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

ACKNOWLEDGMENT

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1. Introduction

The gig economy has rapidly expanded in the Global South, driven by technological advancements and the increasing demand for flexible labour. Data annotation, a critical component of AI development, has emerged as a significant area within this economy. However, the lack of robust employment laws and protections raises concerns about the working conditions of gig workers engaged in data annotation. This research project aims to assess the applicability of existing employment laws as a regulatory framework for data annotation practices within the gig economy in the Global South, focusing on evidence-based regulation to protect workers' rights and welfare. This research aims to investigate the applicability of existing employment laws to data annotation within the African gig economy. It will contribute to a better understanding of the unique challenges faced by gig workers in this sector, particularly in the Global South. By analysing legal frameworks in selected African countries and comparing them with those of developed economies, the research will identify gaps in existing legislation and inform the development of appropriate policy recommendations. This research report provides a comprehensive assessment checklist that can be used to evaluate the fairness and adequacy of current regulations. Further, it advances the potential to significantly impact policy and practice by providing evidence-based recommendations for improving the working conditions and rights of data annotators in the gig economy.

Objectives

1. Analyse the existing employment laws in various Global South countries and their applicability to gig workers, particularly those involved in data annotation.
2. Investigate the gaps in current regulations that fail to protect gig workers, especially in the context of algorithmic management and platform control.
3. Develop recommendations for evidence-based regulations that can be implemented to ensure fair working conditions for gig workers in the data annotation sector.

Research Questions

1. What specific challenges do gig workers in the data annotation sector face due to algorithmic management and platform control, and how do current regulations fail to address these challenges?

2. How do existing employment laws in selected Global South countries apply to gig workers engaged in data annotation, and what are the key limitations or gaps in these laws?

3. What best practices or regulatory frameworks from developed economies could be adapted to improve protections for gig workers in the Global South's data annotation sector?

4. What evidence-based policy recommendations and ethical guidelines can be developed to ensure fair working conditions and rights for data annotation gig workers in the African gig economy?

<u>Methodology</u>

This research will employ a comprehensive literature review to synthesize existing studies on employment laws, gig economy dynamics, and data annotation practices. The analysis will focus on:

1. Comparative Legal Analysis: Examine the employment laws of selected countries, comparing them to more developed economies to identify best practices and potential regulatory frameworks.

2. Case Studies: Analyse specific cases of gig workers in the data annotation sector to illustrate the impact of current regulations and the need for reform.

2. Understanding the Gig Economy- Global and National Perspectives

Labour markets worldwide have been transformed by the global gig economy with digital platforms connecting freelancers to clients for short-term and flexible work.[1] AI relies on a complex supply chain beyond physical resources such as labour and infrastructure but also critical

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[1] Fortunly, '20+ Gig Economy Statistics and Facts for 2025' (16 January 2025) https://fortunly.com/statistics/gig-economy-statistics/ accessed 30 June 2025.

inputs such as data annotation which ensures AI functionality.[2] 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.[3] These workers are often from developing nations which face economic disparities to platform owners located in advanced economies like the European Union (EU).[4] 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.[5] This sector entails the critical field of data annotation, which is 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 youths and nearly half being women, connecting them to global markets while exposing them to several risks.[6] 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.[7] 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.[8] Workers are employed by global firms such as Scale AI, Remotasks, Sama and Appen.[9]

These platforms capitalise on digital skills and labour while maintaining power asymmetries. The workers face low wages below Kenya's minimum wage, poor working conditions, lack of social

[2]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.

[3]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.

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

[5]GetWhizz, 'Gig Economy and Delivery Statistics for 2025' (20 January 2025) https://www.getwhizz.com/blog/for-delivery/gig-economy-and-delivery-statistics accessed 30 June 2025.

[6] 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 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.

[7] 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.

[8] 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.

[9] 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.

protection and often have no formal contracts, raising an ethical concern in AI governance frameworks in Africa.[10] This power imbalance is further amplified by algorithmic management systems which control the performance evaluation, task allocation as well as remuneration without the worker's input or transparency.[11]

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 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.[12] Additionally, data protection laws do not address algorithmic transparency and platform accountability in the gig economy.[13] This regulatory gap allows minimal oversight and governance of the platforms, leading to unfair treatment and arbitrary account suspensions. Such workers cannot claim against these inequalities due to a lack of recognition and protection in the 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.[14] 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 treatments. Due to power imbalance 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.[15] 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

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[10]Fairwork Kenya, 'Labour Standards in the Gig Economy 2021' (2021) 7 https://fair.work/wp-content/uploads/sites/17/2021/12/Fairwork-Kenya-2021-report-accessible.pdf accessed 30 June 2025.

[11] ibid.

[12] ibid.

[13] Tanzania and Kenya Digital Economy Partnership, 'Regulation of Digital Platforms for a Socially-Just Gig Economy in Kenya' (BMZ Digital, May 2023) https://www.bmz-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.

[14] ibid.

[15] ibid.

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.[16]

The critical role played by the gig economy and in particular by data annotators and content moderators underscores the urgent need for labour practices that take into account the gig economy dynamics. The lack of inclusive policies continues to perpetuate the social and economic inequalities across Africa undermining the Continent's digital transformation and subsequently economic growth.

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

3. Legal and Regulatory Frameworks

Regulatory frameworks on the gig economy, including data notation 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 through guaranteeing that data used to train AI systems is properly and ethically labelled, reducing biases and discrimination, as well as effective content moderation which filters 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.[17] The holistic ethical approach from data labelling to deployment and use of AI systems strengthens the trust in AI technologies and fosters sustainable development.[18]

The European Union (EU) and African Union frameworks have several contrasts highlighting the protection provisions in the EU vis-à-vis the ongoing evolutions of regulatory frameworks in Africa such as in Kenya, where efforts both institutional and legal are being made to work on catching up in areas such as platform accountability, worker protection and ethical AI governance. 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. .[19]

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[17] 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.
[18] ibid.
[19] 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.

3.1 European Union Regulatory Framework on Data Annotation

The EU has developed comprehensive frameworks for protecting gig workers and ensuring fair labour practices in digital platforms.[20] This framework ensures worker classification as employees rather than independent contractors and social protection as well as algorithmic accountability. [21]

A. The Platform Work Directive (PWD)

The <u>Directive</u>, adopted in 2023, is the key framework in regulating gig workers including data annotation in the EU.[22] The key protections and safeguards offered by the PWD include:

Algorithmic transparency and accountability requirements

The directive requires disclosure by digital platforms how the platforms assign tasks, calculate pay and evaluate worker performance.[23] 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.[24] 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.[25]

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

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[20] 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.

[21] 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.

[22] 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.

[23] 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.

[24] 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.

[25] ibid.

reductions.[26] This makes it possible for the workers to seek protection through review and challenging of such decisions, solving the black box challenge of algorithms.[27] 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.[28] By adherence to the 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.[29]

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.[30] The platform owners ought to prove that such are in fact independent contractors countering misclassification. This protection is aimed at ensuring no reclassification of workers in the gig economy 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.[31] The effectiveness of the presumption is to ensure that gig workers can enjoy the fundamental benefits and protections of being employees under employment laws such as access to social security, 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.[32]

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[26] Article 10.

[27] Article 11.

[28] 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.

[29] *D*eliveroo Nederland BV v FNV (Supreme Court of the Netherlands, 4 September 2023)

[30] Article 5.

[31] '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-allegedly-violating-laws-on-hiring-riders/ accessed 1 July 2025.

[32]ibid.

The vulnerabilities of gig workers are protected which in return ensures ethical AI governance by ensuring critical actors in AI development such as data annotators are protected.

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.[33] This avoids arbitrage by platforms that might want to exploit jurisdictions with lenient laws.

 The directive also emphasizes the safety and health of platform workers.[34] This involves the evaluation of the risk associated with the systems including psychological and ergonomic risks and introducing preventive and protective measures.[35] 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.[36] Additionally collective bargains and dialogues between workers and platforms are highly encouraged.[37] Spain for instance, after the reclassification of Glovo riders, has implemented joint social funding as well as cross border protections as per 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 this formalisation of the previously informal sector is the improvement of economic security and social welfare of 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.[38] The measures as highlighted aim to ensure that there is a balance between flexibility in work as well as security and fundamental benefits provided by traditional employment and serves as a benchmark for Labor standards and ethical AI governance in the gig economy.

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[33] Recital 3 ibid.
[34] Article 12.
[35] ibid.
[36] ibid.
[37] Article 13.
[38] Article 24.

Enforcement and Penalties

To ensure compliance ,the EU directive provides for enforcement mechanisms.[39] The EU member states have strict compliance measures such as regulatory oversight, and financial sanctions.[40] For instance , France in 2023, fined Uber 17 million Euros for misclassifying drivers as independent contractors rather than employees.[41] 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 lack of transparency for algorithms.[42] 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 improvement of gig worker's conditions and Ethical AI development. Digital platforms have had to reform their mode of business to incorporate fair labour practices and transparency fostering sustainable development in the Gig economy.[43]

B. The General Data Protection Regulations (GDPR)

The GDPR guides the collection and processing of personal data in the EU.[44] Data annotators often handle sensitive data embedded in the datasets for training AI models.[45] Additionally the digital platforms process the workers personal data in application and make automated decisions relating to performance evaluation and salary calculations for the workers.[46] The platforms are mandated to adhere to the GDPR's stringent measures such as the principles of transparency and

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[39] Article 18.

[40] ibid.

[41] Conseil des Prud'hommes, Lyon, 20 January 2023, Uber ordered to pay €17 million to drivers for misclassification (unreported)   https://www.business-humanrights.org/en/latest-news/france-un-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.

[42] 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.

[43] ibid.

[44] 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.

[45] ibid.

[46] 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.

accountability as well as automated decision making. [47]Some of the Key GDPR best practices that lead to accountability of algorithms and protection of data annotators include:

Transparency and Accountability

Article 5 of the GDPR provides for the key principles of processing personal data which include transparency and accountability.[48] Data processors and controllers are required to process personal data in a lawful, fair and transparent manner.[49] 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.[50] A data subject ought to be informed of the purpose of processing, identity of the controller and retention period in respect to their personal data. These principles extend to digital platforms even those that manage data annotators ensuring the workers are well informed of 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 processing as per Article 30.[51] Compliance by digital Platforms used by data annotators ensures that their workers personal data is also handled lawfully and in a transparent manner.

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.[52] This can be through data subjects giving consent and necessity to enter or perform a contract. Data subjects are accorded the right to obtain human interventions and contest automated decisions.[53] This principle offers protection to gig workers to challenge decisions made through the platform algorithms only without human intervention. Such decisions include account suspensions and pay reductions.

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[47] ibid.

[48] 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

[49] ibid.

[50] Article 12.

[51] Article 30.

[52] Article 22.

[53] ibid.

Protection by design and default

Additionally, the GDPR calls for data protection by design or default where platforms have to embed privacy safeguards in 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[54]. Compliance with the GDPR by platform owners such as ensuring there is a human in the loop will create transparency 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 to GDPR through membership in the Cloud Infrastructure Service Provider in Europe (CISPE) Code of conduct.[55] This code of conduct ensures compliance with the GDPR by cloud service providers through emphasis on transparency and accountability assuring data annotators of lawful data processing. The provisions of GDPR in a nutshell ensure digital platforms operate ethically through mandating information disclosure and protection against unfair automated decisions using algorithms building trust in AI systems and protection of 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.[56] Some of the provisions such as the ban on unacceptable risks came to place on 2 February 2025 with the full scope of the Act becoming applicable on 2 August 2025. Similar to the GDPR, the Act applies 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. [57]

The EU AI classifies systems into four risk categories being unacceptable (banned), high risk, limited risk and minimal risk. Article 6 defines high risk systems as those that significantly impact

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[54] Article 32.

[55] 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 accessed 2 July 2025.

[56] 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.

[57] Article 2.

the rights and safety of persons. This includes systems used in hiring and creditworthiness assessments. Digital platforms that employ such systems must comply with the Act.[58]

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.[59] 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.[60] Article 15 imposes accountability obligations and detailed obligations and aspects that call for digital platforms to facilitate audits and uphold fair labour practices.[61] 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)

DSA

The DSA imposes transparency, fairness and accountability obligations on digital platforms which benefit data annotators through improved platform governance.[62] Article 15 of the DSA mandates the providers of intermediary services to publish annual transparency reports detailing content modernisation activities and complaint handling mechanisms.[63] 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.[64]

DMA

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

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[58] Article 6.
[59] Article 13.
[60] Article 14.
[61] Article 15.
[62] 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)
[63] Article 15.
[64] Article 12.

mitigation measures as well as submit independent audits to ensure system accountability. [65] 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 workers, their adherence ensured equitable digital ecosystems through curbing platform abusive practices.

3.2 Africa's Regulatory Framework

Driven by the continent's youthful population, Africa has emerged as a global hub for data annotation.[66] Major technology firms such as Remotasks and Sama outsource labour intensive AI tasks such as data labelling and content moderation from African countries such as Nigeria, and Kenya, capitalising on lower wages and weaker worker protections as compared to the Global North.[67] Africa, however, continues to suffer from poor working conditions and low wages. The death of Nigerian content Moderator Ladi Anzaki Olubunmi in Nairobi, Kenya in 2025 underscored the urgent need for robust safeguards for the gig workers.[68] Africa is increasingly recognising the critical need to regulate the gig economy with frameworks showing the commitment to regulate the economy based on their key principles. The African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention,2014) emphasises transparency and fairness in data processing.[69] Additionally, the African Charter on Human and Peoples Rights provides for the right to just and fair working conditions.[70] Africa's regional bodies

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[65] 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).

[66] Impact Outsourcing, 'Why Outsourcing Data Annotation Services to Africa' (Impact Outsourcing, 6 March 2025) https://impactoutsourcing.co.ke/outsourcing-data-annotation-services-to-africa/ accessed 4 July 2025.

[67] 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.

[68] 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-n358983 accessed 4 July 2025.

[69] 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 accessed 4 July 2025.

[70] 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/dil/docs/African_Charter_Human_Peoples_Rights.pdf accessed 4 July 2025.

such as the East African Community (EAC) and the Southern African Development Community (SADC), have also adopted fair labour policies encouraging the adoption of labour policies that afford worker protection in the emerging technologies.[71] However, these frameworks remain aspirational due to uneven implementation, slow ratification and lack of explicit provisions tailored for the gig economy. Significant gaps persist in safeguarding the workers due to the absence of comprehensive social worker protections and mandatory algorithm transparency.

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

The Malebo Convention seeks to safeguard personal data across Africa. [72] Article 8 emphasises the protection of fundamental rights and freedoms as a key objective for protecting personal data.[73] Personal data ought to be processed lawfully, fairly and for explicit legitimate purposes to ensure transparency and accountability as per Article 13.[74] Article 14 also prohibits the processing of personal data unless there are specific conditions to protect vulnerable groups.[75] These provisions establish a framework that is relevant for gig workers and in particular data annotations whose personal data, including biometric data is collected via digital platforms. However, the convention is general and does not explicitly address gig workers or impose express accountability or transparency requirements on the digital platforms. This then leaves data annotators at the danger of opaque algorithm management in decision making leading to exploitation. There is an urgent need for the convention to have more specific provisions addressing the realities of digital labour, data data-driven profiling, algorithm management and the unique vulnerabilities for African gig workers.

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[71]East African Community, 'Labour and Employment' (EAC) https://www.eac.int/immigration/labour-and-employment/292-sector/immigration-labour/labour accessed 4 July 2025.
[72] ibid.
[73] Article 8.
[74] Article 13.
[75] Article 14.

<p style="text-align:center">**B. African Charter on Human and Peoples Rights (Banjul Charter, 1981)**</p>

The <u>Charter</u> provided a human rights protection foundation for labour protection.[76] It guarantees the right to work under equitable working conditions, such as fair remuneration and safe working conditions under Article 15.[77] 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.[78] The informal nature of gig workers excludes them from accessing these rights especially because the framework is not tailored to the realities of the gig economy. This highlights a regulatory opportunity at the continental level to bridge this gap by rethinking employment legislation and the extent to which it ought to extend labour and health protections to gig workers including data annotators by including mandatory mental health support and fair remuneration.

Kenya

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, Kenya represents a focal point within Africa's context.[79] Kenya remains home for AI labelling platforms having witnessed events such as Remotask shutdown highlighting both the opportunities and vulnerabilities. Recently enacted, the Business Laws (Amendment) Act of 2024 and policy consultations continuously show the trajectory of legislative growth with respect to the gig economy. The Act is comprehensively discussed later on in the research study.[80]

C. 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

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[76] 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.

[77] Article 15.

[78] Article 116.

[79] KICTANet, 'Kenya's Growing Gig Economy: Balancing Opportunity and Challenges' (KICTANet, 17 April 2025) https://www.kictanet.or.ke/kenyas-growing-gig-economy-balancing-opportunity-and-challenges/ accessed 4 July 2025.

[80] Business Laws (Amendment) Act No. 20 of 2024.

union.[81] The constitution sets the foundation for the protection of workers, especially gig workers who often face precarious employment with no social protection. Upholding this provision will ensure equitable treatment and collective bargaining power of the gig workers

D. The Employment Act

The Employment act is the foundational law for protection of workers in Kenya though it only applies to traditional employment relationships.[82] It places reliance on the existence of a contract for service to warrant social protections making it in applicable and thereby raising gaps and considerations as to its applicability in protecting data annotators and other gig workers in the gig economy. The assessment of the Employment Act highlights parameters that should be applicable to the gig workers, the benefits and protections that apply to them.

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[83]. The definition confines the Act's protections to traditional employment relations and excludes gig workers including the data annotators and independent contractors who do not have such contracts. A contract as per section 7 of the Act is an agreement where a party agrees to serve the other as an employee.[84] The Act provides for transparency through requiring that there should be written particulars such as remuneration, job title and working hours under section 11.[85] This clarity and transparency continue to be absent in the gig economy which is informal and further exacerbated by the lack of clear and ethical contractual terms. In correlation, this impacts AI governance from the perspective that the quality and fairness and transparency of AI systems depend heavily on the wellbeing and fair treatment of data annotators who take part in the data labelling. Consequently, consistent exposure to unfair working conditions and fatigue is likely to result in biased, inconsistent and unreliable data annotation practices directly impacting the accountability and fairness of AI systems.[86]

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[81] Article 41, The constitution of Kenya, 2010.
[82] The Employment Act Cap 226, Laws of Kenya.
[83] Section 3, Employment Act Cap 226, Laws of Kenya.
[84] Section 7.
[85] Section 11.
[86] ibid.

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.[87] For gig workers, if they are classified as employees the same would protect them from arbitrary platform decisions from the platform owners. Section 17 on the other hand provides that wages must be lawfully paid at intervals and in the lawful currency.[88] This ensures fair remuneration of employees for the work done. For data annotations, this protection would ensure they are paid on lawful within a fair wage range and 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.[89] The wage protections are however not applicable to gig workers, an exclusion that makes them vulnerable to irregular and delayed wages, unilateral deduction decisions without the consent and transparency to employees and the absence of enforcement mechanisms to challenge such decisions. A good example of this is the Remotask shutdown in Kenya where several workers faced delayed and irregular payments after the platform abruptly ceased operation.[90]

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 to 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 half the employee's ordinary wage. It also guarantees an employee the right to rest at least one day per week. This ensures that employees are not subjected to excessive working hours. For gig workers who often work on flexible, irregular and extended working hours, these protections would ensure such workers are guaranteed rest days and receive overtime pay to reduce fatigue and economic insecurities.

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[87] Section 16.
[88] Section 17.
[89] Section 19.
[90] "Online Gig Workers Left Stranded as Remotasks Exits Kenya," Kenyan Wall Street (12 March 2024) https://kenyanwallstreet.com/gig-workers-stranded-as-remotasks-exits-kenya/ accessed 27 August 2025.

For annual leave, Section 28 provides for at least 21 working days of paid leave for an employee who works for 12 months continuously.[91] This supports the employee's wellbeing and health and prevents burnout. Additionally, section 29 grants female employees 90 calendar days of paid maternity leave and employers cannot terminate employment based on the same. With the employee having to return to the same position after leave.[92] This protects productive rights and health of female employees ensuring income sustainability and job security. Section 30 guarantees employees sick leave with payment ensuring no termination on the basis of illness.[93]

This wage and leave protection would guarantee data annotators paid leave, rest days and job security for women during maternity as well as avoid burnout by regulated working hours. Addressing the gaps and allowing data annotators these social protections would ensure data annotators protection and in return ethical AI. In the case of Sama source workers in Nairobi, the workers labelled AI training data for OpenAI and were subjected to irregular shifts, up to nine hours daily without leave days. This led to burnout and mental issues due to a lack of protection by the Employment Act.**[94]**

Termination and dismissal

The Act provides for safeguards to ensure that termination is fair and transparent. These protections are critical in the gig economy where platform owners often suspend and close the data annotators accounts without reasonable justification or hearing from the workers. Section 35 mandates that each party to a contract must give a reasonable notice or payment in lieu of notice before termination.[95] This period is normally 7 days for a contract of less than 3 months and one month for longer periods exceeding 3 months. 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 termination of account suspension. Deactivation and termination of gig workers should be with notice to reduce economic shocks and provide a buffer period to seek alternative income streams.

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[91] Section 28.
[92] Section 29.
[93] Section 30.
[94] 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.
[95] Section 35.

Additionally, Section 41 guarantees procedural fairness and the right to be heard before termination.[96] The Procedure includes notification of employees of the allegation of misconduct or poor performance and providing them 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 their accounts banned without an explanation and fair hearing to avoid 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 a just cause. Just causes include poor performance, misconduct and redundancy.[97] This prevents economic precarity to gig workers.

The **Meta Platforms Inc. vs Motaung & others,** a dispute involving Sama and Meta and their content moderators highlight the consequences of exempting gig workers from the protection of the Act.[98] The court of appeal held that gig workers are not employees exempting them from the fair termination procedures of the Employment Act.[99]

D. **The Labour Relations Act Cap 233**

Employee right to join trade unions

The act is the key statute that governs the relations between employees and employers.[100] Sections 12 and 13 provide employees with protections such as the right to join trade unions, social security and collective bargaining.[101] 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.[102] As a result, gig workers including data annotators who are often classified as independent contractors working under contracts for service

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[96] Section 41.
[97] Section 45.
[98] The Occupational Health and Safety Act, No. 15 of 2007.
[99] [2024] KECA 1262.
[100] The Labour Relations Act Cap 233, Laws of Kenya.
[101] Section 12, 13.
[102] Section 2.

are denied access to fundamental protections and rights accorded by the Act including freedom of association and collective bargaining.[103]

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.[104] This exclusion of gig workers not only informs the disparities in power dynamics in their contractual relations, but it also informs the need for aligned regulatory provisions that can protect gig workers who form a significant part of Kenya's growing digital economy.

E. Occupational Safety and Health Act

The Act ensures that there are safe working conditions for all employees. It imposes duties on employers to prevent workplace hazards.[105] Section 3 on defining workplaces extends to the location where work occurs.[106] 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 safe environment.[107] Digital platforms where gig workers operate from often disclaim responsibility for providing workers with training and protective mechanisms. This exposes the workers to increased risks such as mental torture due to lack of safeguards. Section 18 extends the employer's duty of care to visit the workers' sites.[108] The Act generally provides a foundation for workplace safety observing key sections that can be applicable to data annotators to ensure social protection.

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[103] Section 4.
[104] Section 62.
[105] ibid.
[106] Section 3.
[107] Section 14.
[108] Section 18.

F. The Work Injuries and Benefits Act

Just like the other employment and labour laws in Kenya, the Work Injuries and Benefits Act (WIBA) has crucial provisions for the protection of data annotators. However, in considering the provision, it is noted that the law remains flawed due to the presumption of gig workers as independent contractors.[109] Its definition of an employee mirrors that of the Employment Act. It restricts its coverage to individuals under a contract of service under section 5(1) explicitly protecting the gig workers. This narrow framing does not include data annotators who are often engaged on part part-time basis on contracts for service or even with no formal contracts.[110]

G. Occupational Health and Safety Act

The act has vital protections relating to work injury compensations, occupational diseases 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.[111] 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.[112] Further, sections 33 to 44 of the Act require the compensation of employees who suffer occupational diseases, with section 39 presuming casualty between employment and certain diseases making the claim process easy.[113] 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.[114] It is thus imperative to explicitly include gig workers under the definition to rectify the exclusion. This is critical especially due to the mental health risks and hazardous working conditions data annotators are exposed to in Kenya. Together, these sections form a framework for ensuring workers receive timely medical care and compensation reducing financial burden to work work-related impairments, they enhance workplace safety standards, an often missing aspect for data annotators in Kenya.

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[109] The Work Injuries and Benefit Act Cap 236, Laws of Kenya.
[110] Section 5(1) The Work Injuries and Benefit Act Cap 236, Laws of Kenya.
[111] Section 7.
[112] Section 10.
[113] Section 33,34,353,36,37,38,393,40,41,42,43,44.
[114] Section 44,45,46,47.

H. The Data Protection Act

The Kenyan Data Protection Act (DPA) governs the processing of personal data to give effect to the right to privacy.[115] Gig workers often have their personal and biometric data collected and stored in a digital platform contrary to data protection principles. The Act extends its protection to its application to data controllers and processors resident in Kenya as well as those outside Kenya processing data as per section 4.[116] This extraterritorial reach is critical in the gig economy where most platform owners are foreign companies that collect and process Kenyan personal data from the Kenyan data annotators.

Data Protection Principles

The Data Protection Act which mirrors the EU GDPR, sets out principles that all data controllers must adhere to for protection of personal data. The principles require data processing to be lawful, fair and transparent.[117] Digital platforms employing data annotators should ensure adherence to these principles especially by ensuring algorithmic transparency. The platforms should ensure adequate technical and organizational measures such as anonymization, 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. This limits the use of data for unfair account suspension and perpetuating biases especially against women.

and in a manner that is not transparent and free from bias and discrimination.

Data protection by design and default

Section 41 of the DPA provides for the protection by design and default.[118] This principle requires data controllers to implement appropriate technical and organisational measures to ensure adherence to the data protection principles. This ensures that data protection principles are integrated in the whole process of handling personal data by default. Such measures include

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[115] The Data Protection Act, Cap 411C laws of Kenya.
[116] Section 4.
[117] Section 25.
[118] Section 41.

anonymisation and pseudonymisation. These principles not only protect personal data but also ensure that data subjects are not subjected to bias and discrimination.

Data subject rights.

Section 26 of the Act provides for data subjects rights.[119] 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 ensuring transparency especially in the algorithmic decision making, where the platforms often use opaque algorithms that are unexplained to the 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 correct the data and erasure and restriction to the processing of their data. Data annotators can use the right to access their personal data to review and challenge any inaccurate assessment, reviews and evaluation, such as biased and inaccurate platform reviews that 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 or object automated decision making by opaque algorithms, ensuring control of how the platforms impact their work allocation and account suspensions.

Automated decision making

Section 35 for the DPA regulates automated decision making (ADM) such as profiling.[120] It requires that such processing that has a significant effect on data subject rights requires the data subject's consent and human intervention. Data controllers and processors ought to 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 which are not explained yet they have significant effects on them, such as suspension of account and performance evaluation. Digital platform owners are mandated to ensure humans are in the loop and the algorithmic decisions are made in a transparent manner with clear channels allowing for contestation of such decisions limiting arbitrary decisions.

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[119] Section 26.
[120] Section 35.

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. This ensures timely mitigation.[121] Data annotators and other platform workers can report any breaches 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.[122]

Additionally, the Act empowers the Data Protection Commissioner to investigate complaints and issue penalty notices, enforcement notices and impose administrative fines.[123] Data subjects whose personal data has been infringed such as through automated individual decision making by opaque platform algorithms can seek compensation for damages.[124] This provides data annotators an avenue to ensure that they can report violations by platforms and seek redress strengthening transparency and accountability of the platforms. These key provisions of consent, transparency, automated decision making and according to data subjects with rights empowers annotators to have control over their personal data and challenge arbitral platform decisions.

I. Business Laws (Amendment) Act 2024

The Act has amended nine Acts of Parliament, including the Employment Act.

The Act seeks to redefine who an employee is under Kenyan law particularly section 2 of the Employment Act, to explicitly include digital creators and ride hailing drivers. With the increase in business outsourcing in the digital economy, self-employed individuals engaged onsite or remotely, and those in Business Process Outsourcing (BPO) services will be included under the definition of employee. This brings data annotators and other gig workers who are mostly under BPO services under the umbrella of statutory protections such as income tax, National Hospital insurance fund (NHIF) contributions extending to them protections much like other traditional employees.

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[121] Section 43.
[122] Section 35.
[123] Section 57,58,62 and 63.
[124] Section 65.

The Act also mandates employers to provide necessary tools and resources for gig workers in order to perform their duties effectively even for short-term engagements. The provision seeks to ensure that data annotators and other gig workers are not disadvantaged due to lack of access to essential working resources instead of relying on their own equipment which might be costly. The Act which was recently enacted has the potential to transform Kenya's gig economy by extending social protections and benefits to gig workers.

4. Case studies

4.1 European Union

The Platform Work Directive (PWD) and the EU GDPR have emerged as critical tools in the protection of gig workers.[125] They fundamentally shape the employment relations in the digital economy highlighting how gig workers ought to be classified and treated. Key to these frameworks is the presumption of employment, shifting the burden to the platforms.[126] This grants the gig workers vital social protections such as leave and collective bargaining rights. The cases challenge the algorithmic transparency of the platforms where workers' livelihoods are dictated by black box algorithms in assigning tasks and evaluating performance without clear explanation and a formal recourse.

Employment Status Recognition

a. Uber BV v Aslam and Others

In 2017, the Court of Justice of the European Union (CJEU) held that Uber workers ought to be considered as workers as opposed to independent contractors. .[127] This was after the Employment Tribunal found that the drivers were workers under the Employment Rights Act decision that Uber appealed.[128] The Employment Appeal Tribunal and the Court of Appeal upheld the decision.[129] The Supreme Court later upheld the decision of the lower courts that the Uber drivers were employees and not self-employed.[130] This was due to the significant control by Uber over their working conditions, pricing and routes and in line with the Platform Work Directive on the

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[125] 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; 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.

[126] 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.

[127] Uber BV and Others v Aslam and Others [2021] UKSC 5, Supreme Court of the United Kingdom.

[128] Section 230 (3) (b) of the Employment Rights Act 1996; Uber BV and Others v Aslam and Others [2016] ET 2202550/2015 (Employment Tribunal).

[129] Uber BV and Others v Aslam and Others [2017] UKEAT 0056_17_2403 (Employment Appeal Tribunal); Uber BV and Others v Aslam and Others [2018] EWCA Civ 2748 (Court of Appeal).

[130] Ibid.

presumption of employment of digital workers.[131] The case challenged the misclassification of gig workers as independent employees rather than employees.[132] The level of control in digital platforms creates a relationship of subordination as a key determinant of granting employment rights in the EU laws such as the PWD.[133] As a result of this ruling, Uber drivers in the EU, unlike in Kenya, are able to enjoy employment rights such as paid leave, minimum wage and social protection. This case is significant in the EU for the adherence to the PWD and classifying data annotators as employees. This stems from the platform control, performance monitoring and algorithmic task assignment by the platforms to data annotators. It challenges the notion that platforms are mere intermediaries and emphasises that control and dependency are critical in the classification of workers.[134] Reclassifying data annotators as employees gives them legal protection that traditional employees enjoy such as leave, fair compensation and reasonable working conditions.[135]

b. Glovo

In Spain, Glovo classified over 10,000 couriers as autonomous or self-employed freelancers. The classification exempted the couriers from employment benefits from Glovo such as social security contributions, protection against unfair dismissal and paid leave.[136] The Spanish labour Courts challenged this model since Glovo exercised control over the riders making them employees. The Spanish Supreme Court ruled that the riders were employees and not self-employed since they operated under Glovo's brand and platform as an essential means of production.[137] Additionally, the platform exerts control through algorithmic management through work allocation and performance rating. Glovo also sets the commercial terms such as payment methods, remuneration and pricing with riders not being able to directly negotiate with customers. Despite this ruling, Glovo continued to further classify some riders as self-employed, attracting further investigations

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[131] Article 9.

[132] ibid.

[133] ibid.

[134] ibid.

[135]Remote, 'Gig Worker Classification: What Businesses Need to Know' (24 June 2025) https://remote.com/blog/contractor-management/gig-worker-classification accessed 8 July 2025.

[136] Spanish Supreme Court, Judgment No 805/2020, 25 September 2020 (Glovo riders' case).

[137]Adrián Todolí Signes, 'Notes on the Spanish Supreme Court Ruling That Considers Riders to Be Employees' (2020) *Dispatch No 30* https://cllpj.law.illinois.edu/content/dispatches/2020/December-Dispatch-2020.pdf accessed 8 July 2025.

and fines.[138] Fortunately, in December 2024, Glovo announced a shift to all its riders to full employment across Spain.[139] Data annotators like other gig workers or the Glovo riders, are often categorised as freelancers while they are subject to algorithmic management by the platforms. This case in the EU ensured that gig workers, including data annotators, can be classified as employees and enjoy employee benefits such as fair pay and social protection.

Algorithmic Transparency case

a. Uber and Ola cab case

Uber and Ola cabs have been found in violation of their drivers rights for failure to ensure the drivers have access to their personal data and that there is transparency in relation to automated decisions relating to work allocation and fare pricing.[140] A group of drivers in the UK and Portugal brought cases against Ola and Uber Cabs before the Amsterdam District Court.[141] The cabs failed to provide the drivers access to their data used in Automated Decision Making (ADM). They also failed to ensure transparency on how algorithms determined fare pricing, account suspensions and work allocation or to explain the logic behind the algorithms. The complaints were based on the GDPR requirements of the right to access personal data and receive information about Automated decision-making that have significant effects.[142] In the case, one of the key aspects related to robo-firing where four uber drivers were dismissed solely based on algorithmic fraud detection. There was no aspect of human intervention or an opportunity to appeal the dismissal. The drivers were seeking an explanation for the decision. Additionally, Uber and Ola drivers sought access to their personal data such as ratings, performance profiles and both companies denied them access citing

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[138] Sur in English, 'Food delivery company Glovo caves in and will employ its 15,000 workers' (3 December 2024) https://www.surinenglish.com/spain/glovo-food-delivery-workers-false-self-employed-20241203111036-nt.html accessed 8 July 2025.

[139] Glovo changes gear in Spain: riders hired full-time, but Delivery Hero stock price collapses on the stock exchange, FIRSTonline, 4 December 2024 https://www.firstonline.info/en/Glovo-changes-gear-in-Spain-riders-hired-full-time-but-Delivery-Hero-stock-price-collapses-on-the-stock-exchange/

[140] Amsterdam Court of Appeal, 'Amsterdam Court of Appeal rules in favour of Uber and Ola Cabs drivers' (Fieldfisher, 4 April 2023) https://www.fieldfisher.com/en/insights/amsterdam-court-of-appeal-rules-in-favour-of-uber-and-ola-cabs-drivers accessed 8 July 2025.

[141] "Dutch Court of Appeals rules against Uber and Ola Cabs in GDPR case' (Staffing Industry Analysts, 4 September 2023) https://www.staffingindustry.com/news/global-daily-news/europe-dutch-court-appeals-rules-against-uber-and-ola-cabs-gdpr-case accessed 8 July 2025.

[142] 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.

platform security.[143] The drivers also challenged the opacity of ADM in determining fare pricing, and account suspensions which denied them employment rights there were hidden employer control. The court found that both Uber and Ola breached the drivers' rights under GDPR and ordered the platforms to disclose information to their algorithmic management practices, a victory for the cab drivers.[144] Uber was ordered to give its drivers access to data used in the automated decisions dismissing them and give a breakdown of passenger ratings. Ola, on the other hand, was found to have used fully automated systems for decisions such as assigning work and making deductions from the driver earnings. This was held to be ADM as per Article 22 of the GDPR and the court ordered Ola to disclose the performance rating.[145] This underscored the critical need to ensure transparency in algorithmic practices such as work allocation and account suspension in the digital era. The Court of Appeal on appeal of the case upheld the Amsterdam District Court's decision. The decision highlighted the critical need for digital platforms to adhere to the GDPR in respect to Automated decision-making, transparency, data subject rights and accountability. It set a precedent for gig economy platforms including those that employ data annotators to ensure transparent algorithms especially for significant decisions such as work allocation and dismissal.

Use of opaque algorithms

a. The Foodinho Case

The decision by the Italian Data Protection Authority fined the food delivery platform 2.6 million Euros for data protection violations in relation to gig workers.[146] Foodinho processed the personal data of the delivery riders unlawfully using opaque algorithmic systems. The platform failed to adequately inform the workers of how its algorithm functioned.[147] The criteria to rank drivers and allocate them orders were also not communicated to the riders. The algorithm processed data including emails, phone calls, chats, delivery times, route mapping and tracked geolocation every

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[143] ibid.

[144] Ingrid Lunden, 'Drivers in Europe net big data rights win against Uber and Ola' (TechCrunch, 5 April 2023) https://techcrunch.com/2023/04/05/uber-ola-gdpr-worker-data-access-rights-appeal/ accessed 8 July 2025.

[145] 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.

[146] Garante per la protezione dei dati personali (Italian Data Protection Authority), Decision No 234 of 10 June 2021, Foodinho case, fine of €2,600,000 for violations of Articles 5(1)(a), (c), (e), 13, 22, 25, 30, 32, 35 and 37 of the GDPR https://gdprhub.eu/index.php?title=Garante_per_la_protezione_dei_dati_personali_%28Italy%29_-_9675440 accessed 8 July 2025.

[147] ibid.

15 seconds. The data was processed for performance rating leading to the penalties for drivers for rejection or delay of orders.[148] The Authority held that there was a violation of the GDPR principles, such as data minimisation and processing beyond the purpose needed. The platform did not have technical and organisational safeguards to ensure accuracy of the algorithmic decisions. Article 22 of the GDPR on automated decision making was violated as the platform did not accord its riders the right to human intervention and a right to contest the decisions.[149] The ruling emphasised discriminatory and unfair algorithmic management and ordered Foodinho to implement measures for protecting its workers to ensure no discriminatory rating systems. The case is critical for data annotators and the general gig economy who often face opaque algorithmic control and a lack of recourse for decisions made through such algorithms.

Conclusion

In conclusion, the EU legal frameworks such as PWD and the GDPR exemplify best practices that seek to balance innovation and gig work protection. The enforcement of these best practices has successfully challenged the classification of gig workers as independent contractors validating grounds to offer them social protection like traditional employees. For data annotators who perform critical tasks in AI development, these protections are critical. Recognition of data annotators as employees and offering social and labour protection will ensure the upholding of privacy and transparency in their data processing, continuously advocating for ethical AI governance by promoting fairness, transparency and accountability in AI systems that rely on the annotated data.

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[148]Italian Data Protection Authority, Decision No 234 of 10 June 2021, Foodinho case, para 4.2, https://gdprhub.eu/index.php?title=Garante_per_la_protezione_dei_dati_personali_%28Italy%29_-_9675440 accessed 8 July 2025.
[149]

4.2 Kenya

The protection of gig workers in Kenya remains underdeveloped reflecting the challenges faced by data annotators in the digital economy.[150] Unlike in the EU, where landmark rulings establish a clear status of gig workers as employees, Kenya's regulatory framework is yet to catch up and fully protect gig workers. For instance, while Kenyan ride-hailing drivers for platforms such as Uber face classification issues without any protection and transparency in algorithmic management, in the EU, such drivers are recognised as employees, warranting social protections. The case studies below highlight the nuances, treatment practicalities in advancing protections for gig workers in Kenya. [151]

Remotask

Scale AI owns an online platform, Remotask which allows Kenyans to perform data annotation tasks such as image labelling contributing to AI model training.[152] Kenyan users started joining the platform in 2021 making it the most popular online gig platform in Kenya, especially for the youth considering the high rate of unemployment. Thousands of Kenyans depended on the platform for their livelihood.[153] 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.[154] Its reason for the suspension was internal policies including poor quality work, multiple accounts and 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.[155] The suspension raised issues around the classification of the workers, raising questions as to whether they were employees entitled to protections or

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[150] 'The Legal Status of Gig Workers in Kenya - A Critical Analysis' Studocu (7 January 2022) https://www.studocu.com/row/document/jomo-kenyatta-university-of-agriculture-and-technology/bachelor-of-law/the-legal-status-of-gig-workers-in-kenya/71948667 accessed 9 July 2025.

[151] 'The Hidden Legal Battles of Kenya's Glovo Riders, Uber Drivers.' Tech-ish (7 May 2025) https://tech-ish.com/2025/05/07/legal-grey-area-platform-work-kenya/ accessed 9 July 2025.

[152] '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.

[153] ibid.

[154] '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.

[155] ibid.

independent contractors subject to unilateral decisions from the platform.[156] This case highlighted the gaps in regulatory mechanisms to ensure fair treatment and social protection for data annotators in Kenya arising from the complaints, lack of contractual obligations and a formal channel for dispute resolution and complaints. This case also exposed the precarious nature of data annotation in Kenya, with workers likely to experience sudden platform exit with no recourse. Before the suspension, Kenyan data annotators had reported delayed payments, sudden account suspensions and opaque performance rating systems by Remotask.[157] The accounts of the data annotators were suspended for "speed and accuracy issues" without any explanation or opportunity to contest the decisions.[158] The suspensions also raised questions around algorithmic management and its impact on the data annotators, their rights such as fair treatment and automated decision making. The Kenyan courts, despite the public outcry, are yet to recognise the gig workers as employees. Due to the lack of employee status and employment and formal contracts, the workers remain excluded from statutory benefits and protection.

Meta Content moderator suit against Majorel and Sama

The case involved 43 former Facebook content moderators who were employed by Sama and Majorel, Kenyan outsourcing companies.[159] The content moderators alleged unlawful dismissal, union busting and blacklisting barring them from future employment.[160] There were no redundancy notices prior to the dismissal, a severe violation of Kenyan employment and labour laws.[161] The case was centred around worker classification and the responsibility of the platforms. The

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

[157] 'Remotasks Reviews' *Trustpilot* (6 June 2024) https://www.trustpilot.com/review/remotasks.com?page=2 accessed 9 July 2025.

[158] '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.

[159] '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.

[160] '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.

[161] Meta Platforms, Inc & 2 others v Motaung & 186 others [2024] KECA 1262.

Employment and Labour Relations Court at Nairobi in 2023 ruled that Meta, alongside Sama and Majorel who were its contractors, 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[162] 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.[163] The Kenyan Court of Appeal confirmed that it has jurisdiction over Meta, a foreign tech company and allowed the workers' claim to proceed. In September 2024, the Court of Appeal upheld the Employment and Labour Courts decisions, emphasising that the moderators were employees of Meta, awarding them damages for the violations.[164] This ruling is a critical precedent for data annotation and content moderation tasks for multinational platforms. It recognises such workers as employees, entitling them to labour protections such as reasonable working conditions and fair termination.

Kenya data annotators working for OpenAI

This case highlights how the working conditions and compensation for data annotators employed by outsourcing firms such as Sama for OpenAI's development are unfair.[165] This is particularly with regard to content labelling and filtering for ChatGPT.[166] As per <u>TIME's Report</u>, Kenya data labellers 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

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[162] Constitutional Petition E052 of 2023.

[163] ibid.

[164] [2024] KECA 1262.

[165] 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.

[166] '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.

mental health protection.[167] OpenAI contracted Kenyan Workers and paid them Less Than $2 Per Hour.[168] 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.[169] This sparks systematic exploitation within the AI supply chain, where the multinational foreign companies benefit from low-cost labour from the economically vulnerable regions like Kenya. Additionally, the workers did long shifts of up to nine hours a day labelling texts while trying to cope with the mental health burdens of their daily work.[170]

In 2024, further investigations by Weetrack report showed that Kenyan workers continued to receive low pay of around $2 per hour from Sama despite the high pay from Meta.[171] These reports sparked debates around ethical AI development. Digital platforms and multinational tech companies relied on low-income countries such as Kenya, who lack bargaining power and social protection for gig workers.[172] This intensified the urgent need for ethical AI governance in the whole AI development supply chain, including fair labour practices for data annotators. 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.

The Kenya Gig Workers Union

In response to the unfair treatment of data annotators in Kenya, Kenya workers have formed organised unions for collective representation and protection. In 2023, The Kenya Gig Workers Union (KGWU) was established to advocate for the gig workers as employees, to accord them social security and fair wages. The workers union specifically pushes for algorithmic transparency in decisions such as work allocation, account suspension and performance evaluation to ensure

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[167] 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.

[168] Ibid.

[169] 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.

[170]ibid.

[171] '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.

[172] '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-kenia-to-filter-toxic-content-for-chatgpt/ accessed 9 July 2025.

fair, explainable and constable decisions and avenues. KGWU has engaged with government agencies such as the Ministry of Labour and Social Protection and the Ministry of ICT and the Digital Economy to push for updated laws that address the realities of the gig economy. KGWU contributed to discussions convened by GIZ and KICTANet in 2024 at the Policy Consultation Roundtable on Regulating Kenya's Gig Economy. The same emphasised the need for social protection, legal clarity and safety standards for gig workers. KGWU has also taken part in capacity building and training programs to empower gig workers on their rights and how to navigate the digital platforms. All these efforts have led to increased acknowledgement of gig workers by the government as a key category requiring protection.

Data Labelers Association of Kenya

Earlier this year the Data Labelers 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.[173] It has created awareness on challenges faced by data annotators and advocated for mental health support, fair wages and labour rights of the workers. By collaborating with the Ministry of Labor and Ministry of Information, Communication and Digital Economy and human rights organisations like Siasa Place and KICTANet, the association has pushed for policy reforms. This has been done through stakeholder engagements and policy hackathons resulting in initiatives like the development of Model Contract and a Voluntary Code of Conduct for AI data workers.[174] These efforts have empowered the invisible workers to demand fair treatment and employee recognition.

The case studies above reveal the unfair treatment of gig workers in Kenya, calling for comprehensive legal reforms to address the realities of the gig economy.

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[173]Kenyan AI workers form Data Labelers Association | Computer Weekly (13 February 2025) https://www.computerweekly.com/news/366619321/Kenyan-AI-workers-form-Data-Labelers-Association accessed 28 August 2025.

[174] 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.

5 Comparative Analysis

Both the EU and Kenyan legal frameworks and case studies reveal the convergence and sharp divergences in the adjudicatory practices and protections in relation to the gig economy. Each jurisdiction addresses the complex aspects of the gig economy and especially in relation to data annotators differently producing different protection or lack thereof. There is a comprehensive approach of the EU vis-à-vis the fragmented and nascent Kenyan environment leaving gig workers vulnerable to exploitation and legal uncertainty.[175]

Regulatory framework

Differences are evident between the EU and Africa. The EU frameworks remain robust and multilayered by integrating labour rights, data protection and platform accountability requirements at the core to protect gig workers.[176] The GDPR, ensures protection from automated decision making while the PWD mandates transparency in algorithmic management and minimum social protections for gig workers shaping gig workers working conditions.[177].

In contrast, Kenya's regulatory framework lacks the capacity to fully address the gig economy realities.[178] The gig workers left with no protection behind as they are treated as independent contractors with no sufficient protection under the labour laws. Despite the recent Business Laws (Amendment) Act shift to the recognition of gig workers, the same lacked public participation

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[175]Parliament, 'Gig economy: how the EU improves platform workers' rights' (April 2024) https://www.europarl.europa.eu/topics/en/article/20190404STO35070/gig-economy-how-the-eu-improves-platform-workers-rights accessed 14 July 2025.

[176]Ogletree Deakins, 'It's Official: The EU Platform Work Directive Is Here' (3 January 2025) https://ogletree.com/insights-resources/blog-posts/its-official-the-eu-platform-work-directive-is-here/ accessed 14 July 2025.

[177] Osborne Clarke, 'GDPR for HR | The gig economy, DSAR tips and data protection abroad' (3 October 2022) https://www.osborneclarke.com/insights/gdpr-hr-gig-economy-dsar-tips-and-data-protection-abroad accessed 14 July 2025.

[178] KICTANet, 'Kenya's Growing Gig Economy: Balancing Opportunity and Challenges' (17 April 2025) https://www.kictanet.or.ke/kenyas-growing-gig-economy-balancing-opportunity-and-challenges/ accessed 14 July 2025.

from crucial stakeholders raising criticism from digital creators and the Kenya Data Labelers Association raising questions about inclusivity and effective enforcement.[179] o

Adjudication and enforcement

The institutional response with regard to the protection of data annotators is different between the EU and Kenya. The EU demonstrates a robust institutional response to data annotators classification and their rights with courts recognising the employment status of gig workers in the EU despite contractual relations trying to circumvent the labour laws and treat such workers as independent contractors.[180] The judiciary in Kenya is progressively attempting to recognise the aspect of gig workers and as per the Meta Sama case, the gig workers were accorded protection as employees.[181] Despite this decision, however, enforcement remains hampered by the nascent jurisprudence of gig workers and lack of recognition of gig workers as employees.

Integration of human rights and ethical standards in AI governance

This **comes** out as a distinctive feature in relation to Kenya and EU Laws. The EU's AI act and the GDPR embed ethical consideration by mandating humans in the loop, and other principles such as data minimisation directly influencing the practices of data annotators and platform accountability.[182] Kenya regulatory frameworks on the other hand lack enforceable AI specific governance. The case studies such as complaints against OpenAI highlight the urgent need for ethical AI governance through protection of data annotators from exploitation and psychological harm.

The successes of the EU and those of Kenya

These successes vary depending on the focus and extent of protection of gig workers. The EU successes include the establishment of a robust and harmonised regulatory framework for explicit

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[179] Digital workers slam Senate's controversial Business Laws Bill amid concerns over rights violations https://eastleighvoice.co.ke/digital+work+bill-digital+workers-senate/195216/digital-workers-slam-senate-s-controversial-business-laws-bill-amid-concerns-over-rights-violations accessed 28 August 2025.

[180] European Parliament, 'Gig economy: how the EU improves platform workers' rights' (April 2024) https://www.europarl.europa.eu/topics/en/article/20190404STO35070/gig-economy-how-the-eu-improves-platform-workers-rights accessed 14 July 2025.

[181] ibid.

[182] IAPP, 'EU AI Act shines light on human oversight needs' (5 September 2024) https://iapp.org/news/a/eu-ai-act-shines-light-on-human-oversight-needs accessed 14 July 2025.

protection of gig workers balancing innovation and data annotators protection for responsible AI Judicial precedents have redefined the workers employment status in line with the PWD enabling them to be protected and accorded labour rights.[183]

Kenya, despite the existing regulatory gaps exhibit successes that are worth noting. The acknowledgement of platform responsibility and labour rights of gig workers in the Meta Sama case by Kenyan courts sets a precedent for holding multinational tech companies accountable under Kenyan labour laws. The Kenyan DPA also has an extraterritorial reach, allowing for the protection of data annotators rights, such as automated decision-making requirements for Kenyan data subjects regardless of where processing takes place. The gig workers unionization efforts such as KGWU reflect the growing collective voice advocating for gig workers' rights.

Conclusion

The comparative analysis highlights Kenya's evolving framework for the protection of gig workers. Whereas it shows Kenya's promising frameworks and judicial interventions and the existing enforcement gaps. Notably, the misclassification of the gig workers as independent contractors per Kenyan employment laws leads to exclusion from labour rights. As such consideration must be given to the protection of workers under the jobs created due to the use of AI. Key to this consideration is ensuring the protection of the welfare of the data annotators who constitute the backbone of the development of AI.

6 Major challenges and risks

The rapid evolution of the gig economy in Kenya mirroring the broad African trends signifies the urgent need for employment law reforms. It highlights the profound shift in employment modalities and exposes the workers to multifaceted challenges.[184] Despite it being a promising

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[183] ibid.

[184] International Labour Organization, 'Strong labour and social protections: Key to 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.

sector in boosting economic growth, AI development and innovation globally, it poses challenges to the gig workers due to a lack of protection.[185]

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.[186] The gig workers face abrupt account suspensions without notice, explanation or even an avenue for challenging the automated decisions. Due to their classification as contract workers, gig workers are excluded from labour protections such as fair remuneration, collective bargaining, social protection and dismissal. The lack of transparency by the platforms undermines the ability to contest the opaque decisions.[187]Therefore, Platforms can 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. [188] In return this poses income instability with data annotators falling below the minimum wage and are based on opaque algorithmics and customer ratings. This leads 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.[189]

Additionally, data annotators in Kenya **lack social protection** despite the critical role they play in the AI ecosystem.[190] Employment laws in Kenya do not explicitly cover gig workers, and they

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[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://fair.work/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.

remain classified as independent contractors denying them access to protections under such laws. This exposes the workers to vulnerabilities in times of sickness leading to abrupt job losses.[191]

Kenyan data annotators face **harrowing working conditions** p**osing significant risks to their mental and physical well-being** which ultimately raise ethical issues in AI development.[192] The annotators are exposed to graphic and disturbing content including 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.[193] This is worsened by the long shifts and the lack of protection leaving the annotators at risk. Kenyan data annotators working for Open AI 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.[194] Other workers have complained of being traumatised and experiencing chronic distress. Health resources still 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.[195]

Further to the exposure to harmful content, data annotators endure precarious working conditions. The data annotators in Kenya operate with no formal contracts, working on short term and task-based agreements.[196] Beyond job security, other risks such as lack of paid leave and long hours of work arise. The illusion of the flexibility of the work masks the intense workload and long shifts that the data annotators face. The impact this system poses runs from psychological stress such as depression, anxiety to physical health as a result of prolonged screen times and lack of rest due to the prolonged shifts.[197]

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[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.

[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://superrr.net/en/blog/data-workers-demand-safe-and-fair-conditions accessed 17 July 2025.

[197] ibid.

Intersection between the challenges and Ethical AI

These challenges 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.[198] This compromises the wellbeing of the data annotators remains at a threat, directly affecting the accountability, transparency and reliability of AI calling for embedding of ethical AI principles in data annotation.[199]

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

Impact of Algorithmic Management and Platform Asymmetries.

Algorithmic management in digital platforms exists for both Africa and the EU and fundamentally shapes the experience of gig workers. Platforms deploy automated decision-making for task

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[198] ibid.

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

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

[201] ibid.

allocation, rating, monitoring, and payment practices, often with little human oversight or accountability.[202]

A critical problem exists due to the **power asymmetry** between the platforms and the workers. Algorithms in the digital platforms remain opaque and make decisions that have significant impacts on the workers.[203] These decisions include work allocation, performance evaluation and account suspensions. The logic behind the decision is often hidden from the workers leaving them with no recourse over the adverse decisions so made. It deprives the workers of bargaining power and undermines their dignity at work by denying them explanations and recourse. The gig workers remain unaware of the criteria used for their evaluations and thus make it impossible to correct any errors in such evaluations. This lack of transparency contravenes AI principles of explainability, stifling redress and oversight over such platforms. The opacity amplifies the biases and discriminations against the workers as they cannot contest the same.[204]

Every click by the data annotators remains continuously surveilled, tracked and evaluated, leading to "digital Taylorism," which is the intense use of digital technologies to monitor workers and control labour process[205] Kenyan annotators from platforms like Remotask and Sma have complained of constant assessment of their accuracy and speed and even deviating from strict annotation templates. This erodes their autonomy, fosters anxiety and creates a chilling effect that their work is continuously monitored. Workers became aware that there are unseen algorithms continuously determining their access to income. Numerous workers in Kenya have been deactivated due to quality drops without warning or redress. Annotators have also had their accounts suspended for accuracy rates falling below an invisible threshold. The platforms do not provide for any clarification but only send generic and system.[206]

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[202] CIPIT, 'Work in the Digital Platform Economy: Risks, Protections and the Role of Automated Management Systems in Kenya' (2024) https://cipit.strathmore.edu/work-in-the-digital-platform-economy-risks-protections-and-the-role-of-automated-management-systems-in-kenya/ accessed 17 July 2025.

[203] CSF, 'Understanding Power Asymmetries in Platform-based Gig Work' (1 October 2023) https://www.csf-asia.org/understanding-power-asymmetries-in-platform-based-gig-work/ accessed 17 July 2025.

[204] ibid.

[205] Wood A, Graham M, Lehdonvirta V and Hjorth I, 'Digital Taylorism: Freedom, Flexibility, Precarity, and Vulnerability' in Cambridge Handbook of the Law of the Sharing Economy (Oxford University Press 2022) https://academic.oup.com/book/38817/chapter/337673245 accessed 17 July 2025.

[206] ibid.

Furthermore, **financial precarity** is reinforced by the algorithms. This is as a result of the fluctuating pricing, unpredictable commissions tied to metrics not known to the workers. Additionally, the algorithms continuously **perpetuate biases,** with women and the youth being the most affected in Kenya.[207] They receive fewer tasks and lower rated jobs.[208] Due to a lack of transparency, it becomes impossible to verify where these penalties come from. The shifting quality targets are impossible to meet and lead to burnout for Kenyan annotators. Their pay is constantly withheld due to productivity issues dictated by the algorithms. This causes a psychological toll to the workers who are constantly labelled as low performers without any recourse or explanation. The opacity of algorithms not only causes harm to the workers but also undermines the ethical foundations and reliability of AI systems.

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[207] Kaaniru J, 'Ethical AI Development in Kenya: The Role of Ethical Data Sourcing and Governance' (2025) https://cipit.strathmore.edu/ethical-ai-development-in-kenya-the-role-of-ethical-data-sourcing-and-governance/ accessed 27 August 2025.

[208] World Bank, What Works to Advance Women's Digital Literacy? A Review of Good Practices and Programs (2024) https://documents1.worldbank.org/curated/en/099040225191054238/pdf/P173166-dc7a7963-3066-4151-a26e-2b987720fc1e.pdf accessed 17 July 2025.

7. Gendered Perspectives

The gender dynamic in Kenya's gig economy highlights the deep seated inequalities that shape women's participation, advancement and well-being in digital work, particularly in data annotation and the AI supply chain.[209] 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.[210] The participation of women remains low with only 28% of women gig workers as per the 2023 Ajira digital Programme and Microsave Consulting report.[211] This stems from the limited device ownership by women and the gender AI divide, leading to limited internet access for women. Additionally, the women gig workers in Kenya earn up to 40% less than men in equivalent tasks as per a 2023 KICTANet study. Women often spend three times as many hours as men do in domestic work compared to men, constraining their availability for the complex and time demanding gig work. Therefore, they remain restricted to microtasks such as content moderation, where wages are low.[212]

Additionally, the gig work ecosystem in Kenya leads to **career limitations for women**. The platforms and algorithms remain biased against women and offer limited career progression pathways for women. Women remain 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.[213] The employment rates post the training are lower for females than for males. KICTANet and Microsave Consulting have highlighted a steep drop in female gig work as a result of childbirth and marriage due to increased care responsibilities. The lack of supportive policies such as paid maternity leave women without

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[209] 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.

[210] Gigpedia, 'Women in the Gig Economy in Kenya and South Africa' (2023) https://gigpedia.org/resources/blogs/2024/wageindicator-exploring-empowerment-women-in-the-gig-economy-in-kenya-and-south-africa accessed 17 July 2025.

[211] 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.

[212] SSRN, 'Gender Disparities in the Online Gig Economy in Kenya: Case Study of the Ajira Digital Programme' (2025) https://papers.ssrn.com/sol3/Delivery.cfm/2d0976c4-184a-436e-9955-836eab0f7292-MECA.pdf?abstractid=5145689&mirid=1 accessed 17 July 2025.

[213] ibid

options   but to quit gig work. This in turn affects their economic security and participation in the AI supply chain.[214]

The digital gender divide is further amplified due to lack of safety which remains an obstacle to women's entry in 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.[215] In data annotation, women have complained of exposure to sexually explicit and violent content without safeguards. Most digital platforms have inadequate incident reporting ineffective mechanisms. Consequently, the lack of protection and accountability leads to self-censorship of women's online platforms excluding them from participation in the Gig economy.[216]

As a result, ethical AI development and governance across Africa is 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.[217] In contrast, women's perspectives remain absent diminishing the fairness, representation and reliability of AI systems and outputs, perpetuating the gender digital divide. These disparities affect the ethical legitimacy of sustainability in Kenya's digital economy. Such gender exclusions are against international law and Kenya's National gender policy and undermine trust in AI systems restricting Africa's competitiveness as a technological hub.

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[214] 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.

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

[216] ibid.

[217] 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.

8. Evidence-Based Recommendations

Africa powers critical infrastructure in AI development as a hub for data annotation. Most multinational companies such as OpenAI rely on Kenyan data annotators for data to train their multi-million-dollar AI systems.[218] The data annotators across Africa remain exploited due to the regulatory void denying them protection, subjecting them to opaque algorithms and impacting the legitimacy of the systems they help in building. This leaves them vulnerable, calling for urgent regulatory reforms to protect them.

Kenya data annotators have had cases of mental health complaints, wage theft and arbitrary account suspensions directly linked to the existing policy gaps in the Kenyan

Inclusion of gig workers under the definition of an Employee

The amendment of relevant laws to include data annotators and the gig workers would ensure that the data annotators are not misclassified as independent contractors who lack statutory protection. Kenya has made such strides through the Business Amendment Act. The Act recognises platform workers such as data annotators as employees.[219]

The statutory recognition abolishes the detrimental independent contractor classification of data annotators and can be effectively used for platform protection of data annotators. The employment Act has very critical best practices similar to those of the EU such as Leave provisions, minimum wage provisions and social protection which remain unreachable for data annotators due to the definition of an employee under the Act. The reform will lead to the wage protection, fair termination and dismissal and protection from long working hours through the limiting of working hours and leave which are accorded in the Act.

Social protection

Kenya has existing social protection laws including the WIBA, Labour Relations Act and Occupational Safety and Health Act. The Acts provide for workplace safety, collective labour rights and work injury compensations which are very fundamental in the gig economy where data

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[218]Labeling to Kenyan Workers Earning Less ...' *Big Data Wire* (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 18 July 2025.

[219] Amnesty International, 'Joint Submission of Memoranda on the Business Laws Amendment Bill' (25 April 2025)https://www.amnestykenya.org/joint-submission-of-memoranda-on-the-business-laws-amendment-bill/ accessed 18 July 2025.

annotators are exposed to precarious working conditions without medical insurance and health protection. There is an urgent need to tailor these laws to the evolving economy to include 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.[220] 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 in order to hold platforms liable to workplace safety standards.[221] Together these amendments will be multifaceted and critical in the social protection of the Kenyan data annotators and other gig workers.

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Algorithmic transparency for platforms.

The algorithmic management of most digital platforms remain opaque making decisions that have significant impacts to data annotators in Kenya. They lack explainability, human oversight and the right to challenge the decision leaving workers with opaque decisions that are detrimental and no recourse.[222] Kenya's Data Protection Act is very critical in the regulation of digital platforms to enhance transparency. Section 35 of the Act mirrors Article 22 of the GDPR and addresses Automated Decision Making.[223] Similar to the GDPR it grants data subjects the right to explainability about the decisions solely made by algorithms that significantly affect them. Kenya can enforce the same by requiring explanation of algorithmic decisions by digital platforms such as work allocation and account suspension. This will empower the workers' understanding of the reasons for decisions affecting them and accord them a 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.[224] The enforcement of these principles to the digital platforms which collect and process the data annotators would ensure fair operation of platform algorithms without hidden biases. The office of the Data Protection Commissioner (ODPC) thus would play a critical role by issuing sector

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[220] Section 5 (1) Work Injuries and Benefit Act Cap 236, Laws of Kenya.
[221] Section 3, Occupational Safety and Health Act no. 15 of 2007.
[222]ibid.
[223] Section 35, The Data Protection Act Cap 411C, laws of Kenya; Article 22.
[224] Section 25 The Data Protection Act Cap 411C, laws of Kenya.

specific guidelines of 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 of digital platforms to transparency in automated decisions through algorithmic impact assessments and audits to identify and mitigate risks such as operational opacity and biases.

Kenya can leverage on the Data Protection Act and enact employment guidelines on Automated decision making rather than enacting a new law first. This will ensure that it leverages existing frameworks and institutional structures in place to avoid legislative delays. This would then crystallize to substantive enactment of laws to explicitly provide for platform regulation in future. Through these reforms black box algorithmic decisions will be minimised and procedural fairness boosted through provision of human oversight avenues. Through this, trust in digital platforms will be fostered and algorithmic precarity that disproportionately affects Kenyan data annotators will be curtailed. Through the application of the Data Protection Act, the same will ensure immediate remedy for protection of data annotators that will prepare the country for a more comprehensive Platform regulation framework.

Bridging the digital gender divide

The digital gender divide in Kenya leads to less women participation in data annotation due to lack of skills and adequate equipment for the platform-based work.[225] Bridging these gaps requires a multifaceted approach to embed gender equality in the AI ecosystems. This includes the requirement that gig platforms have reporting mechanisms for harassments and ensure effective and accessible redress mechanisms. The same will ensure that women are not only involved in microtasks only due to gender biases embedded in the algorithms allocating work.[226] The above recommendation on algorithmic transparency will ensure the realization of this reform by requiring explainability and human in the loop. Public private partnerships remain critical in narrowing the digital gender divide. Through partnerships between the government agencies, tech companies and

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[225] Njeri K, 'Great divide: How digital gender gap is widening inequalities' *Nation* (12 February 2025) https://nation.africa/kenya/news/gender/great-divide-how-digital-gender-gap-is-widening-inequalities-4150468 accessed 18 July 2025.

[226] Micronomics, 'Challenges and Opportunities for Kenyan Women in the Gig Economy' (2023) https://www.microsave.net/2023/12/15/challenges-and-opportunities-for-kenyan-women-from-the-gig-economy-in-the-digital-age/ accessed 18 July 2025.

civil societies, affordable digital services can be delivered to ensure access by women as well as penetration of affordable internet.[227] Initiatives such as Ajira Digital programme and Africa Women technology have shown success through offering skills and mentorship as well as childcare support enabling the full participation of women in digital labour markets.[228] These reforms together with flexible working structures and specific safety features by platforms will create an enabling environment for women data annotators. Once the divide is addressed it will increase women digital inclusion improving their economic status and diversifying the AI training data which translates to gender fairness and women inclusion in the AI ecosystems. Existing gender biases will not be amplified and the same will result in bias free and resilient AI systems.[229]

 The above recommendation addresses the specific challenges experienced by African data annotators, Kenya risks creating new digital exploitations and losing on contributing to ethical AI development globally. Adoption of the recommendation is grounded on the unique potential of Africa to drive ethical, inclusive and fair AI systems.

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[227]World Bank, Closing Gender Gaps in Digital Development (2023) https://documents1.worldbank.org/curated/en/099022924054584089/pdf/P1805721f6ca4402c1905b12c4337f89bb8.pdf accessed 18 July 2025.

[228] Ajira Digital Program, Government of Kenya, Ministry of ICT: https://ajiradigital.go.ke accessed 18 July 2025.

[229] UNESCO, 'Policy Brief: Bridging the Gender Digital Divide for Inclusive AI Development' (2024) https://unesdoc.unesco.org/ark:/48223/pf0000374560 accessed 18 July 2025.

9. **Conclusion**

Africa remains an emerging, crucial player in the data annotation market, fuelling ethical AI through data labelling and its skilled workforce. Its legal frameworks align with the EU best practices in protecting gig workers, but a critical regulatory gap exists. The best practices in Kenya's Data Protection and labour laws exclude data annotators due to its narrow employee definition. This leaves the data annotators excluded from the statutory and social benefits of the laws, with platforms remaining unaccountable. Implementation of the recommendations above, through including gig workers in the employee definition and enforcing transparency and accountability requirements for digital platforms, is pivotal in closing the gaps. The same will now only empower and protect Kenyan data annotators but also improve the AI outputs, elevating Africa's role in the ethical AI ecosystem. Through addressing the existing risks and challenges, Africa will spearhead responsible AI innovation and inclusive economic growth.

ANNEX 1

CHECKLIST FOR GUIDINGING DATA ANNOTATION IN AFRICA'S GIG ECONOMY

This checklist is created to assist both tech companies and the data annotators in Africa in the development of their code of ethics and standards as well as govern their contractual relationships. Tech companies can ensure that their codes of ethics and standards as well as their employment contracts with data annotators reflect fairness, inclusion, social protection, transparency and accountability. Additionally, the checklist is designed to assist Africa's data annotators in the revision and acceptance of their employment contracts to ensure social protection, conducive working environment and protection by the employment laws to ensure inclusion and fairness. The checklist serves as a practical guide for the creation of an inclusive and a culture of transparency, accountability and ethical adoption of Artificial Intelligence (AI) contributing to responsible AI adoption.

PART 1. TECH COMPANIES

CHECKLIST FOR DEVELOPING ETHICAL CODE OF ETHICS
A. INCOPORATE KEY ETHICAL PRINCIPLES

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

- 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. This can ensure each principle is translated to clear standards
- Ensure Accessibility and Awareness of the codes to all the workers on onboarding and via the platforms.

B. ALGORITHM TRANSPARENCY AND ACCOUNTABILITY
Most major platforms use opaque algorithms with no transparency and accountability mechanism making 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 ought to be guarantee that all the algorithmic decisions by the platforms affecting 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 finalized and made by the platforms.
- Ensure there are designated human contact points in the platforms. Human support teams trained to manage the disputes ensure 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 to ensure diverse stakeholders such as worker representatives and independent experts are involved in the assessment process to ensure accurate impact analysis.
- Public reporting through ensuring detailed reports on audit findings including the identified risks, mitigation measures adopted 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 the tech companies have programs that ensure that the gender digital dive is bridged ensuring inclusion and harassment free working conditions.
- Gender inclusive digital literacy and technology access initiatives to promote women participation. This includes Training programs to ensure equitable digital skills for women, mentorships, 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 for example in work distribution doing away with 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, 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 workers for transparency and accountability purposes.

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

B. CLAUSES TREATING WORKERS AS EMPLOYEES

Treating the gig workers as employees by the tech companies ensures a clearer definition of each party's duties and 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 contracts.
- Include termination clauses and due process similar to that of domestic laws in the specific data annotators country.

C. INCOPORATE SOCIAL WORKER PROTECTIONS

Social protection for data workers ensures their wellbeing translating directly to the quality of work done and in return the output of AI systems. To ensure ethical outputs, it is critical to ensure that workers always remain 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 and manageable workloads to avoid prolonged working hours that cause fatigue to workers.

D. SAFE ETHICAL WORKING CONDITIONS

To ensure workers physical and mental wellbeing 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 for under the domestic laws and global best practices.
- Ensure confidential reporting mechanisms to receive reports of any workplace violations.
- Integrate antidiscrimination and anti-harassment clauses to ensure safe working conditions.

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 sickness and in return very low wages below the minimum wages. This is unsustainable for the workers whose salaries are not commensurate with the working hours 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 clear leave application, conditions and approval procedures to avoid absenteeism while also according to workers the needed rest to avoid burnouts.
- Set minimum wages for the workers in aligning with domestic laws and similar assignments in other jurisdictions like the European Union.
- Define clear wage calculation and timely disbursement mechanisms.

PART 2.DATA ANNOTATORS

1.CHECKLIST FOR DEVELOPING ETHICAL CODE OF ETHICS

A. <u>CONDUCTING PERIODIC REVIEW AND AUDITING OF PLATFORM ALGORITHMS.</u>

Data annotators ought to keep the online platforms in check by auditing their algorithms to ensure they are not opaque. This will ensure transparency, accountability and explainability of the algorithmic automated decisions affecting them.

- Collaborate in conducting internal and external independent audit checks of platform algorithms to ensure fairness. This will help in sharing patterns of unfair account suspension or allocation informing platforms of their opaque algorithmic decisions.
- Systematic recordings and regular reporting of algorithmic anomalies. Annotators should report any inconsistencies or suspicious behaviours in performance evaluation and task allocations.
- Engage in Algorithmic impact assessments through giving feedback to evaluate 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. This can be through 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 in the platforms.
- Require platforms to embed human rights and anti-discrimination policies in their codes and operation 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 ensures reporting on any inequalities and advocates for algorithmic updates.
- Adopt cross validation techniques to monitor and challenge biases by comparing annotation results across diverse groups and report any discrepancies indicating biases. This helps push for measures that ensure platform equity and dataset fairness.
- Adopt and use reporting tools for the tracking and flagging of harassment and gender discrimination by the 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 ensure oversight on the platforms to ensure that there are clear and accessible channels for challenging platform decisions as per domestic requirements.

- 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 form platform that significant decisions affecting them like 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 the decisions made by platforms requiring robust transparency and accountability for the decisions made with clear and easily accessible avenues for contesting such decisions.

2.CHECKLIST 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 into writing, in plain and understandable language with clarity on their roles and are properly executed by both parties.
- Ensure that the contracts classify them as employees with clarity and not independent contractors and retain copies of such contracts to use in case of any disputes in future.
- Ensure key agreement terms such as payment rates, leave, account suspension, performance evaluation and work deadlines are clear.
- Ensure contracts provide for dispute resolution mechanisms and reporting mechanisms in case of breach and clear redress mechanisms in times of breach.

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 review of the contracts to interpret any complex terms.
- Negotiate on terms such as fair treatment, rest breaks, dispute resolutions that align with domestic labour laws.
- Monitor contract adherence to ensure compliance with the contract terms and raise any concerns in case of violation of the contracts and 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.
- Ensure there are provisions on health insurance as per the domestic laws for the workers before signing the contacts.
- 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 in reviewing their contracts to ensure labour protections accorded by domestic frameworks from part of such contracts.

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

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