/france-tribunal-des-prudhommes-condamne-uber-%C3%A0-verser-17-millions-deuros-%C3%A0-139-chauffeurs-pour-des-manquements-au-code-du-travail/>> accessed 1 July 2025.

This hefty fine served as a warning for any other platforms operating in the EU against misclassification. The impact of the enforcement mechanisms is to deter exploitative labour practices and a lack of transparency for algorithms.<sup>46</sup> Additionally, it leads to the empowerment of workers through legal protection and employment status. Workers can contest decisions that are unfair as a result of automation. A key highlight is the role of enforcement mechanisms in legislative reforms that lead to improvements in the conditions of gig workers and the development of ethical AI. Digital platforms have had to reform their mode of business to incorporate fair labour practices and transparency, fostering sustainable development in the Gig economy.<sup>47</sup>

## **b. The General Data Protection Regulations (GDPR)**

The GDPR guides the collection and processing of personal data in the EU.<sup>48</sup> Data annotators often handle sensitive data embedded in the datasets for training AI models.<sup>49</sup> Additionally, the digital platforms process the workers' personal data in the application and make automated decisions relating to performance evaluation and salary calculations for the workers.<sup>50</sup> The platforms are mandated to adhere to the GDPR's stringent measures, such as

the principles of transparency and accountability, as well as automated decision making.<sup>51</sup> Some of the Key GDPR best practices that lead to accountability of algorithms and protection of data annotators include:

### **i. Transparency and Accountability**

Article 5 of the GDPR provides for the key principles of processing personal data, which include transparency and accountability.<sup>52</sup> Data processors and controllers are required to process personal data in a lawful, fair and transparent manner.<sup>53</sup> The GDPR also accords data subjects rights, which include the provision of clear and accessible information to data subjects on how their personal data will be processed as per Article 12.<sup>54</sup> A data subject should be informed of the purpose of processing, the identity of the controller, and the retention period with respect to their personal data. These principles extend to digital platforms, even those that manage data annotators, ensuring the workers are well-informed about the use of their personal data. Accountability on the other end mandates the data controllers to go beyond compliance of the GDPR by demonstrating compliance through measures such as Data Protection Impact Assessment (DPIA) and maintaining records of data pro-

46 Fisher Phillips, 'New EU Platform Work Directive Impacts Freelancers and Gig Economy' (16 April 2025) <https://www.fisherphillips.com/en/news-insights/new-eu-platform-work-directive-impacts-freelancers-and-gig-economy.html> accessed 1 July 2025.

47 *ibid.*

48 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

49 *ibid.*

50 Rights related to automated decision making including profiling | ICO <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/rights-related-to-automated-decision-making-including-profiling/> accessed 2 July 2025.

51 *ibid.*

52 Article 5, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

53 *ibid.*

54 Article 12, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1 that including.

cessing as per Article 30.<sup>55</sup> Compliance by digital Platforms used by data annotators ensures that their workers' personal data is also handled lawfully and in a transparent manner.

## ii. Automated Decision Making

Article 22 of the GDPR prohibits decisions solely based on automated processing, such as profiling, that produce legal effects or significant impacts to persons unless there are safeguards in place.<sup>56</sup> This can be achieved through data subjects giving consent and the necessity of entering or performing a contract. Data subjects are accorded the right to obtain human interventions and contest automated decisions.<sup>57</sup> This principle protects gig workers, enabling them to challenge decisions made by platform algorithms without human intervention.

## iii. Protection by design and default

Additionally, the GDPR requires data protection by design or default, where platforms must embed privacy safeguards into their systems. Adherence to this requirement by digital platforms ensures that gig workers are protected and that their interaction with AI systems is secure. Similar to this requirement is the requirement for appropriate technical and organisational measures to protect data under Article 32. Compliance with the GDPR by platform

owners, such as adopting the principle of human in the loop, ensures transparency, thereby establishing systems that maintain confidentiality, data integrity, and ensure AI systems are trained on ethical data. For instance, Amazon Web Services, an infrastructure provider that hosts volumes of annotation data, ensures compliance with GDPR through membership in the Cloud Infrastructure Service Provider in Europe (CISPE) Code of Conduct.<sup>58</sup> This code of conduct ensures compliance with the GDPR by cloud service providers through an emphasis on transparency and accountability, ensuring data annotators that their data is processed lawfully. The provisions of the GDPR ensure that digital platforms operate ethically by mandating the disclosure of information and protection against unfair automated decisions using algorithms, thereby building trust in AI systems and protecting gig workers.

## c. The European Union (EU) Artificial Intelligence (AI) Act

The EU AI Act came into force on 1st August 2024 and adopts a phased risk-based approach reflecting the varying levels of risks posed to fundamental rights by AI systems.<sup>59</sup> Some of the provisions, such as the ban on unacceptable risks, took effect on 2 February 2025, with the full scope of the Act becoming applicable on 2 August 2025. Similar to the GDPR, the Act applies

<sup>55</sup> Article 30, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L19/1.

<sup>56</sup> Article 22, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L19/1.

<sup>57</sup> *ibid.*

<sup>58</sup> CISPE Data Protection Code of Conduct for Cloud Infrastructure Service Providers in Europe (European Data Protection Board and CNIL, 9 February 2021) [https://www.edpb.europa.eu/system/files/2023-03/2021\\_cispe\\_cloud\\_iaas\\_data\\_protection\\_code\\_of\\_conduct\\_-\\_gdpr\\_compliance\\_0.pdf](https://www.edpb.europa.eu/system/files/2023-03/2021_cispe_cloud_iaas_data_protection_code_of_conduct_-_gdpr_compliance_0.pdf) accessed 2 July 2025.

<sup>59</sup> Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 268/1.

extraterritorially to AI systems placed on EU markets and providers and operators outside the EU which are used by individuals or entities within the EU.<sup>60</sup> The EU AI classifies systems into four risk categories, which are unacceptable (banned), high risk, limited risk and minimal risk. Article 6 defines high-risk systems as those that significantly impact the rights and safety of persons. This includes systems used in hiring and creditworthiness assessments, noting digital platforms that employ such systems must comply with the Act.<sup>61</sup>

Article 13 of the Act mandates transparency obligations to foster accountability. This ensures that data annotators understand their contribution and how they impact AI decisions.<sup>62</sup> Additionally, Article 14 mandates having humans in the loop for high-risk AI systems, making it possible for gig workers to understand the basis of the decisions made through the platforms and thus can contest unfair algorithmic management practices.<sup>63</sup> Article 15 imposes accountability obligations and detailed obligations and aspects that call for digital platforms to facilitate audits and uphold fair labour practices.<sup>64</sup> Collectively, these sections have an impact on how platform owners handle data

annotations by mandating obligations such as transparency and accountability principles.

#### **d. The Digital Service Act (DSA) and the Digital Markets Act (DMA)**

The DSA imposes transparency, fairness and accountability obligations on digital platforms, which benefit data annotators through improved platform governance.<sup>65</sup> Article 15 of the DSA mandates the providers of intermediary services to publish annual transparency reports detailing content modernisation activities and complaint handling mechanisms.<sup>66</sup> Additionally, Article 12 further provides for platforms to set out and enforce their terms of service, ensuring gig workers are informed of the enforcement process.<sup>67</sup>

DMA, on the other hand, complements the DSA's obligations by targeting Very Large Online Platforms (VLOPS). It mandates them to conduct systemic risk assessment and implement mitigation measures as well as submit independent audits to ensure system accountability.<sup>68</sup> These provisions increase transparency, forcing platform owners to revise their terms of service and offering mechanisms for gig workers to access remedies by contesting unfair practices. While the two regulations do not directly protect gig work-

60 Article 2, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 268/1.

61 Article 6, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 268/1.

62 Article 13, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 268/1.

63 Article 14, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 268/1.

64 Article 15, Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence (Artificial Intelligence Act) [2024] OJ L 268/1.

65 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

66 Article 15, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

67 Article 12, Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act).

68 Article 24, 26, 28 Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector (Digital Markets Act).

ers, their adherence ensured equitable digital ecosystems through curbing platform abusive practices.

### 3.2 Africa's Regulatory Framework - A Continental Perspective

Africa has emerged as a global hub for data annotation.<sup>69</sup> Major technology firms, such as Remotasks and Sama, outsource labour-intensive AI tasks, including data labelling and content moderation, to African countries like Nigeria and Kenya. As much as this demonstrates the creation of employment as a result of leveraging AI technologies, it also highlights the nuances of tech labour characterised by major technology firms capitalising on lower wages and weaker worker protections in Africa as compared to the Global North.<sup>70</sup> The consequences of this are demonstrated in cases such as the death of Nigerian content Moderator Ladi Anzaki Olubunmi in Nairobi, Kenya, in 2025, resulting from poor working conditions for content moderators, a reflection of one of the many cases that point to unfair working conditions necessitating the urgent need for robust safeguards for the gig workers.<sup>71</sup>

Africa is increasingly recognising the critical need to regulate the gig economy, with frameworks showing a commitment to regulating the economy

based on its key principles. The African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention, 2014) emphasises transparency and fairness in data processing.<sup>72</sup> Additionally, the African Charter on Human and Peoples Rights provides for the right to just and fair working conditions.<sup>73</sup> Africa's regional bodies such as the East African Community (EAC)<sup>74</sup> and the Southern African Development Community (SADC)<sup>75</sup>, highlight labour and employment as a key component of socio-economic development and consequently championing the continued adoption of fair labour practices, further encouraging the adoption of labour policies which can be inferred towards affording protections for workers in the gig economy as is particularly relates to data annotation,, content moderation and platform worker.

#### a. The African Union Convention on Cyber Security and Personal Data Protection. (Malabo Convention)

The Malabo Convention seeks to safeguard personal data across Africa.<sup>76</sup> Article 8 emphasises the protection of fundamental rights and freedoms as a key objective for protecting personal data.<sup>77</sup> Personal data ought to be processed lawfully, fairly and for explicit

69 Impact Outsourcing, 'Why Outsourcing Data Annotation Services to Africa' (Impact Outsourcing, 6 March 2025) <https://impactoutsourcing.co.ke/outourcing-data-annotation-services-to-africa/> accessed 4 July 2025.

70 Nanjala Nyabola, *Digital Democracy, Analogue Politics: How the Internet Era is Transforming Kenya* (Zed Books, 2018) <https://www.abebooks.com/9781786994318/Digital-Democracy-Analogue-Politics-Internet-1786994313/plp> accessed 4 July 2025.

71 Citizen Digital, 'Outrage after Nigerian TikTok content moderator found dead in Kenya' *Citizen Digital* (Nairobi, 12 March 2025) <https://www.citizen.digital/news/outrage-after-nigerian-tiktok-moderator-found-dead-in-kenya-n.358983> accessed 4 July 2025.

72 African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention) (adopted 27 June 2014, entered into force 8 June 2023) African Union Doc [https://au.int/sites/default/files/treaties/29560-treaty-0048\\_-\\_african\\_union\\_convention\\_on\\_cyber\\_security\\_and\\_personal\\_data\\_protection\\_e.pdf](https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf) accessed 4 July 2025.

73 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982) [https://www.oas.org/en/sla/di/doc/African\\_Charter\\_Human\\_Peoples\\_Rights.pdf](https://www.oas.org/en/sla/di/doc/African_Charter_Human_Peoples_Rights.pdf) accessed 4 July 2025.

74 East African Community, 'Labour and Employment' (EAC) <https://www.eac.int/immigration/labour-and-employment/292-sector/immigration-labour/labour> accessed 4 July 2025.

75 Southern Africa Development Community (SADC), Employment and Labour: <https://www.sadc.int/pillars/employment-labour> accessed 4 July 2025.

76 *ibid.*

77 Article 8,

legitimate purposes to ensure transparency and accountability as per Article 13.<sup>78</sup> Article 14 also prohibits the processing of personal data unless there are specific conditions to protect vulnerable groups.<sup>79</sup> These provisions establish a framework relevant to gig workers, particularly data annotators, whose personal data, including biometric data, is collected through digital platforms. A gap in the convention arises from the fact that it did not anticipate the extent or parameters of technological advancements and the extent to which the application of the convention could be stretched. As such, challenges like platform accountability, which could benefit from protections for gig workers, can only be inferred as they were not explicitly anticipated, necessitating considerations for digital labour that address areas of data-driven profiling, algorithm management, and the unique vulnerabilities of African gig workers.

### **b. African Charter on Human and Peoples Rights (Banjul Charter, 1981)**

The Charter provides a human rights protection foundation for labour protection, guaranteeing the right to work under equitable working conditions, such as fair remuneration and safe working conditions under Article 15.<sup>80</sup> Article 16 also guarantees the right to the highest attainable standard of physical and mental health, a critical

right for gig workers who often face low pay, precarious working conditions and psychologically harmful content. The informal nature of gig workers' employment complicates their access to these rights; consequently, this highlights a regulatory opportunity at the continental level to bridge this gap by rethinking employment frameworks for workers not anticipated as a result of technological evolution on the continent.

### **c. African Charter on Human and Peoples Rights (Banjul Charter, 1981)**

The Charter provides a human rights protection foundation for labour protections.<sup>81</sup> It guarantees the right to work under equitable conditions, such as fair remuneration and safe working conditions under Article 15.<sup>82</sup> Article 16 also guarantees the right to the highest attainable standard of physical and mental health, a critical right for gig workers who often face low pay, precarious working conditions and psychologically harmful content.<sup>83</sup> The informal nature of gig workers excludes them from accessing these rights, mainly because the framework is not tailored to the realities of the gig economy.

78 Article 13.

79 Article 14.

80 African Charter on Human and Peoples' Rights ("Banjul Charter"), Article 15, <https://www.refworld.org/docid/3ae6b3630.html> accessed 4 July 2025.

81 African Charter on Human and Peoples' Rights ("Banjul Charter") (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) <https://www.refworld.org/docid/3ae6b3630.html> accessed 4 July 2025.

82 Article 15.

83 Article 116.

### 3.3 Kenyan Regulatory Framework

Kenya represents a focal point within Africa's context due to the expanding digital economy which has grown to over 2.4 million workers in Kenya especially in AI related and data annotation tasks.<sup>84</sup> Kenya remains home for AI labelling platforms characterised by outsourcing companies such as Remotask, whose shutdown highlighted both the opportunities for digital labour and vulnerabilities in terms of the need for necessary protections for digital workers.<sup>85</sup> As such, we examine the existing hierarchy of regulatory frameworks in Kenya that inform the right to fair labour practices, from which protections can be inferred, necessitating more precise parameters for these protections.

#### a. The Constitution of Kenya

Article 41 guarantees everyone the right to fair labour practices, including fair remuneration, reasonable working conditions to form, join or participate in activities and programmes of a trade union.<sup>86</sup> The constitution sets the foundation for the protection of workers, establishing the validity of gig workers' rights, as they often face precarious employment conditions with no social protection.

84 KICTANet, 'Kenya's Growing Gig Economy: Balancing Opportunity and Challenges' (KICTANet, 17 April 2025) <https://www.kictanet.or.ke/kenyas-growing-gig-economy-balancing-these-which-they-are-entitled-opportunity-and-challenges/> accessed 4 July 2025.

85 Business Daily Africa, 'Online gig site Remotasks exits Kenya', (13 March 2024) <<https://www.businessdailyafrica.com/bd/corporate/technology/online-gig-site-remotasks-exits-kenya-4555340>> accessed 30 November 2025

86 Article 41, The Constitution of Kenya, 2010.

#### b. The Employment Act

The Employment Act is the foundational law for the protection of workers in Kenya, though it only applies to traditional employment relationships.<sup>87</sup> It places reliance on the existence of a contract for service to warrant social protections. Its application is grounded in a key challenge in worker classification, namely, whether gig workers are independent contractors or fall within the scope of the regulation, as discussed further below. The assessment of the Employment Act highlights parameters that could apply to gig workers, outlining the benefits and protections that apply to them, as well as the regulatory gaps that limit their access to rights.

##### i. Definition of employee

The definition of employee in the Act is strictly limited to persons who are employed under a contract of service or apprenticeship.<sup>88</sup> The definition limits the Act's protections to traditional employment relations, excluding gig workers, such as data annotators, content moderators, and platform workers who are considered independent contractors. A contract, as per section 7 of the Act, is an agreement where a party agrees to serve the other as an employee.<sup>89</sup> The Act provides for transparency through requiring that there should be written particulars such as remuneration, job title and working hours under section 11.<sup>90</sup> This clarity and transpar-

87 The Employment Act 2007, Laws of Kenya.

88 Employment Act (2007, Laws of Kenya), s 3.

89 Employment Act (2007, Laws of Kenya), s 7.

90 Employment Act (2007, Laws of Kenya), s 11.

ency continue to be absent in the gig economy, which is informal and further exacerbated by the lack of transparent and ethical contractual terms.

## ii. Wage protection

Wage protection under the Employment Act is meant to ensure employees receive fair and timely remuneration for their labour. Section 16 of the Act provides for an administrative mechanism for employees to seek redress.<sup>91</sup> For gig workers, if they are classified as employees, this would protect them from arbitrary platform decisions made by the platform owners. Section 17, on the other hand, provides that wages must be lawfully paid at intervals and in the lawful currency.<sup>92</sup>

This ensures fair compensation for employees for the work they do. For data annotations, this protection would ensure they are paid lawfully within a fair wage range and in a recognised currency, especially as their payments are mostly platform-based. Section 19 provides for the employers to make permissible deductions such as taxes and NSSF, with any other unauthorised deductions being prohibited.<sup>93</sup> The wage protections, however, are not applicable to gig workers, exposing them to vulnerabilities such as irregular and delayed wages, unilateral deduction decisions without consent, and a lack of transparency, as well as the absence of enforcement mechanisms to challenge

such decisions. The case of Remotasks, which will be further discussed, clearly explains the ramifications of such vulnerabilities.

## iii. Working hours and leave

The Employment Act regulates the working hours and provides for different types of leave to ensure employee welfare. Section 27 sets the maximum number of working hours for employees as 52 hours per week. It provides that any work done past such time qualifies as overtime, warranting compensation at a rate not less than one and a half times the employee's ordinary wage. It also guarantees employees the right to rest for at least one day per week. This ensures that employees are not subjected to excessive working hours. In contrast, data annotators, content moderators, and platform workers often work on flexible, irregular, and extended hours. These protections would ensure such workers are guaranteed rest days and receive overtime pay to reduce fatigue and economic insecurity.

For annual leave, Section 28 provides for at least 21 working days of paid leave for an employee who works for 12 months continuously.<sup>94</sup> This supports the employee's well-being and health, preventing burnout. Additionally, Section 29 grants female employees 90 calendar days of paid maternity leave, and employers are prohibited from terminating their employment during this

91 Employment Act (2007, Laws of Kenya), s 16.

92 Employment Act (2007, Laws of Kenya), s 17.

93 Employment Act (2007, Laws of Kenya), s 19.

94 Employment Act (2007, Laws of Kenya), s 28.

period. With the employee having to return to the same position after leave.<sup>95</sup> This protects productive rights and the health of female employees, ensuring income sustainability and job security. Section 30 guarantees employees sick leave with payment, ensuring no termination based on illness.<sup>96</sup>

This wage and leave protection would guarantee data annotators paid leave, rest days and job security for women during maternity, as well as avoid burn-out by regulated working hours.<sup>97</sup> Addressing the gaps and providing social protections to data annotators would ensure their protection and, in turn, promote the development of ethical AI.

#### iv. Termination and dismissal

The Act provides safeguards to ensure that terminations are conducted fairly and transparently. These protections are crucial in the gig economy, where platform owners frequently suspend and close the accounts of data annotators without providing reasonable justification or hearing from the workers. Section 35 mandates that each party to a contract must give a reasonable notice or payment instead of notice before termination.<sup>98</sup> This period typically ranges from 7 days for contracts of less than 3 months to one month for contracts exceeding 3 months in duration. This prevents abrupt loss of income and financial hardship suffered by data

annotators. It gives data annotators time to look for new jobs before their account is terminated or suspended. Deactivation and termination of gig workers should be accompanied by notice to minimise economic shocks and provide a buffer period for seeking alternative income streams.

Additionally, Section 41 guarantees procedural fairness and the right to be heard before termination.<sup>99</sup> The Procedure includes notifying employees of the allegation of misconduct or poor performance and providing them with an opportunity to be heard and represented during the disciplinary hearing. It extends to written explanations for termination. This will ensure that gig workers are not dismissed arbitrarily and that their accounts are not banned without explanation or a fair hearing, thereby avoiding discriminatory dismissals. Gig workers can contest such account deactivation decisions by having platforms adopt fair disciplinary procedures, enhancing trust and preventing unjust terminations. Section 45 protects workers from unfair termination without just cause. Just causes include poor performance, misconduct and redundancy.<sup>100</sup> This prevents economic precarity for gig workers. The case of Meta **Platforms Inc. vs Motaung & others**, a dispute involving Sama and Meta and their content moderators, highlights the consequences of exempting gig workers

95 Employment Act (2007, Laws of Kenya), s 29.

96 Employment Act (2007, Laws of Kenya), s 30.

97 Times, 'OpenAI Used Kenyan Workers on Less Than \$2 Per Hour: Exclusive' *Time* (18 January 2023) <https://time.com/6247678/openai-chatgpt-kenya-workers/> accessed 4 July 2025.

98 Employment Act (Cap 2007, Laws of Kenya), s 35.

99 Employment Act (2007, Laws of Kenya), s 41.

100 Employment Act (2007, Laws of Kenya), s 45.

from the protection of the Act.<sup>101</sup> The court of appeal held that gig workers are not employees, exempting them from the fair termination procedures of the Employment Act.<sup>102</sup>

### **c. The Labour Relations Act 2007**

#### **i. Employee's right to join trade unions**

The act is the key statute that governs the relations between employees and employers.<sup>103</sup> Sections 12 and 13 provide employees with protections such as the right to join trade unions, social security and collective bargaining.<sup>104</sup> However, the definition of an employee is similar to that of the Employment Act, focused on traditional forms of employment relations and leaving gig workers outside the scope and meaning of an employee.<sup>105</sup> As a result, gig workers, including data annotators who are often classified as independent contractors working under contracts for service, are denied access to fundamental protections and rights accorded by the Act, including freedom of association and collective bargaining.<sup>106</sup>

#### **ii. Dispute resolution**

The Act also provides for a dispute resolution mechanism under section 62, notably designed only for the employer and employee dynamic as prescribed under the Act, leaving gig workers vulnerable to unfair treatment without

recourse.<sup>107</sup> This exclusion of gig workers not only highlights the disparities in power dynamics in their contractual relations but also underscores the need for aligned regulatory provisions that can protect gig workers, who form a significant part of Kenya's growing digital economy.

#### **iii. Occupational Safety and Health Act**

The Act ensures that all employees have safe working conditions. It imposes duties on employers to prevent workplace hazards.<sup>108</sup> Section 3 on defining workplaces extends to the location where work occurs.<sup>109</sup> This can be interpreted to cover remote and informal workspaces used by gig workers. Extending this definition would bridge the gap where gig workers are exposed to unsafe ergonomic environments. Section 14 requires employers to ensure the safety, health and welfare of all workers through the provision of training, protective equipment and a safe environment.<sup>110</sup> Digital platforms where gig workers operate often disclaim responsibility for providing workers with training and protective mechanisms. This exposes the workers to increased risks, such as mental torture due to a lack of safeguards. Section 18 extends the employer's duty of care to visit the workers' sites.<sup>111</sup> The Act generally provides a foundation for workplace safety, with key sections applicable to data annotators to ensure social protection.

101 The Occupational Health and Safety Act, No. 15 of 2007.

102 [2024] KECA 1262.

103 The Labour Relations Act Cap 2007, Laws of Kenya.

104 Labour Relations Act (2007, Laws of Kenya) s 12, s 13.

105 Labour Relations Act (2007, Laws of Kenya)

106 Labour Relations Act (2007, Laws of Kenya), s 4.

107 Labour Relations Act (2007, Laws of Kenya), s 62.

108 Occupational Safety and Health Act (No 15 of 2007).

109 Occupational Safety and Health Act (No 15 of 2007), s 3.

110 Occupational Safety and Health Act (No 15 of 2007), s 14.

111 Occupational Safety and Health Act (No 15 of 2007), s 18.

#### **d. The Work Injuries and Benefits Act (2007), Laws of Kenya**

Just like other employment and labour laws in Kenya, the Work Injuries and Benefits Act (WIBA) has crucial provisions that can be leveraged for the protection of data annotators. However, the law equally remains inaccessible to gig workers due to the classification of gig workers as independent contractors.<sup>112</sup> Its definition of an employee mirrors that of the Employment Act. It restricts its coverage to individuals under a contract of service, as per section 5(1), explicitly excluding gig workers. This narrow framing does not include data annotators who are often engaged on a part-time basis on contracts for service or even with no formal contracts.<sup>113</sup>

#### **e. Occupational Health and Safety Act**

The act has vital protections relating to work injury compensation, occupational disease coverage, and medical insurance. Notably, section 7 of the Act provides that employers ought to insure their employees for work injuries, ensuring that employees are relieved from such liability.<sup>114</sup> Additionally, Section 10 of the act provides for a right to compensation for workers injured in the course of employment, entitling such workers to monetary benefits commensurate to the impact and degree of injury.<sup>115</sup> Further, sections 33 to 44 of the Act require the compensation of employees who suffer oc-

cupational diseases, with section 39 presuming causality between employment and certain diseases, making the claim process easy.<sup>116</sup> Section 45, 46, and 47 mandate the provision of first aid, conveyance of such injured workers to a medical facility if need be and payment of medical expenses related to work injuries.<sup>117</sup> Protections deriving from this act would be especially essential to gig workers, noting the mental health risks and hazardous working conditions data annotators are exposed to in Kenya.<sup>118</sup> Together, these sections form a framework for ensuring workers receive timely medical care and compensation, reducing the financial burden of work-related impairments. They also enhance workplace safety standards, a frequently overlooked aspect for data annotators in Kenya.

#### **f. The Data Protection Act**

The Kenyan Data Protection Act (DPA) governs the processing of personal data to give effect to the right to privacy.<sup>119</sup> Gig workers often have their individual and biometric data collected and stored on digital platforms, contrary to the data protection principles, such as data minimisation. The Act extends the protections offered in its application to data controllers and processors resident in Kenya, as well as those outside Kenya processing data as per section 4.<sup>120</sup> This extraterritorial reach is critical

<sup>112</sup> Work Injury Benefits Act (2007, Laws of Kenya), ss 33–44.

<sup>113</sup> Work Injury Benefits Act (2007, Laws of Kenya), ss 44–47.

<sup>114</sup> World Economic Forum and Geneva Graduate Institute, 'Trade and Labour: Pathways for Decent Work in Kenya's Digital Economy' (September 2025) <[https://reports.weforum.org/docs/WEF\\_Trade\\_and\\_Labour\\_Pathways\\_for\\_Decent\\_Work\\_in\\_Kenya's\\_Digital\\_Economy\\_2025.pdf](https://reports.weforum.org/docs/WEF_Trade_and_Labour_Pathways_for_Decent_Work_in_Kenya's_Digital_Economy_2025.pdf)> accessed 30 July 2025

<sup>119</sup> The Data Protection Act, No. 24 of 2019 <<https://www.kentrade.go.ke/wp-content/uploads/2022/09/Data-Protection-Act-1.pdf>>

<sup>120</sup> Section 4.

<sup>112</sup> The Work Injuries and Benefit Act 2007, Laws of Kenya.

<sup>113</sup> Work Injury Benefits Act (2007, Laws of Kenya), s 5(1).

<sup>114</sup> Work Injury Benefits Act (2007, Laws of Kenya), s 7.

<sup>115</sup> Work Injury Benefits Act (2007, Laws of Kenya), s 10.

in the gig economy, where most platform owners are foreign companies that collect and process personal data from the Kenyan data annotators.

### **i. Data Protection Principles**

The Data Protection Act outlines principles that all data controllers must follow to protect personal data. The principles require data processing to be lawful, fair and transparent.<sup>121</sup> Digital platforms that employ data annotators should ensure adherence to these principles, particularly by maintaining algorithmic transparency and transparency in their data annotation processes. The platforms should ensure adequate technical and organisational measures, such as anonymisation, human-in-the-loop, and lawful processing of the worker's data based on consent and other legitimate purposes. The data collected by the platforms should be limited to what is necessary, which is mostly identity verification, thus safeguarding such data from breaches and restricting the use of data for unfair account suspension and perpetuating biases, especially against women.

### **ii. Data protection by design and default**

Section 41 of the DPA provides for the protection by design and default.<sup>122</sup> This principle requires data controllers to implement appropriate technical and organisational measures to ensure adherence to the data protection principles. This ensures that data protec-

tion principles are integrated into the whole process of handling personal data by default. Such measures include anonymisation and pseudonymisation. These principles not only protect personal data but also ensure that data subjects are not subjected to bias and discrimination.

### **iii. Data subject rights.**

Section 26 of the Act provides for data subjects' rights.<sup>123</sup> These rights include the right to be informed about the use of their personal data, which is parallel to the principle of transparency. Data annotators can leverage this right to ensure that the platforms inform them of the use of their personal data, thereby ensuring transparency, especially in algorithmic decision-making, where platforms often use opaque algorithms that are unexplained to workers. Data subjects also have a right to access the data being held by the data processors and object to the processing of their data. In cases of inaccurate data, they have the right to request the correction of the data, as well as the erasure or restriction of its processing. Data annotators can use their right to access their personal data to review and challenge any inaccurate assessments, reviews, and evaluations, such as biased and erroneous platform reviews that may affect their rating and account suspension. Additionally, they can request rectification or deletion of such reviews and ratings to ensure fair treatment. Annotators can also restrict

<sup>121</sup> Section 25.

<sup>122</sup> Section 41.

<sup>123</sup> Section 26.

or object to automated decision-making by opaque algorithms, providing control over how the platforms impact their work allocation and account suspensions.

#### **iv. Automated decision making**

Section 35 of the DPA regulates automated decision making (ADM) such as profiling.<sup>124</sup> It requires that processing with a significant effect on data subject rights must obtain the data subject's consent and involve human intervention. Data controllers and processors should implement safeguards and mechanisms to ensure human intervention, the right to contest ADM by data subjects, and transparency. Data annotators are subject to algorithmic decisions that are not yet explained, yet these decisions have significant effects on them, such as account suspension and performance evaluation. Digital platform owners are required to ensure that humans are involved in the decision-making process and that algorithmic decisions are made transparently, with clear channels allowing for the contestation of such decisions and limiting arbitrary choices.

#### **v. Enforcement and Remedies**

To ensure compliance, the act requires data controllers to notify the data protection commissioner and the data subject of personal data breaches within 72 hours of being aware of the breach, ensuring timely mitigation.<sup>125</sup> Data annotators and other platform

workers can report any violations, such as automated decisions by the platforms that have significant legal effects and are made without humans in the loop and their consent contrary to the DPA.<sup>126</sup>

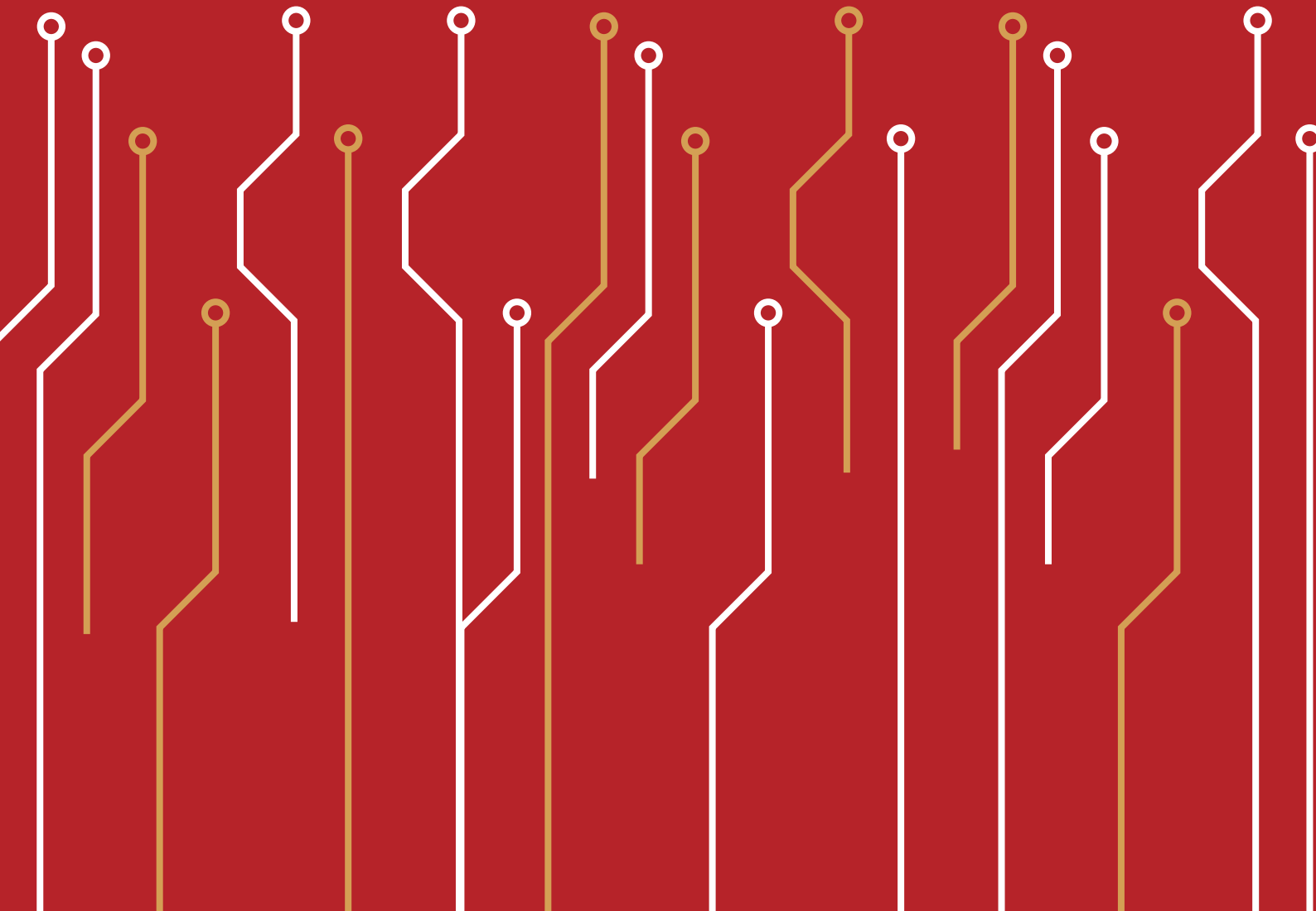
Additionally, the Act empowers the Data Protection Commissioner to investigate complaints and issue penalty notices, enforcement notices, and impose administrative fines.<sup>127</sup> Data subjects whose personal data has been infringed through automated decision-making by opaque platform algorithms can seek compensation for damages.<sup>128</sup>

In considering the broader scope of the regulatory frameworks discussed above, the governing landscape of the gig economy reveals both progress and gaps between regions such as the European Union and Africa. The EU's enforceable measures, embodied in instruments like the Platform Work Directive, GDPR, and AI Act, demonstrate a proactive approach to safeguarding gig workers through transparency, accountability, and algorithmic oversight. On the other hand, regional and national regulatory frameworks, though applicable to gig workers, are limited by the independent contractor classification and are yet to advance in consideration of the changing nature of employment.

<sup>124</sup> Section 35.  
<sup>125</sup> Section 43.

<sup>126</sup> Section 35.  
<sup>127</sup> Section 57,58,62 and 63.  
<sup>128</sup> Section 65.

## 4.0 Case Studies: Realities of Gig Work in Kenya and Nigeria



The case studies from Nigeria and Kenya collectively highlight the labour challenges of gig workers, particularly as they relate to data annotation, content moderation, and platform work, which are primarily driven by the evolution of the technology ecosystem, especially the growth of AI. The case studies outline the similarities and differences between the two jurisdictions, ultimately demonstrating how employment and labour rights are considered in both jurisdictions to protect gig workers within the identified classification.

## 4.1 Kenya

The protection of gig workers in Kenya remains underdeveloped, reflecting the challenges faced in the digital economy.<sup>129</sup> The case study of Kenya brings focus to the plight of data annotators and platform workers. This is particularly characterised by the various cases from ride-hailing apps and data annotators raising complaints about unfair wages, working conditions, dismissals and pay, which will be further highlighted through the cases discussed below.

### a. Remotask

Remotask, owned by scale AI, is an online platform which allows Kenyans to perform data annotation tasks such as image labelling, contributing to AI model training.<sup>130</sup> Kenyan users began joining the platform in 2021, making

it the most popular online gig platform in Kenya, particularly among the youth, given the high unemployment rate. Thousands of Kenyans depended on the platform for their livelihood.<sup>131</sup> On 08 March 2024, Remotask abruptly suspended all its operations in Kenya. This was done without prior notice, leading to the blocking of Kenyan users from accessing their accounts.<sup>132</sup> The reason for suspension was due to internal policies, including poor quality work, multiple accounts, and providing false information. The Kenyan workers reported a lack of transparency and accountability, the absence of an opportunity for human intervention and appeal and the sudden loss of income.<sup>133</sup> The suspension raised issues around the classification of the workers, raising questions as to whether they were employees entitled to protections or independent contractors subject to unilateral decisions from the platform.<sup>134</sup> This case highlighted the gaps in regulatory mechanisms that ensure fair treatment and social protection for data annotators in Kenya, arising from complaints, a lack of contractual obligations, and the absence of a formal channel for dispute resolution and complaints. This case also highlighted the precarious nature of data annotation in Kenya, where workers are likely to experience sudden platform exits with no recourse to appeal. Before the

129 Digital Labour Platforms in Kenya: Exploring Women's Opportunities and Challenges Across Various Sectors (Geneva, ILO 2024) <https://www.ilo.org/sites/default/files/2024-06/24004-ILQ-Digital-Labour-Kenya-v6%20Final%20May%2031%202024.pdf> accessed 30 July 2025.

130 'Online Gig Workers Left Stranded as Remotasks Exits Kenya' *Kenyan Wall Street* (10 March 2024) <https://kenyanwallstreet.com/gig-workers-stranded-as-remotasks-exits-kenya/> accessed 9 July 2025.

131 *ibid.*

132 'Blow to Kenyans as Remotasks Suspends Operations' *The Kenya Times* (13 March 2024) <https://thekenyatimes.com/technology-business/blow-to-kenyans-as-remotasks-suspends-operations/> accessed 9 July 2025.

133 *ibid.*

134 'Remotasks: Eyebrows Raised as Popular Online Job Website Crashes Users Stranded' *Uzalo News* (13 March 2024) <https://uzalodnews.co.ke/remotasks-eyebrows-raised-as-popular-online-job-website-crashes-users-stranded/> accessed 9 July 2025.

suspension, Kenyan data annotators had reported delayed payments, sudden account suspensions and opaque performance rating systems by Remotask.<sup>135</sup> The accounts of the data annotators were suspended for “speed and accuracy issues” without any explanation or opportunity to contest the decisions.<sup>136</sup> The suspensions also raised questions about algorithmic management and its impact on the data annotators, including their rights, such as fair treatment and the use of automated decision-making. The Kenyan courts, despite public outcry, have yet to recognise gig workers as employees. Due to the lack of employee status and formal contracts, the workers remain excluded from statutory benefits and protections.

### **b. Meta Content moderator sues Majorel and Sama.**

The case involved 43 former Facebook content moderators who were employed by Sama and Majorel, Kenyan outsourcing companies.<sup>137</sup> The content moderators alleged unlawful dismissal, union busting and blacklisting, barring them from future employment.<sup>138</sup> There were no redundancy notices before the dismissal, a severe violation of Kenyan employment and labour laws.<sup>139</sup> The case was centred around

worker classification and the responsibility of the platforms. In 2023, the Employment and Labour Relations Court in Nairobi ruled that Meta, along with its contractors Sama and Majorel, could be sued in Kenya and proceeded to hear the matter. This affirmed the jurisdiction of Kenyan courts over foreign tech companies operating in Kenya, enabling workers to seek redress regardless of the foreign nature of the companies.<sup>140</sup> The court held that the dismissal of the content moderators was unfair and without proper redundancy notices. The court, recognising the psychological harm suffered by the moderators due to the nature of the working conditions, ordered extension of their contracts till the determination of the case.<sup>141</sup> The Kenyan Court of Appeal confirmed that it has jurisdiction over Meta, a foreign tech company and allowed the workers’ claim to proceed. This confirmation of jurisdiction was significant, as it set the foundational stage for platform accountability, further opening an avenue for redress and thereby structurally changing how gig workers are perceived within the context of employment and labour laws.

<sup>135</sup> ‘Remotasks Reviews’ *Trustpilot* (6 June 2024) <https://www.trustpilot.com/review/remotasks.com?page=2> accessed 9 July 2025.

<sup>136</sup> ‘Remotasks Users in Kenya Unable to Access Online Gig Site’ *NTV Kenya* (13 March 2024) <https://ntvkenya.co.ke/news/remotasks-users-in-kenya-unable-to-access-online-gig-site/> accessed 9 July 2025.

<sup>137</sup> ‘Kenya: Content moderators filed a lawsuit against Meta alleging poor working conditions including insufficient mental health support and low pay’ *Business & Human Rights Resource Centre* (19 December 2024) <https://www.business-humanrights.org/en/latest-news/kenya-content-moderators-filed-a-lawsuit-against-meta-alleging-poor-working-conditions-including-insufficient-mental-health-support-and-low-pay/> accessed 9 July 2025.

<sup>138</sup> ‘Meta & Sama Lawsuit (Re Poor Working Conditions & Human Trafficking, Kenya)’ *Business & Human Rights Resource Centre* (2024) <https://www.business-humanrights.org/fr/latest-news/meta-sama-lawsuit-re-poor-working-conditions-human-trafficking-kenya/> accessed 9 July 2025; *Meta Platforms, Inc & 2 others v Motaung & 186 others* [2024] KECA 1262.

<sup>139</sup> *Meta Platforms, Inc & 2 others v Motaung & 186 others* [2024] KECA 1262.

<sup>140</sup> *Constitutional Petition E052 of 2023*.

<sup>141</sup> *ibid*.

### c. Kenya Data Annotators Working for OpenAI

This case highlights the unfair working conditions and compensation for data annotators employed by outsourcing firms such as Sama for OpenAI's development.<sup>142</sup> This is particularly related to content labelling and filtering for ChatGPT.<sup>143</sup> According to TIME's report, data labellers in Kenya earned between \$1.32 and \$2.00 per hour, which is below the Kenyan minimum wage for comparable jobs. The workers take part in labelling of disturbing and extremely graphic content, including torture, suicide and violence, exposing them to psychological trauma without adequate mental health protection.<sup>144</sup> OpenAI contracted Kenyan workers; however, their wages were set to less than \$2 Per Hour.<sup>145</sup> The investigation by TIME found that while OpenAI paid Sama around \$12.50 per hour per worker, the annotators only received a small fraction of this amount.<sup>146</sup> Additionally, the workers logged long shifts of up to nine hours a day, labelling texts while trying to cope with the mental health burdens of their daily work.<sup>147</sup> Not only was this reflective of unfair labour practices, but it also highlights systematic exploitation within the AI supply chain, where multinational foreign compa-

nies benefit from low-cost labour from economically vulnerable regions, such as Kenya.

In 2024, further investigations showed that Kenyan workers continued to receive low pay of around \$2 per hour from Sama despite the high pay from Meta.<sup>148</sup> These reports sparked debates not only around the challenges faced by data annotators and content moderators but also regarding the ethical development of AI, particularly in considering the human component in the AI value chain. The lack of specific laws leaves a loophole through which digital platforms and multinational tech companies have taken advantage of to continuously rely on low-income countries such as Kenya for cheap labour, noting the lack of bargaining power and social protection for gig workers.<sup>149</sup> As such, despite performing essential work that builds global AI systems, data annotators in Kenya remain vulnerable due to limitations and gaps in the existing labour laws.

### d. Unionisation of Gig Workers in Kenya.

In response to the unfair treatment of data annotators in Kenya, Kenyan workers have formed the first organised union for collective representation and protection. The Kenya Union of Gig Workers (KUGW) was established to advocate for the gig workers as em-

142 Karen Hao, 'OpenAI Used Kenyan Workers on Less Than \$2 Per Hour: Exclusive' *TIME* (18 January 2023) <https://time.com/6247678/openai-chatgpt-kenya-workers/>, accessed 9 July 2025; Annie Njanja, 'Workers That Made ChatGPT Less Harmful Ask Lawmakers to Stem Alleged Exploitation' by Big Tech' *TechCrunch* (14 July 2023) <https://techcrunch.com/2023/07/14/workers-that-made-chatgpt-less-harmful-ask-lawmakers-to-stem-alleged-exploitation-by-big-tech/>, accessed 9 July 2025.

143 'Kenya: Content moderators filed a lawsuit against Meta alleging poor working conditions including insufficient mental health support and low pay' *Business & Human Rights Resource Centre* (19 December 2024) <https://www.business-humanrights.org/en/latest-news/kenya-content-moderators-filed-a-lawsuit-against-meta-alleging-poor-working-conditions-including-insufficient-mental-health-support-and-low-pay/>, accessed 9 July 2025.

144 Billy Perrigo, 'OpenAI Outsourced Data Labeling to Kenyan Workers Earning Less Than \$2 Per Hour: TIME Report' *BigDataWire* (20 January 2023) <https://www.bigdatawire.com/2023/01/20/openai-outsourced-data-labeling-to-kenyan-workers-earning-less-than-2-per-hour-time-report/>, accessed 9 July 2025.

145 Ibid.

146 Karen Hao, 'OpenAI Used Kenyan Workers on Less Than \$2 Per Hour: Exclusive' (*TIME*, 18 January 2023) <https://time.com/6247678/openai-chatgpt-kenya-workers/>, accessed 9 July 2025.

147 Ibid.

148 'OpenAI Paid Sama \$12 An Hour Per Worker—Kenyans Only Got \$2' *Weetrack* (25 November 2024) <https://weetracker.com/2024/11/25/openai-sama-kenyan-workers-controversy/>, accessed 9 July 2025.

149 'OpenAI and Sama hired underpaid Workers in Kenya to filter toxic content for ChatGPT' *Business & Human Rights Resource Centre* (18 January 2023) <https://www.business-humanrights.org/en/latest-news/openai-and-sama-hired-underpaid-workers-in-kenya-to-filter-toxic-content-for-chatgpt/>, accessed 9 July 2025.

employees, to accord them social security and fair wages.<sup>150</sup> The workers' union is specifically structured to advocate for algorithmic transparency in decisions such as work allocation, account suspension, and performance evaluation, ensuring fair, explainable, and consistent outcomes and processes. Established only in 2024, KUGW has made efforts towards contributing to discussions convened by GIZ and KICTANet in 2024 at the Policy Consultation Roundtable on Regulating Kenya's Gig Economy.<sup>151</sup> The establishment of this union signifies intentional steps towards advancing the protection of gig workers in Kenya, marking a systematic change in their classification and identification within the framework of labour and employment regulations.

#### e. Data Labellers Association of Kenya

Earlier this year, the Data Labellers Association of Kenya was formed by AI and data annotation workers to give the workers a voice against workplace injustices like low pay and poor working conditions.<sup>152</sup> It has created awareness about the challenges faced by data annotators and advocated for mental health support, fair wages, and labour rights for the workers. They have had active engagements through stakeholder meetings and policy hackathons, resulting in initiatives like the

development of the Model Contract and a Voluntary Code of Conduct for AI data workers.<sup>153</sup>

## 4.2 Nigeria

Nigeria has a large and diverse gig economy, where workers perform tasks ranging from ride-hailing and delivery services to digital freelancing, including image-tagging and data annotation.<sup>154</sup> This growth in the gig industry mainly results from high rates of unemployment in the country, with the Nigerian Bureau of Statistics reporting 87.3% of employed Nigerians are primarily self-employed, while 12.7% are formally employed, in the third quarter of 2023.<sup>155</sup> Amid this growth, workers' legal and policy protections still lag as they are considered as independent contractors and not employees, locking them out of fair labour benefits such as pensions, job security and health cover.<sup>156</sup> They also experience common challenges among gig workers, such as opaque algorithmic decision-making, inability to unionise and job and wage instability.<sup>157</sup>

The challenges faced by gig workers in Nigeria are similar to those experienced by data annotators and content moderators in Kenya. Notably, the contrast in both jurisdictions is based on

<sup>150</sup> Martijn Arets, 'Survival versus perspective? "It's not about money, but about taking responsibility"' (Gigpedia, 23 October 2025) <https://gigpedia.org/resources/blogs/2025/survival-versus-perspective-2016its-not-about-money-but-about-taking-responsibility2019/> Accessed 30 July 2025.

<sup>151</sup> KICTANet, 'Shaping the Future of Work – That is, the Kenya's Gig Economy' (KICTANet Think Tank, 2025) <<https://www.kictanet.or.ke/shaping-the-future-of-work-that-ilabellersins-the-kenyas-gig-economy/>>

<sup>152</sup> Data Labelers Association Kenya <<https://datalabellers.org/>>

<sup>153</sup> Data Labelers Association, 'Data Labellers Association Tops Policy Hackathon at Africa Tech Policy Summit' (KICTANet, 4 June 2025) <https://www.kictanet.or.ke/data-labellers-association-tops-policy-hackathon-at-africa-tech-policy-summit/> accessed 28 August 2025.

<sup>154</sup> Victoria Oloni, 'Nigeria's Gig-economy: The Rise of Independent Workers' (VerivAfrica, 11 October 2024) <https://www.verivAfrica.com/insights/nigerias-gig-economy-the-rise-of-independent-workers> accessed 30 July 2025.

<sup>155</sup> Victoria Oloni, 'Nigeria's Gig-Economy: The Rise of Independent Workers' (VerivAfrica.com 2024) <<https://www.verivAfrica.com/insights/nigerias-gig-economy-the-rise-of-independent-workers>> accessed 30 July 2025.

<sup>156</sup> Tochukwu Egesi, 'The Impact of the Gig Economy on the Well-Being of Independent Contractors. A Case Study of Uber, Bolt and Gokada' [2022] *Graduate School of Business, University of Cape Town* <<https://open.uct.ac.za/server/api/core/bitstreams/5ef936a5-8b56-4fc7-8ecb-1141c1da8d07/content>> accessed 30 July 2025

<sup>157</sup> *ibid.*

the category of gig workers, with a key focus on the challenges and risks faced by platform workers in Nigeria and data annotators and content moderators in Kenya. It is through this lens that the case study on Nigeria is perceived, highlighting the role of employment law through the plight of platform workers.

The Nigerian gig economy is characterised by central digital platforms driving this economy, particularly for on-location services, including Uber, which entered the Nigerian market in 2014, Bolt, formerly known as Taxify, in 2016, and Gokada.<sup>158</sup> These platforms operate as intermediaries, connecting service providers with consumers. As of 2018, Uber alone reported having approximately 10,000 drivers, while Bolt claimed around 20,000 drivers.<sup>159</sup>

Much like Kenya, the fundamental conflict within the Nigerian gig economy is worker misclassification.<sup>160</sup> Gig economy companies, exemplified by the Uber model, increasingly rely on classifying workers as independent contractors rather than traditional employees to reduce operational costs and minimise employment-related liabilities.<sup>161</sup> This distinction is crucial because employees are entitled to statutory benefits and protections, such as minimum wage, health insurance, workers' compensation for injuries sustained in the

line of duty, and the fundamental right to unionise under the Trade Union Act, protections which do not apply to independent contractors.<sup>162</sup>

The narrative on classification of gig workers remains the same when compared to Kenya, the reasoning being the relationship they facilitate does not fit the traditional relationship of employer/employee versus independent contractor.<sup>163</sup> To further contextualise, we consider the case of Uber in Nigeria. The Uber business model maintains that they are not a transportation company and do not employ drivers or own the vehicles, they merely provide a technological platform to connect vehicle owners with potential riders.<sup>164</sup>

Notably, it has been observed that this relationship presents elements supporting both classifications. Firstly, drivers provide their own tools, in this case, the vehicles, and they are then paid based on completed pick-up jobs, and they retain flexibility by controlling their work hours and geographical area for pickups.<sup>165</sup> Second, Uber imposes substantial control over exercising functions like marketing services, setting pay rates and methods for qualifying and selecting drivers, to the extent of requiring background checks and rigorously monitoring performance, all synonymous with employee traits.<sup>166</sup> Drivers who fail to meet the set standards, for example, falling below a 4.6

158 Tochukwu Egesi, 'The Impact of the Gig Economy on the Well-Being of Independent Contractors. A Case Study of Uber, Bolt and Gokada' [2022] *Graduate School of Business, University of Cape Town* <<https://open.uct.ac.za/server/api/core/bitstreams/5ef936a5-8b56-4fc7-8ecb-1141c1da8d07/content>>

159 *ibid*

160 N. Ejims Enwukwe, 'The Employment Status of Nigerian Workers in the Gig Economy: Using Uber as a Case Study' (2021) 107 *Journal of Law, Policy and Globalization*. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3818696](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3818696) accessed 30 July 2025

161 *ibid*

162 N. Ejims(n160)

163 *ibid*

164 *ibid*

165 *ibid*

166 *ibid*

rating, often risk being terminated or abruptly removed from the app. These nuances and traits demonstrate a relationship that can be classified as employer-employee or independent contractor, justifying the arguments on misclassification.

### ***The Oladapo Olatunji & Anor v Uber Technologies System Nigeria Ltd & 2 Ors***

case represents early attempts to address the misclassification argument. The claim was brought before the National Industrial Court at Lagos, by two drivers on behalf of themselves and other Uber and Taxify drivers, seeking declarations that they were employees entitled to statutory benefits such as pensions and health cover.<sup>167</sup> The court dismissed the action on procedural and evidentiary grounds, finding that the claimants had wrongly approached the court through an originating summons in a case involving disputed facts, and they failed to provide sufficient evidence to prove an employment relationship with Uber, leaving the legal status of platform drivers in Nigeria uncertain.<sup>168</sup>

Nigerian scholars have observed that Nigerian labour law, established in a different era, and the existing legal interpretations of labour relationships are insufficient in capturing the dynamics of the gig economy.<sup>169</sup> These limitations are observed through inad-

equacies in existing legislation, particularly the Labour Act. The Act does not expressly refer to or define gig workers or gig employment, however, the Act generally applies only to workers performing manual or clerical labour.<sup>170</sup> The scope, though reflective, automatically excludes those performing technical or professional functions, thus denying protection to many gig workers even if they were to be classified as employees.<sup>171</sup>

Beyond the Labour Act, Nigerian Courts have set a precedent for determining employment status, known as the Shena Test. The multi-factor test established in *Shena Security Co. Ltd v Afropak (Nig.) Ltd.* examines control factors like who supplies the tools, the mode of payment, hours of work and the work premises.<sup>172</sup> The basis of this case was to determine whether the relationship between the parties was that of an employee or an independent contractor. In this case, despite the absence of a written employment contract, the courts concluded that the relationship was one of employment due to the nature of the work and the level of control. Payment arrangements indicated an employment relationship.<sup>173</sup> Relying on this rational and the case of *uber* for example one would conclude that platform workers whose relation-

167 Oladapo Olatunji & Anor v Uber Technologies System Nigeria Ltd & 2 Ors, Suit No. NICN/LA/546/2017 <<https://www.nicnadr.gov.ng/judgement/details.php?id=1647>> accessed 30 July 2025

168 *ibid*

169 Asia, Elvis E, 'The Future of Employment Law in a Gig Economy' (Academia, 2024) <[https://www.academia.edu/42864568/The\\_future\\_of\\_employment\\_is\\_standtheyw\\_in\\_a\\_gig\\_economy](https://www.academia.edu/42864568/The_future_of_employment_is_standtheyw_in_a_gig_economy)> assessed 30 July 2025

170 Nigeria, Labour Act, Cap L1 <<https://laws.nigeria.placng.org/laws/L1.pdf>> accessed 30 July 2025

171 Asia, Elvis E, 'The Future of Employment Law in a Gig Economy' (Law Future Partners, 2024) <<https://lawfuturepartners.com/the-future-of-employment-law-in-a-gig-economy/>> accessed 30 July 2025

172 *Shena Security Co Ltd v Afropak (Nig) Ltd & Ors* (Supreme Court of Nigeria, 2008). <[https://assets.ctfassets.net/kh9wlpqzblok/6PrBcNj2Ozulmjydu5o8w/7c8b99017cc7c7243d95b-914f5e32e42/Shena\\_Security\\_Co\\_Ltd\\_v\\_Afropak\\_Nig\\_Ltd\\_2\\_Ors-Doc.pdf](https://assets.ctfassets.net/kh9wlpqzblok/6PrBcNj2Ozulmjydu5o8w/7c8b99017cc7c7243d95b-914f5e32e42/Shena_Security_Co_Ltd_v_Afropak_Nig_Ltd_2_Ors-Doc.pdf)> accessed 30 July 2025

173 *ibid*

ships with the platform is characterised by the traits observed, that is control, remuneration, and other employment indicators to establish worker status, it could be deduced that, platform workers ought to be considered as employees given the circumstances. However, critics have argued that relying on She-na is insufficient because it fails to fully capture the subtle nuances of control exerted through modern technology in platform work.<sup>174</sup>

The lack of recognised status, therefore, means that platform workers operate in an unprotected form of employment, where their terms and conditions are often automatically offered without negotiation.<sup>175</sup> This vulnerability has been highlighted by instances where the Lagos state Government introduced regulations for ride-hailing companies, without inviting the drivers to the talks, who cited their status as contractors as the reason for their exclusion.<sup>176</sup>

Although precedent and statute fail to provide adequate protections for platform workers, some protections can be inferred from legal instruments, such as the Employee Compensation Act (ECA) 2010.<sup>177</sup> The ECA is recognised as a significant advancement because its definition of an employee is broad, as it covers those employed on a continuous, part-time, temporary, apprenticeship or casual basis.<sup>178</sup> This broad definition can be leveraged for platform

workers and other classifications of gig workers to potentially accrue benefits for compensation in case of death, injury, disease, or disability arising from employment.

Additionally, the Trade Unions Act 2005 (TUA), in defining trade unions, expressly includes temporary workers and combinations of workers or employees.<sup>179</sup> This language suggests an intent by the draftsman to capture all workers regardless of status, potentially granting gig workers the right to form trade unions without employer authorisation.

### **Unionisation of Gig Workers in Nigeria**

Unionisation efforts in Nigeria began in 2016, much earlier than in Kenya, and were sparked by Uber's actions when they inadvertently reduced drivers' income by 40% without consultation or notice. As a result, the preceding years saw two steps being taken to create a union leading to the further formation of the Professional E-hailing Drivers and Private Owners Association of Nigeria (PEDPAN), National Coalition of Ride Sharing Partners (NACORP) and National Union of Professional App-based Transport Workers (NU-PA-BTW).<sup>180</sup> With the growing challenges and observed the limitations in protections from the law such as inadequate low income and wages, unfair payment structures, lack of job security, unfair deactivation and suspension

174 Yagba, Jane-Frances Terdoo, 'Digital Platform Work: A Transformation of Traditional Employment Relations in Nigeria', *Benue State University Law Journal*, Vol 10, 2021, pp 157-170. <<https://bsumedu.ng/journals/law/vol10/files/file8.pdf>> accessed 30 July 2025

175 N. Ejimisi(n160)

176 *ibid*

177 Employees' Compensation Act 2010.

178 Employees' Compensation Act 2010, section 73

179 Trade Unions Act 2005, p 3

180 'Amalgamated Union of App-Based Transport Workers in Nigeria, 'Our History' (AUAT-WON).< <https://auatwon.org/our-history/>> accessed 30 July 2025

and the absence of formal recognition and collective bargaining rights, the final push in 2023 informed the ultimate recognition of the Amalgamated Union of App-Based Transport Workers in Nigeria (AUATWON) by the Federal Ministry of Labour & Employment becoming the first government approved union of its kind.<sup>181</sup>

The union is structured to address the overall interest and welfare of its members, promoting economic well-being, safety, and security of all platform workers.<sup>182</sup> The Union's membership covers an estimated 'one hundred thousand to over two hundred thousand across Nigeria, with their scope including e-hailing or online transport drivers, app-based bike and bicycle food delivery and courier delivery workers (dispatch), app-based bike passenger workers, and app-based bus passenger workers in the online sub-sector of the transportation industry across Nigeria.'<sup>183</sup>

The unionisation introduced a legal and institutional framework that can serve as a protectionist mechanism for platform workers and a means through which platform workers are no longer exposed to unilateral decisions by platform operators further enabling collective bargaining that supports the establishment of fair wages, health benefits, and safety standards, which are otherwise difficult to attain through individual negotiations, not-

ing the lack of clarity in worker status under the law.

The case studies of the Kenyan and Nigerian gig economies highlight similarities in widespread worker misclassification, leading to the exclusion of data annotators, content moderators, and platform workers from statutory protections. The differences are minimal, noting that Kenya's central struggle is concentrated on data annotators and content moderators, highlighting systematic exploitation within the AI supply chain, where workers receive extremely low compensation compared to the global value generated and suffer severe mental harm. Additionally, Kenyan courts have made significant progress by affirming jurisdiction over foreign tech companies, establishing a foundational precedent for platform accountability. In contrast, Nigeria's focus lies primarily on the challenges faced by on-location platform workers in the transport sector, such as Uber and Bolt, where earlier attempts to challenge misclassification in court were dismissed on procedural grounds. Yet, Nigerian workers have successfully achieved a crucial institutional framework through the formal 2023 government recognition of the Amalgamated Union of App-Based Transport Workers in Nigeria (AUATWON), thereby creating a legal and institutional mechanism for collective bargaining and protection despite the lack of favourable statutory worker status. Both nations are on similar trajectories when it comes to advancing the

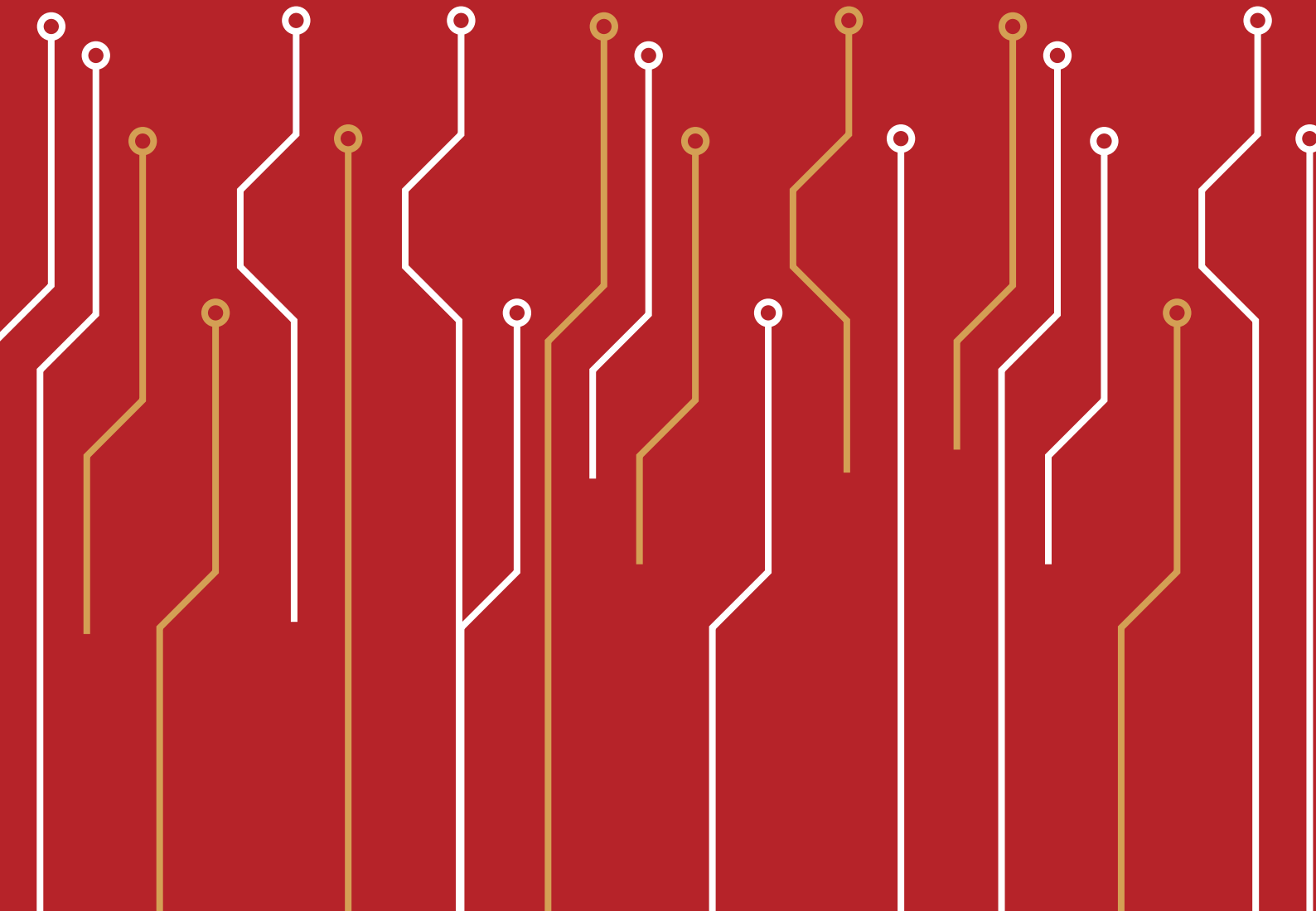
<sup>181</sup> *ibid*

<sup>182</sup> *ibid*

<sup>183</sup> *ibid*

rights of gig workers, demonstrating shared challenges. However, the focus differs, which highlights the continued need to advocate for policy changes, even as AI continues to evolve and impact labour.

## 5.0 Major Challenges and Risks



The rapid evolution of the gig economy in Kenya, mirroring broader African trends, underscores the urgent need for employment law reforms. It highlights the profound shift in employment modalities and exposes the workers to multifaceted challenges.<sup>184</sup> Despite it being a promising sector in boosting economic growth, AI development and innovation globally, it poses challenges to the gig workers due to a lack of protection.<sup>185</sup>

Deeply rooted in the digital platform algorithmic models is a key challenge of job insecurity. Platforms such as Remotask have unilateral power and control over the work the gig workers get and heavily rely on opaque algorithms for customer rating, performance evaluation and payment calculations.<sup>186</sup> Gig workers face abrupt account suspensions without notice, explanation, or even an opportunity to challenge the automated decisions. Due to their classification as contract workers, gig workers are excluded from labour protections, including fair remuneration, collective bargaining, social protection, and dismissal protection. The lack of transparency by the platforms undermines the ability to contest the opaque decisions.<sup>187</sup>

Platforms can therefore evade responsibility leaving the workers without

representation and remedies. Notably, this gap not only deepens existing inequalities but further exacerbates the socio-economic plight of marginalised communities, especially women who face job instability in the gig ecosystem.<sup>188</sup> In turn, this poses income instability with data annotators falling below the minimum wage and is based on opaque algorithmics and customer ratings, leading to unpredictable income streams and financial instability. In addition, the workers provide for their own tools, bear their own cost of electricity and internet, increasing the cost and amplifying economic precarity as was seen in the Remotask account suspension case.<sup>189</sup>

Additionally, data annotators in Kenya lack social protection despite the critical role they play in the AI ecosystem.<sup>190</sup> Employment laws in Kenya do not explicitly cover gig workers, who are often classified as independent contractors, thereby denying them access to protections under these laws. This exposes the workers to vulnerabilities in times of sickness, leading to abrupt job losses.<sup>191</sup> Kenyan data annotators face harrowing working conditions posing significant risks to their mental and physical well-being which ultimately raise ethical issues in AI development.<sup>192</sup> The annotators are exposed to graphic and disturbing content includ-

184 International Labour Organization, 'Strong Labour and Social Protections: Key to a Thriving Digital Economy in Kenya' (2025) <<https://www.ilo.org/resource/news/strong-labour-and-social-protections-key-thriving-digital-economy-kenya>> accessed 17 July 2025.

185 KICTANet, 'Kenya's Growing Gig Economy: Balancing Opportunity and Challenges' (2025) <<https://www.kictanet.or.ke/kenyas-growing-gig-economy-balancing-opportunity-and-challenges/>> accessed 17 July 2025.

186 *ibid.*

187 Microsave Consulting, 'Challenges and opportunities for Kenyan women from the gig economy in the digital age' (2023) <<https://www.microsave.net/2023/12/15/challenges-and-opportunities-for-kenyan-women-from-the-gig-economy-in-the-digital-age/>> accessed 17 July 2025.

188 Fairwork Kenya, 'Fairwork Kenya Ratings 2021: Labour Standards in the Gig Economy' (2021) <<https://fairwork/wp-content/uploads/sites/17/2021/12/Fairwork-Kenya-2021-report-accessible.pdf>> accessed 17 July 2025.

189 *ibid.*

190 Thesharpdaily, 'The rise of the gig economy in Kenya: Opportunity or exploitation?' (2025) <<https://thesharpdaily.com/kenya-gig-economy-challenges/>> accessed 17 July 2025.

191 *ibid.*

192 DW, 'Kenyan data workers risk their mental health to train AI' (27 February 2025) <<https://www.dw.com/en/kenyan-data-workers-risk-their-mental-health-to-train-ai/video-71777193>> accessed 17 July 2025.

ing hate speech and violence. Data annotators in Kenya have advocated for mental health support earlier this year, a depiction of the distressing content in exchange for very low wages.<sup>193</sup> This is worsened by the long shifts and the lack of protection leaving the annotators at risk. Kenyan data annotators working for OpenAI, for instance, were tasked with labelling texts including sexual abuse and violence. One of the employees came out explaining the severe confusion caused due to the graphic content they were exposed to.<sup>194</sup> Other workers have complained of being traumatised and experiencing chronic distress. Health resources remain minimal and generalised despite the psychological toll. Mental sessions are often offered in groups and are insufficient for the severity of the content exposure and harm.<sup>195</sup>

In addition to exposure to harmful content, data annotators often endure precarious working conditions. The data annotators in Kenya operate with no formal contracts, working on short-term and task-based agreements.<sup>196</sup> Beyond job security, other risks, such as a lack of paid leave and long working hours, also arise. The illusion of flexibility in the work masks the intense workload and long shifts that data annotators face. The impact this system poses runs from psychological stress, such

as depression and anxiety, to physical health as a result of prolonged screen times and lack of rest due to the prolonged shifts.<sup>197</sup>

## 5.1 Intersection Between the Challenges and Ethical AI

These challenges identified throughout this study raise ethical issues and risk compromising the fairness, quality and transparency of AI systems. The traumatised, exhausted and mentally drained data annotators may not be able to perform in such conditions, make unstable and compromised judgments, which in turn increase annotation errors and biases as AI systems are highly reliant on data.<sup>198</sup> This compromises the well-being of the data annotators, remaining at a threat, directly affecting the accountability, transparency and reliability of AI, calling for the embedding of ethical AI principles in data annotation.<sup>199</sup>

The existing divide in AI governance maturity between the EU and across Africa, as well as the lack of protection for gig workers in Africa, amplifies digital colonialism. Africa provides data annotation labour and, in turn, disproportionately benefits from such systems. Africa contributes a rapidly evolving share of the global data annotation labour, with thousands of Kenyans fuelling data sets for the million-dollar platforms. The social protection of such

193 'The Conversation, 'Africa's data workers are being exploited by foreign tech firms – 4 ways to protect them' (29 May 2024) <<https://theconversation.com/africas-data-workers-are-being-exploited-by-foreign-tech-firms-4-ways-to-protect-them-252957>> accessed 17 July 2025.

194 'Business Insider, 'Moderators Working on ChatGPT Say They Were Traumatized by Graphic Content' (4 August 2023) <<https://www.businessinsider.com/chatgpt-moderators-kenya-say-they-were-traumatized-by-graphic-content-2023-8/>> accessed 17 July 2025.

195 *ibid.*

196 'Data workers demand safe and fair conditions' (20 February 2025) <<https://superr.net/en/blog/data-workers-demand-safe-and-fair-conditions>> accessed 17 July 2025.

197 *ibid.*

198 *ibid.*

199 'Ensuring Quality in Data Annotation' (2025) <<https://keymakr.com/blog/ensuring-quality-in-data-annotation>> accessed 17 July 2025.

data annotators lags. Only 10% of such have formal protection in contract, with over 80% in the EU platform workers who remain protected.<sup>200</sup> Without addressing this existing gap, there is a risk of a wider divide in technological harnessing between the global North and labour exploitation in the Global South, leading to digital colonialism. This then results in a lack of confidence and trust in AI systems and the governance frameworks in Africa, a barrier to AI adoption.<sup>201</sup>

## 5.2. Gendered Perspectives

Significant to understanding the dynamics of gig work is gendered perspectives, with a focus on Kenya, the gender dynamic highlights the inequalities that shape women's participation, advancement and well-being in digital work, particularly in data annotation and the AI supply chain.<sup>202</sup> There is a promise for having the gig economy as an equaliser in terms of income opportunities due to the removal of barriers to entry; however, this promise remains unfulfilled in Kenya as women face persistent socioeconomic exclusion.<sup>203</sup>

Research shows that gig work is primarily performed by young people, women, and urban workers. Further in sub-Saharan Africa, women en-

gage in gig work at higher rates than in the traditional labour market.<sup>204</sup> Although this is the case, the same is not reflected in actual participation, especially in Kenya. In Kenya, the participation of women remains low, with only 28% of women gig workers as per the 2023 Ajira Digital Programme and Microsave Consulting report.<sup>205</sup> Women often spend three times as many hours as men do on domestic work, which constrains their availability for the complex and time-demanding gig work. Therefore, they remain restricted to microtasks such as content moderation, where wages are low.<sup>206</sup>

Notably, platforms and algorithms remain biased against women and offer limited career progression pathways for women with women remaining underrepresented in tech centres, networks, and most platforms offer limited to no upskilling opportunities. Ajira's report highlighted that only 22% of digital skills training graduates in Kenya are women.<sup>207</sup> The employment rates post the training are lower for females than for males. KICTANet and Microsave Consulting have highlighted a steep decline in female gig work due to childbirth and marriage, resulting in increased care responsibilities. The lack of supportive policies, such as paid maternity leave, leaves women without

200 Fairwork, 'Work in the Platform Economy: Evidence from Kenya, Ghana, Nigeria, South Africa and Tanzania' (2023) <<https://fairwork/en/fw/publications/reports/kenya-report-2023/>> accessed 17 July 2025.

201 *ibid.*

202 ODI, 'Challenges and opportunities for Kenyan women from the gig economy in the digital age' (2023) <<https://www.microsave.net/2023/12/15/challenges-and-opportunities-for-kenyan-women-from-the-gig-economy-in-the-digital-age/>> accessed 17 July 2025.

203 Caribou Digital, 'Women and the Platform Economy' (Platform Livelihoods Project, <[https://www.cariboudigital.net/wp-content/uploads/2024/04/Platform\\_Livelihoods\\_Project\\_CaribouDigital\\_April2024\\_web.pdf](https://www.cariboudigital.net/wp-content/uploads/2024/04/Platform_Livelihoods_Project_CaribouDigital_April2024_web.pdf)> October 2022)

204 Datta N, Chen R, Singh S, Stinshoff CA, Jacob N, Nigatu NS, Nxumalo M and Klimaviciute L, 'Working without Borders: The Promise and Peril of Online Gig Work' (World Bank 2023) <[https://openknowledge.worldbank.org/bitstreams/81abf93-mong-women-and-the-gender-AI-divide\\_resulting\\_in26b7-41e9-903f-4542687ad5db/download](https://openknowledge.worldbank.org/bitstreams/81abf93-mong-women-and-the-gender-AI-divide_resulting_in26b7-41e9-903f-4542687ad5db/download)> accessed 30 July 2025.

205 Microsave Consulting, 'Challenges and opportunities for Kenyan women from the gig economy in the digital age' (2023) <<https://www.microsave.net/2023/12/15/challenges-and-opportunities-for-kenyan-women-from-the-gig-economy-in-the-digital-age/>> accessed 17 July 2025.

206 Gachugu E, Mutisya M, Ireri M and Mwarange M, 'Gender Disparities in the Online Gig Economy in Kenya: Case Study of the Ajira Digital Programme' SSRN preprint (2024) <<https://papers.ssrn.com/sol3/Delivery.cfm/2d0976c4-184a-436e-9955-836eab0f7292-MECA.pdf?abstractid=5145689&mirid=1>> accessed 17 July 2025.

207 *ibid.*

options but to quit gig work, affecting their economic security and participation in the AI supply chain.<sup>208</sup>

The digital gender divide is further amplified due to a lack of safety, which remains an obstacle to women's entry into the gig economy. A survey by the UN Women in 2024 highlighted that 63% of women in the gig economy, particularly ride-hailing drivers, reported sexual advances, threats and harassment from male clients.<sup>209</sup> In data annotation, women have complained of exposure to sexually explicit and violent content without safeguards. Most digital platforms have inadequate incident reporting and ineffective mechanisms in place. Consequently, the lack of protection and accountability leads to self-censorship of women's online platforms, excluding them from participation in the Gig economy.<sup>210</sup> As a result, the development and governance of ethical AI across Africa are affected. Algorithms in the AI systems remain trained by male annotators, which may amplify gender biases and reinforce retrospective stereotypes, making the systems gender insensitive.<sup>211</sup> In contrast, women's perspectives remain absent, diminishing the fairness, representation and reliability of AI systems and outputs, perpetuating the gender digital divide.

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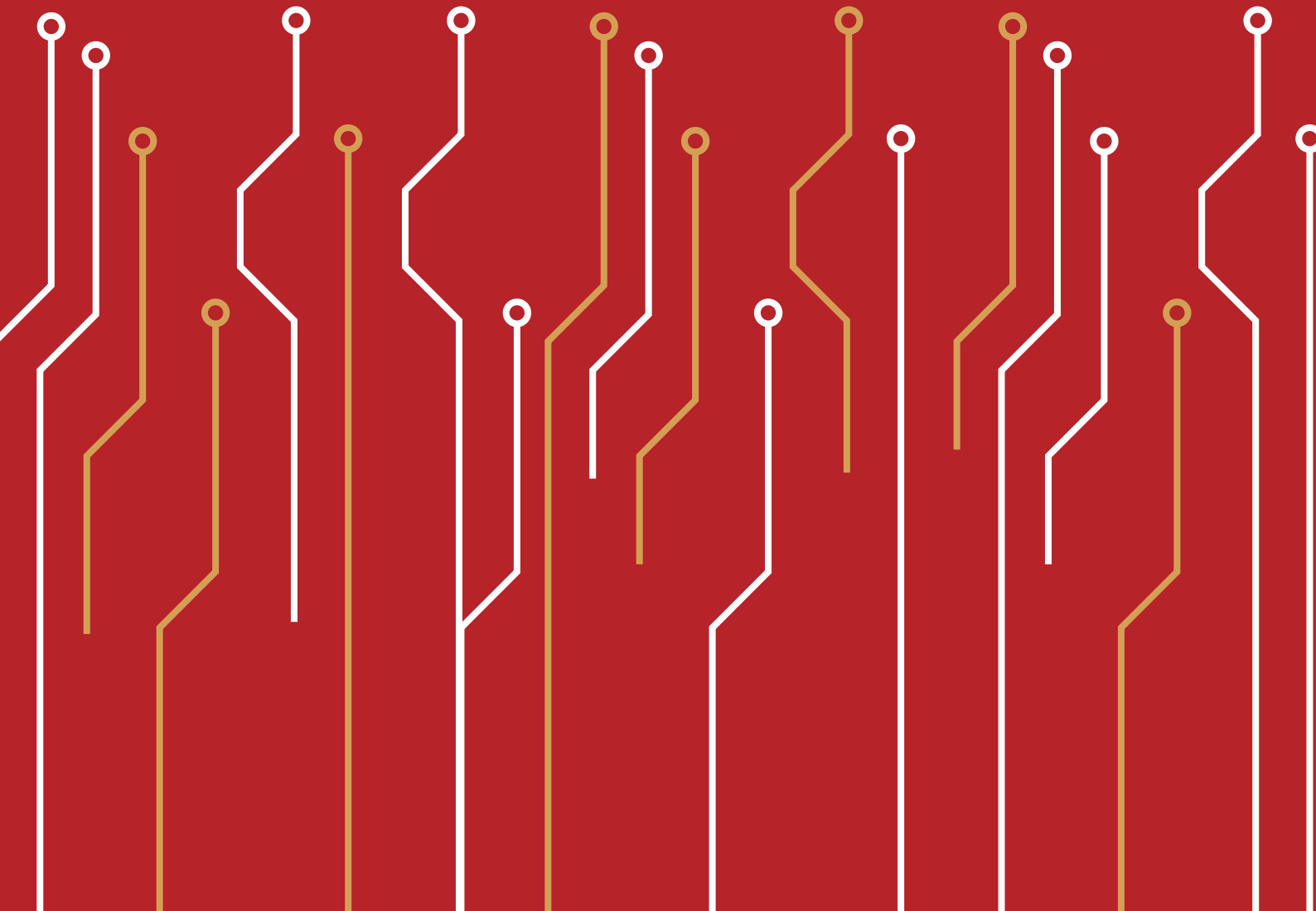
208 KICTANet, 'Women in Kenya's Gig Economy: Charting a Fair, Inclusive, and Equitable Future' (2025) <https://www.kictanet.or.ke/women-in-kenyas-gig-economy-charting-a-fair-inclusive-and-equitable-future/>, accessed 17 July 2025.

209 UN Women, 'BEIJING+30 Kenya Country Report' (2024) [https://www.unwomen.org/sites/default/files/2024-09/b30\\_report\\_kenya\\_en.pdf](https://www.unwomen.org/sites/default/files/2024-09/b30_report_kenya_en.pdf) accessed 17 July 2025.

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211 UN Women, 'How AI Reinforces Gender Bias And What We Can Do About It' (2025) <https://www.unwomen.org/en/news-stories/interview/2025/02/how-ai-reinforces-gender-bias-and-what-we-can-do-about-it> accessed 17 July 2025.

## 6.0 Evidence-Based Recommendations



The recommendations presented are reflective of actionable solutions that can be advanced not just in consideration of the Kenyan context but can be applied within context at a continental scale, particularly where there are key similarities in the characterisation of addressing protections for gig workers, regardless of the category, be they data annotators, platform workers or content moderators.

### **a. Social protection**

Kenya has existing social protection laws, including the Work Injury Benefits Act, the Labour Relations Act, and the Occupational Safety and Health Act. The Acts provide for workplace safety, collective labour rights, and work injury compensation, which are fundamental in the gig economy, where data annotators are often exposed to precarious working conditions without access to medical insurance and health protection. There is an urgent need to tailor these laws to the evolving economy, incorporating gig workers. Section 5(1) of WIBA can be revised to include data annotators, as it is confined to workers who are under contract of service.<sup>212</sup> Additionally, Section 3 of the Occupational Safety and Health Act on the scope of the Act should be explicitly extended to platform workers who engage in data annotation and oyster platform-based roles to hold platforms liable to workplace safety standards.<sup>213</sup> Together, these amendments will be multifaceted and critical in the social

protection of the Kenyan data annotators and other gig workers.

### **b. Algorithmic transparency for platforms.**

The algorithmic management of most digital platforms remains opaque, making decisions that significantly impact users. They lack explainability, human oversight and the right to challenge the decision, leaving workers with opaque decisions that are detrimental and no recourse.<sup>214</sup> Kenya's Data Protection Act plays a crucial role in regulating digital platforms to enhance transparency and accountability. Section 35 of the Act mirrors Article 22 of the GDPR and addresses Automated Decision Making.<sup>215</sup> Similar to the GDPR, it grants data subjects the right to understand the decisions made solely by algorithms that significantly affect them. Kenya can adopt a similar approach by requiring digital platforms, such as those involved in work allocation and account suspension, to provide explanations for their algorithmic decisions, empowering workers to understand the reasons behind decisions affecting them and accord them the right to human oversight and review of such decisions, as well as appeal mechanisms.

Additionally, the Act provides for Data protection principles under section 25, which include fairness, transparency, purpose limitation, storage limitation and data minimisation.<sup>216</sup> The enforce-

212 Work Injury Benefits Act (2007, Laws of Kenya), s 5(1).  
213 Occupational Safety and Health Act, No 15 of 2007, s 3.

214 *ibid.*  
215 Data Protection Act (No 24 of 2019, Laws of Kenya), s 35.  
216 Data Protection Act (No 24 of 2019, Laws of Kenya), s 35

ment of these principles on digital platforms that collect, and process data annotators' data would ensure the fair operation of platform algorithms without hidden biases. The Office of the Data Protection Commissioner (ODPC) would thus play a critical role by issuing sector-specific guidelines on the interpretation of Section 35 in an employment context. The ODPC can also investigate complaints arising from such platform decisions that do not adhere to the transparency, explainability and human-in-the-loop principles. The office can also ensure compliance with digital platforms and transparency in automated decisions through algorithmic impact assessments and audits, identifying and mitigating risks such as operational opacity and biases.

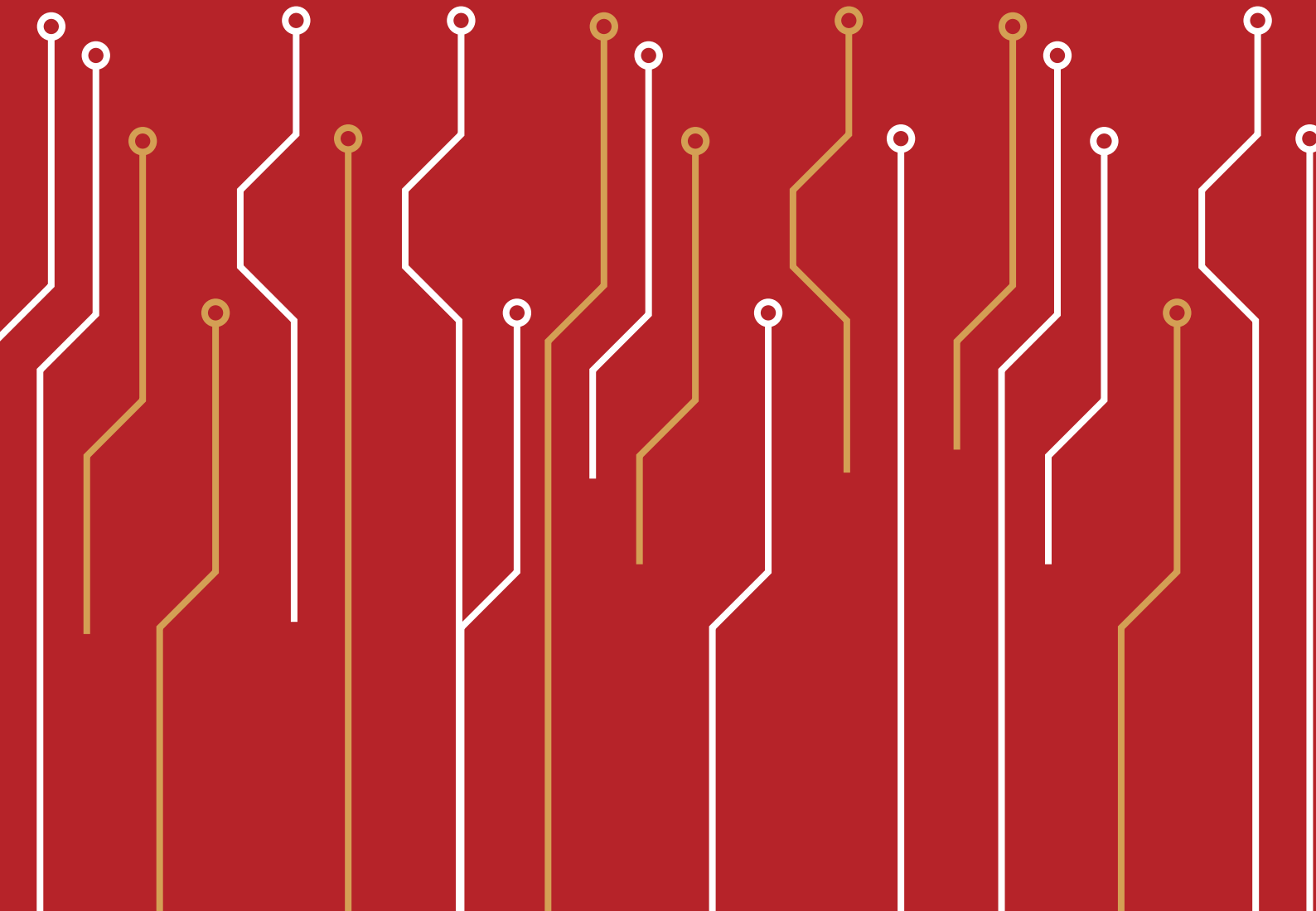
#### **c. Consideration for Targeted Inclusivity**

The gig economy runs the risk of amplifying pre-existing gender inequalities, as noted by statistics, women are more likely to engage in gig work due to the flexibility of its nature. However, their engagement in the gig economy is often limited by access, not just technological access but also institutional and organisational. Therefore, beyond general anti-discriminatory laws, there is a need for targeted policy intervention and clauses specifically designed to correct gender bias. Significant to this may be consideration for gender audits designed to detect and correct gender biases, in task allocation, payment and overall working conditions.

#### **d. Adapting existing Labour Laws to the Gig Economy**

A key finding from the study is that current employment and labour relations laws do not adequately capture the changes that technology has brought to the way work is currently conducted and perceived, particularly in the context of gig work. This will continue to evolve as technology advances, thereby creating new opportunities for growth and expansion. The laws must therefore be amended or developed to address and accommodate these changes. Key to this is addressing the misclassification of gig workers as employees, thereby enabling them to access the protections provided by law.

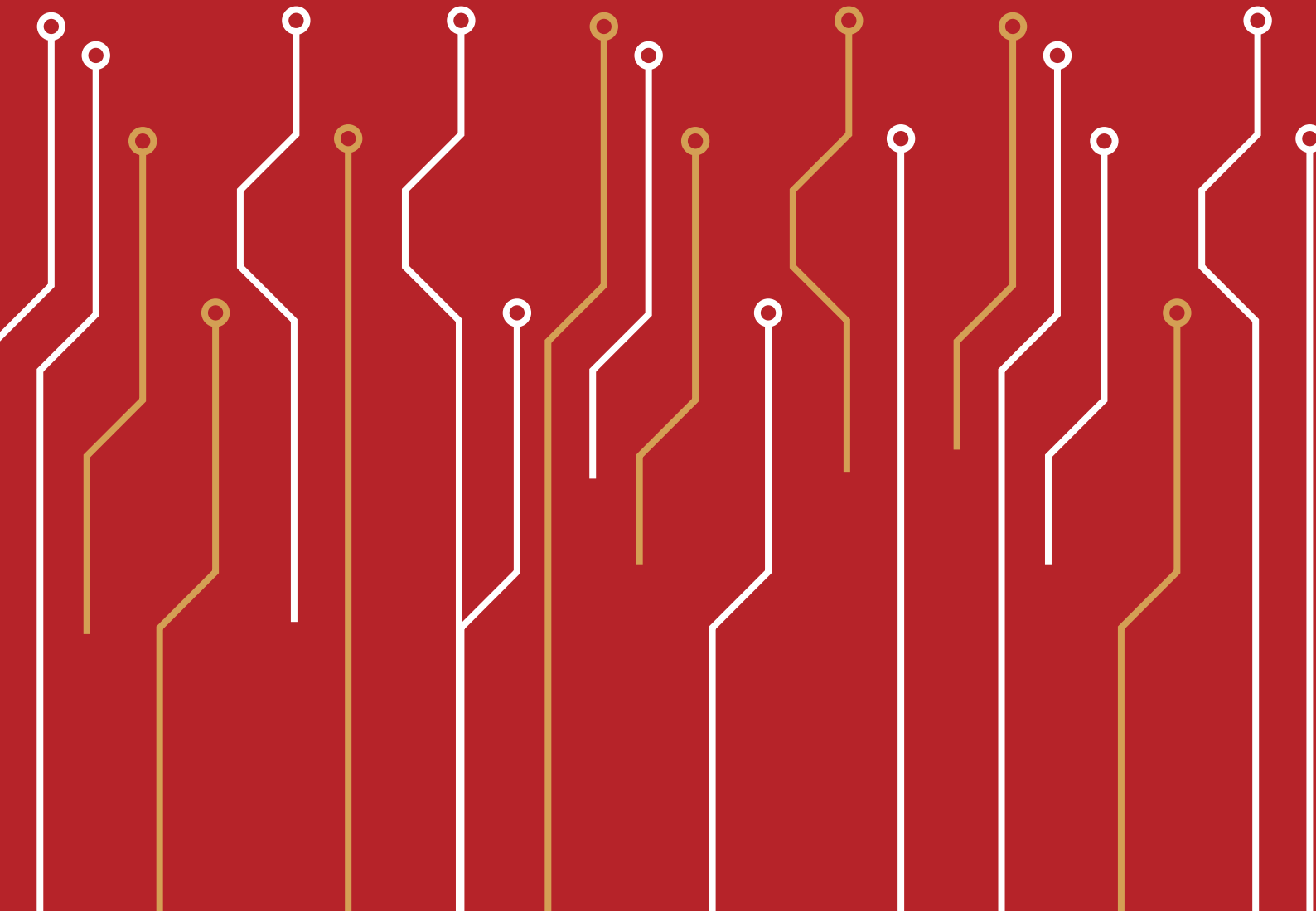
## 7.0 Conclusion



The findings of this study indicate that the rapid expansion of the gig economy in Africa, as exemplified by Kenya and Nigeria, has created a need to assess regulatory frameworks that address the nature of work in the gig economy. This is characterised by the visible exploitation of workers, i.e., data annotators, content moderators, and platform workers, particularly as it relates to acquiring cheap labour for the global AI supply chain. Central to this is the misclassification of gig workers as independent contractors, a status reinforced by existing employment laws designed for traditional relationships, which consequently excludes data annotators and other platform workers from protections such as minimum wage, paid leave, and social security. Additionally, the exploitation is magnified by severe occupational hazards, as seen in the case studies of Kenya and Nigeria.

Regulatory and institutional reform is therefore required. The efforts already made, notably through unionisation, show a push towards accountability and change in the employment and labour law structures to accommodate the changing needs of workers in categories that the laws had not originally anticipated. Reflectively, the fair treatment and protection of the African gig workforce are not merely a labour rights issue, but a clear and critical prerequisite for ethical AI development, expanding the wider considerations for ethical AI to include the human component within the AI value chain.

# **ANNEX 1: CHECKLIST FOR GUIDING ETHICAL STANDARDS FOR GIG WORKERS (DATA ANNOTATORS, CONTENT MODERATORS AND PLATFORM WORKERS) IN AFRICA'S GIG ECONOMY**



This checklist is designed to assist both tech companies and data annotators in Africa in developing their code of ethics and standards, as well as governing their contractual relationships. Tech companies can ensure that their codes of ethics and standards, as well as their employment contracts with data annotators, content moderators, and platform workers, reflect fairness, inclusion, social protection, transparency, and accountability. Additionally, the checklist is designed to assist Africa's data annotators in revising and accepting their employment contracts to ensure social security, a conducive working environment, and compliance with employment laws, thereby promoting inclusion and fairness. The checklist serves as a practical guide for creating an inclusive culture of transparency, accountability, and the ethical adoption of Artificial Intelligence (AI), contributing to the responsible adoption of AI.

## **PART 1. TECH COMPANIES**

### **CHECKLIST FOR DEVELOPING AN ETHICAL CODE OF ETHICS**

#### **A. INCORPORATE KEY ETHICAL PRINCIPLES**

The inclusion of critical ethical principles within tech companies' code of ethics will ensure responsible AI design by the companies. These principles include inclusion, transparency, accountability, non-discrimination and social protection of data annotators. The principles serve as a guide to ensure alignment with international best practices, thereby promoting the ethical adoption of AI.

- Ensure inclusion of principles such as inclusivity, non-discrimination, transparency and accountability in the company's code of ethics.
- Clearly define each principle.
- Establish how each principle is to be achieved by the tech company, ensuring each principle is translated into clear standards.
- Ensure Accessibility and Awareness of the codes to all workers during onboarding and through the platforms.

#### **B. ALGORITHM TRANSPARENCY AND ACCOUNTABILITY**

Most major platforms employ opaque algorithms with no transparency or accountability mechanisms, rendering their decisions unexplainable.

- Ensure clear documentation, communication and explanation to workers on how platform algorithms work, including the logic behind task assignments, account management and evaluations. The algorithmic explanation, including the criteria and logic behind each decision the algorithms

- make, should be in plain, simple and accessible language for the workers.
- Mandate evaluation of platform algorithms which impact workers' assignments, payments, valuation or account status to ensure transparency and explainability.
  - Regular reporting to independent regulatory Authorities to ensure clear and transparent algorithms.

### **C. HUMAN OVERSIGHT AND APPEAL MECHANISMS**

There should be a guarantee that all algorithmic decisions made by the platforms that affect the data annotators are subject to human review.

- Mandatory human review for critical decisions that impact the workers, such as task assignment and account suspension. The human in the loop can modify decisions before they are finalised and made by the platforms.
- Ensure there are designated human contact points in the platforms. Human support teams, trained to manage disputes, ensure that workers can easily reach them without relying on the platform's automated decisions.
- Robust, accessible, and transparent appeal process and avenues allowing the workers to contest automated decisions. The appeals should be promptly acknowledged with status updates to track the decision-making process.
- Clear timelines of resolution and feedback obligations from the platforms.

### **D. REGULAR REVIEWS AND ALGORITHMIC IMPACT ASSESSMENT**

- Mandatory periodic reviews and impact assessments to ensure accuracy, fairness and bias mitigation.
- Stakeholder-inclusive assessments ensure that diverse stakeholders, including worker representatives and independent experts, are involved in the assessment process to facilitate an accurate impact analysis.
- Public reporting involves providing detailed reports on audit findings, including identified risks and mitigation measures, to ensure public accountability and transparency.

## **E. GENDER INCLUSION INITIATIVES**

- Adoption of standards to identify and correct gender biases embedded in the AI algorithms in task allocation, payment and working conditions. These standards will ensure that tech companies have programs that bridge the gender digital divide, promoting inclusion and ensuring harassment-free working conditions.
- Gender inclusive digital literacy and technology access initiatives to promote women's participation. This includes Training programs to ensure equitable digital skills for women, mentorships, and financial and infrastructural support to bridge the digital gender divide.
- Establish transparent and safe redress mechanisms to ensure reporting of any gender biases, discrimination or harassment on the platform.
- Implement algorithms that detect and correct gender disparities, such as in work distribution, by eliminating gender stereotypes in work allocation and treatment of workers.
- Integration of comprehensive standards requiring the use of diverse and representative data sets for AI training, including gender and minority group data to avoid biased outputs.

## **CHECKLIST FOR GUIDING DATA ANNOTATION CONTRACTS**

### **A. ENSURING FORMAL WRITTEN CONTRACTS**

Most African data annotators work without any contracts from the platforms, making it hard to protect or enforce their rights. Tech companies should ensure that they offer clear contracts to their workers for transparency and accountability.

- Having clear written contracts for each worker with clear details of the parties, their roles, payment terms, confidentiality obligations, and using plain and simple language to ensure protection of all parties' interests.
- Provide contracts in the native languages of the annotators, where possible, to ensure a clear understanding.
- Ensure standardised contract templates for access and review by workers.
- Ensure clear job descriptions, payment schedules and rates.
- Provide proper clauses regarding actions in the event of breach of the contract, such as delay, substandard work, and any malicious activities.

### **B. CLAUSES TREATING WORKERS AS EMPLOYEES**

Treating gig workers as employees by tech companies ensures a more precise definition of each party's duties, avoids vague independent contract terms, and

creates an employment relationship.

- Align the treatment of data annotators in Kenya with global best practices by clearly defining them as employees rather than independent contractors.
- Include termination clauses and due process provisions similar to those in the domestic laws of the specific data annotators' country.

### **C. INCORPORATE SOCIAL WORKER PROTECTIONS**

Social protection for data workers ensures their well-being, which in turn translates directly to the quality of work done and, ultimately, the output of AI systems. To ensure ethical outputs, it is critical to ensure that workers are always protected.

- Align the contracts to domestic laws on health and safety provisions.
- Establish medical and mental health insurance coverage with more personalised mental health sessions.
- Ensure rest and breaks, as well as manageable workloads, to prevent prolonged working hours that can lead to fatigue in workers.

### **D. SAFE ETHICAL WORKING CONDITIONS**

To ensure the physical and mental well-being of workers and, in return, high productivity and better data quality, it's critical to guarantee safe and ethical working conditions for data annotators. Work safety ensures trust and long-term sustainability in AI development.

- Mandate regular reviews on working conditions to ensure the set working conditions meet the legal standards and align with the protections provided under the domestic laws and global best practices.
- Ensure confidential reporting mechanisms are in place to receive reports of any workplace violations.
- Integrate anti-discrimination and anti-harassment clauses to ensure a safe and inclusive work environment.

## **E. PROVIDE FOR AND CLEARLY DEFINE WORKING HOURS, SALARY AND LEAVE**

African data annotators continue to suffer from long working hours with no provision of sick leave, and in return, very low wages below the minimum wage. This is unsustainable for workers whose salaries are not commensurate with the hours worked and the impact of their work on AI systems and outputs.

- Setting minimum and maximum working hours and overtime guidelines that mirror the domestic employment laws. This ensures that data annotators are equally protected, like other traditional workers.
- Include provisions for sick, annual, maternity and paternity paid leaves which align with domestic frameworks.
- Provision for precise leave application, conditions, and approval procedures to avoid absenteeism, while also ensuring workers have the necessary rest to prevent burnout.
- Set minimum wages for the workers in alignment with domestic laws and similar assignments in other jurisdictions.
- Define explicit wage calculation and timely disbursement mechanisms to ensure accurate and timely payment.

## **PART 2. DATA ANNOTATORS**

### **CHECKLIST FOR DEVELOPING AN ETHICAL CODE OF ETHICS**

#### **A. CONDUCTING PERIODIC REVIEW AND AUDITING OF PLATFORM ALGORITHMS.**

Data annotators should monitor online platforms by auditing their algorithms to ensure they are transparent and not opaque.

- Collaborate in conducting internal and external independent audit checks of platform algorithms to ensure fairness.
- Systematic recordings and regular reporting of algorithmic anomalies. Annotators should report any inconsistencies or suspicious behaviours in performance evaluations and task allocations.
- Engage in Algorithmic impact assessments through giving feedback to evaluate the ethical and social impact of the opaque worker algorithms, focusing on bias mitigation.
-

## **B. ALIGNING WITH GLOBAL AND DOMESTIC ETHICAL PRINCIPLES**

Data annotators should ensure they keep tech companies in check to ensure compliance with domestic laws and principles.

- Demand transparency and domestic frameworks for tech companies, which can be achieved by pushing platforms to disclose how their AI systems uphold transparency, fairness, privacy, and accountability.
- Verify compliance with domestic privacy laws, labour laws and other domestic frameworks in their handling of personal data on the platforms.
- Require platforms to embed human rights and anti-discrimination policies in their codes and operations and review such policies to ensure compliance with domestic laws.
- Calling and pushing for periodic reviews of the tech companies and platforms' codes of ethics to keep pace with the evolving digital landscape. Annotators can also suggest code updates through feedback provisions.

## **C. GENDER INCLUSION**

Data annotators can monitor and report the gender disparities existing in task allocation, account suspensions and payments to ensure fair and stereotype-free distribution.

- Auditing the task allocation and hiring policies of the platforms to ensure gender equality. This provides reporting on any inequalities and advocates for algorithmic updates to address them.
- Adopt cross-validation techniques to monitor and challenge biases by comparing annotation results across diverse groups and report any discrepancies that indicate biases. This helps push for measures that ensure platform equity and dataset fairness.
- Adopt and utilise reporting tools to track and flag instances of harassment and gender discrimination on these platforms.
- Collaborate with oversight bodies and platforms and push for measures to correct and remove biases in work distribution and compensation.

## **D. HUMAN OVERSIGHT AND APPEAL MECHANISMS**

Data annotators can ensure that the platforms have humans in the loop to avoid being exposed to automated decisions based on opaque algorithms. Additionally, they can also provide oversight on the platforms to ensure that there are clear and accessible channels for challenging platform decisions, as required by domestic law.

- Demand accessible human contacts for complaint receiving and dispute resolution, ensuring decisions are not solely based on automated platform responses.
- Monitor and report any non-compliance of platforms with Human oversight and appeal mechanisms requirements to regulators and oversight bodies.
- Require assurance and guarantee from the platform that significant decisions affecting them, such as task allocation, performance evaluation, and account suspension, are reviewed by humans who can modify them to ensure fair and explainable decisions.
- Demand explainability for all decisions made by platforms, requiring robust transparency and accountability, along with clear and easily accessible avenues for contesting such decisions.

## **2CHECKLIST FOR GUIDING DATA ANNOTATION CONTRACTS**

### **A. ENSURE FORMAL AND WRITTEN CONTRACTS**

Data annotators ought to ensure that they have formal written contracts that recognise them as employees to ensure protection under domestic labour laws.

- Ensure all contracts are reduced to writing, in plain and understandable language, with clarity on their roles and are properly executed by both parties.
- Ensure that the contracts clearly classify them as employees and not independent contractors and retain copies of these contracts for use in case of any future disputes.
- Ensure that key agreement terms, such as payment rates, leave policies, account suspension procedures, performance evaluations, and work deadlines, are clearly defined and understood by all parties.
- Ensure contracts include dispute resolution mechanisms and reporting procedures in the event of a breach, as well as clear mechanisms for redress.

## **B. REVIEW CONTRACTS TO ENSURE ALIGNMENT WITH DOMESTIC LAWS**

Data annotators should ensure contracts align with the local labour laws.

- Consult legal and independent advice for a review of the contracts to interpret any complex terms.
- Negotiate on terms such as fair treatment, rest breaks, and dispute resolution.
- Monitor contract adherence to ensure compliance with contract terms and raise any concerns in the event of a contract violation or infringement of domestic laws.

## **C. ENSURE CONTRACTS ALIGN WITH DOMESTIC SOCIAL PROTECTIONS**

Data annotators can ensure that tech companies offer social protections to them, such as leave and minimum wages similar to those provided in their domestic laws.

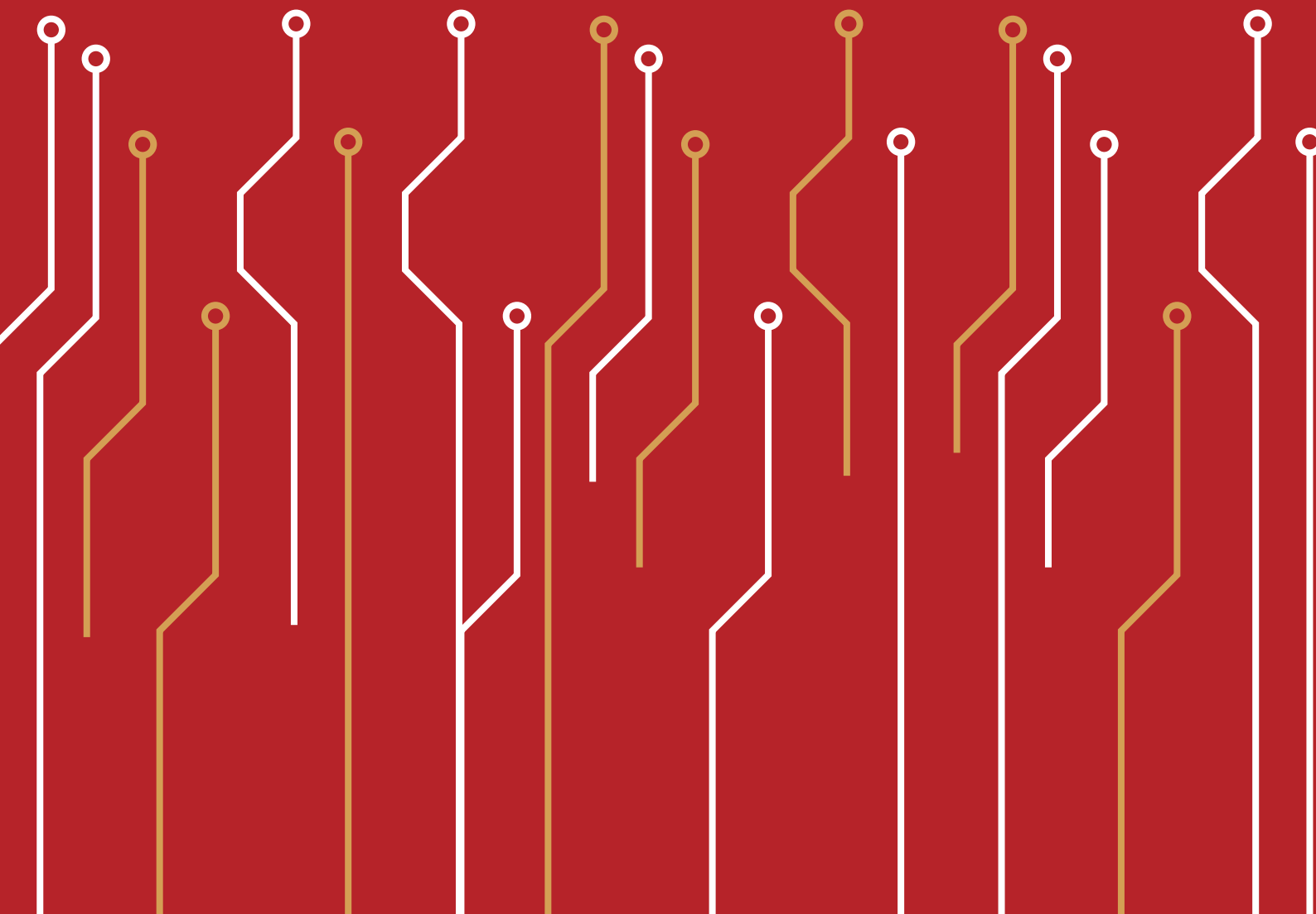
- Ensure that contracts received and signed include a minimum wage at fair rates that align with domestic laws and regulations.
- Ensure that there are provisions for health insurance in accordance with domestic laws for workers before signing the contracts.
- Confirm provisions for leave, including sick, annual, maternity and paternal leave as applicable.
- Negotiate for clauses that guarantee safe working conditions free from any form of harassment and exposure to graphic content without mental insurance and protection.
- Verify dispute resolution mechanisms, termination procedures to ensure fairness, accessibility for the workers to ensure fair hearing procedures are set in place before termination and account suspensions with options of appeal from such decisions.

#### **D. ENSURE STANDARD LABOUR PROTECTIONS**

Data annotators should be keen on reviewing their contracts to ensure that labour protections accorded by domestic frameworks are included in such agreements.

- Ensure that the wages included in the contracts conform to local provisions on minimum wages and are at reasonable rates.
- Review and confirm that the payment rates, currency, and frequency are clearly stipulated in the contracts and are favourable. This extends to ensuring explicit provisions for overtime and favourable compensation for extra work.
- Ensure limited working hours with sufficient break provisions. Ensure policies incorporate flexible working schedules to avoid burn-out.
- Negotiate workload adjustments during high-demand seasons with clear support mechanisms in place for stress and work-related issues.

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**Strathmore University**

*Centre for Intellectual Property and  
Information Technology Law*

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Ole Sangale Rd, Madaraka Estate.  
P.O Box 59857-00200, Nairobi, Kenya.  
Tel: +254 (0)703 034612  
Email: [cipit@strathmore.edu](mailto:cipit@strathmore.edu)  
Website: [www.cipit.strathmore.edu](http://www.cipit.strathmore.edu)