THE RIGHT TO REASONABLE WORKING CONDITIONS: REGULATION OF PSYCHOSOCIAL WORKPLACE HAZARDS IN KENYA

Submitted in partial fulfilment of the requirements of the Bachelor of Laws Degree,
Strathmore University Law School

By

ODAWA BERTHA MARY

100665

Prepared under the supervision of

MARVIN OLIECH ONYANGO

JANUARY 2021

Word Count: 20,856

TABLE OF CONTENTS

ACKNOWLEDGEMENTS

This dissertation would not have been possible without the guidance, support and dedication from my supervisor.

I am grateful for the conversations I had with my classmates and friends on the topic that helped me deepen my perspective and outline my research.

Utmost gratitude goes to my siblings, Sheila, Lorine, Janet, Sarah and John and my parents Dr. Francis and Dr. Susan Odawa for the support, by helping me read through drafts and creating a conducive environment for my thought and writing process.

Finally, I am grateful to God for His never-ending grace.

DECLARATION

I, BERTHA MARY ODAWA, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: ……

Date: ……28 January 2021…….

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: ……

MARVIN OLIECH ONYANGO

ABSTRACT

Psychosocial workplace hazards are an emerging occupational safety and health risk that is largely associated with the mental health of workers. Labour law spanning from a global to a local arena, it is paramount to then analyse the place of these hazards under the law. Focusing on the Kenyan scene, the study aims at the acknowledgement of the existence of these risks, the investigation of their possible causes and negative impact, the extent of their regulation and the recommendation of possible solutions.

An establishment of the place of mental health in Kenya will be undertaken to understand the approach and possible reaction to these risks and their regulation. Turning also to Japan and Europe, who have attempted to establish methods to combat psychosocial workplace hazards through the European Psychosocial Risk Management Program and the Japanese Stress Check Program.

Challenges to the success of this kind of regulation ought to be considered, such as the sensitivity of discussing mental health issues, the lack of adequate research, funding, and enforcement mechanisms. However, various recommendations are made to try alleviating the situation such as increased regulation, raising awareness and a change in perspective as regards work and mental health. This pursuant to the declaration of mental health as a national crisis that needs management before it spirals out of control.

LIST OF ABBREVIATIONS

CAT	-	The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
CEDAW	-	The Convention on the Elimination of All Forms of Discrimination Against Women.
CRC	-	The Convention on the Rights of the Child.
CRPD	-	The Convention on the Rights of Persons with Disabilities.
GDP	-	Gross Domestic Product.
ICCPR	-	The International Covenant on Civil and Political Rights.
ICERD	-	The International Convention on the Elimination of All Forms of Racial Discrimination.
ICESR	-	The International Covenant on Economic, Social and Cultural Rights.
ICMRW	-	The International Convention on the Protection of the Rights of All Migrant Workers and members of their families.
ICPPED	-	The International Convention for the Protection of All Persons from Enforced Disappearance.
ILO	-	International Labour Organisation.
PWC	-	PricewaterhouseCoopers.
SDG(s)	-	Sustainable Development Goals.
UDHR	-	Universal Declaration of Human Rights.
UN	-	United Nations.
WHO	-	World Health Organisation.

LIST OF CASES

Beth Kalondu Mwema v Brand Kenya Board (2015) eKLR.

Coca Cola East and Central Africa Limited v Maria Kagai Ligaga (2015) eKLR.

BWK v EK and another (2017) eKLR.

Josephine Kirigo Kagwanja v Waruhiu Construction Ltd (2016) eKLR.

Kudheidha Workers v Director of Central Police Station Canteen (2019) eKLR.

Nicholas Juma Ojuok v Pentagon Elite Security Services Limited (2018) eKLR.

Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd (2007) eKLR.

Rashid Ali Faki v A.O Said Transporters (2016) eKLR.

LIST OF LEGAL INSTRUMENTS

INTERNATIONAL INSTRUMENTS

The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment, 10 December 1984, 1465 UNTS 85.

The Convention Concerning the Promotional Framework for the Occupational Safety and Health Convention, 31 May 2006, No.187.

The Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, 1249 UNTS 13.

The Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3.

The Convention on the Rights of Persons with Disabilities, 13 December 2006, 2515 UNTS 3.

Hours of Work (Industry) Convention, 28 November 1919, No.1.

The International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, 660 UNTS 195.

The International Covenant on Economic, Social and Cultural Rights, 16 December 1966, 993 UNTS 3.

The International Convention on the Protection of the Rights of All Migrant Workers and members of their families, 18 December 1990, 2220 UNTS 3.

The Occupational Health Services Convention, 25 June 1985, No.161.

The Occupational Health Services Recommendation, 7 June 1985, No.171.

The Occupational Safety and Health Convention, 3 June 1981, No.155.

The Occupational Safety and Health Recommendation, 3 June 1981, No.164.

The Protection of Workers' Health Recommendation, 4 June 1953, No.97.

The Protocol to the Occupational Safety and Health Convention, 3 June 2002, No.155 of 1981.

The Recommendation Concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases, 20 June 2002, No.194.

The Universal Declaration of Human Rights, 10 December 1948.

The Welfare Facilities Recommendation, 6 June 1956, No.102.

Policy and Other Documents

UNGA, *Transforming Our World: the 2030 Agenda for Sustainable Development*, UN A/RES/70/1 (25 September 2015).

REGIONAL INSTRUMENTS

The African Charter on Human and People's Rights, 27 June 1981, 1520 UNTS 217.

The Treaty for the Establishment of the East Africa Community, 30 November 1999, Revised 2007.

NATIONAL LEGISLATION

The Constitution of Kenya (2010).

Employment Act, (CAP 226, Revised 2012).

Employment and Labour Relations Court Act, *(*Act No.20 of 2011, Revised 2016).

Health Act, (2017).

Labour Institutions Act, (Act No 12 of 2007, Revised 2012).

Mental Health Act, (CAP 248, Revised 2012).

The Mental Health (Amendment) Bill 2018, (Kenya Gazette Supplement No.136, Senate Bills No.32).

Occupational Safety and Health Act, (Act No 15 of 2007, Revised 2010).

Work Injury Benefits Act, (CAP 236, Revised 2012).

Policy and Other Documents

The Constitution of Kenya Review Commission, *Final Draft*, 2005.

Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health, 2015.

CHAPTER 1:

INTRODUCTION

1.1 BACKGROUND

Arguably, work is one of the characteristics that distinguishes human nature.[1] In the animal kingdom, all the other activities by the rest of the species for the purposes of sustaining their lives may not be considered as work. Lee looks into the relationship between emotions and work by pointing to the fact that work is an important source of non-economic well-being for the human person.[2] In light of this fact, the theory of non-commodification, as discussed by David Beatty is brought to light as he states that, apart from labour's productive functions, it gives a person a sense of identity and meaning, allowing them to secure their self-respect and self-esteem.[3] Owing to the fact that a human being has such an intimate relationship with work, it is important to look at all the aspects of work, including, the laws that regulate work, to ensure that they fully encompass the concept of human dignity.

Owing to the importance of work, a specialised agency of the United Nations (UN) was established, known as the International Labour Organisation (ILO)[4] with the mandate of establishing humane conditions of labour and an international system of labour legislation.[5] It has also been engaged in the establishment of international labour standards and the inclusion of labour protection in the domain of human rights.[6] The ILO is special because in addition to its being the first ever specialised agency of the UN in 1946 and having been established in 1919 pursuant to the Treaty of Versailles, it survived the collapse of the League of Nations.

---

[1]Paulus I, 'Laborem Exercens', The Holy See, 1 <http://w2.vatican.va/content/johnpaulii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html> on 10 February 2020.

[2]Lee R, 'Introduction to emotions at work: The employment relationship during an age of anxiety', 19 *Employee Rights and Employment Policy Journal* 1, 2015, 46.

[3]Spector H, 'Philosophical Foundations of Labour Law,' 33 *Florida State University Law Review* 4, 2006, 1136.

[4] Hughes S, 'The International Labour Organisation', 10 *New Political Economy* 3, 2005, 413.

[5] Thomas A, 'The International Labour Organisation-It's Origins, Development and Future', 135 *International Labour Review* 3-4, 1996, 261.

[6] Hughes S, 'The International Labour Organisation', 414.

Work has a positive effect on the health of a person, whether employed or unemployed.[7] This could be attributed to the fact that one earns an income and has a role to play in society. Work, therefore, enables one to sustain their life and to meet their basic needs.[8]

The International Labour Organisation, as per Article 1 of its Constitution, was established for the promotion of the various aims and objectives set out in the preamble to its Constitution and the Declaration of Philadelphia as annexed to it. The Constitution of the ILO was formulated in order to help in the achievement of various objectives in its preamble. This premised on the fact that universal peace can be established based on social justice. Consequently, recognising that conditions of labour exist involving injustice to the extent that the peace of the world would be in peril. As a result, an improvement of the conditions would be required through the regulation of working hours, the establishment of a maximum working day and week and the protection of the worker against sickness, disease and injury that arises out of work.

Annexed to the ILO Constitution is the Declaration concerning the aims and purposes of the ILO also known as the Declaration of Philadelphia. Having been formulated in 1944 as per its preamble, the ILO's aims and principles include in Section I, the fact that labour is not a commodity. This already pointing to the unique relationship between labour and the human person. Regarding labour and health concerns, Section III provides for adequate protection for the life and health of workers in all occupations. This being a solemn obligation of the ILO, it ensures that it has programmes of the kind that promote such an aim.

During the UN General Assembly in 2015, the Sustainable Development Goals (SDG's) were set up. Goal 8 was established calling for decent work in addition to the promotion of inclusive and sustainable economic growth encompassing full and productive employment.[9] Thus, was born the Decent Work Agenda, with its four pillars for the engagement of the ILO as a key stakeholder. The four pillars include rights at work, employment creation, social dialogue, and social protection.[10]

---

[7] Verbeek J, 'When Work is Related to Disease, What Establishes Evidence for a Causal Relation?', 3 *Safety and Health at Work*, 2012, 111.
[8] Hughes S, 'The International Labour Organisation', 413.
[9] International Labour Organisation, Decent Work, - << https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> on 29 July 2020.
[10] International Labour Organisation, *Decent Work and the 2030 Agenda for Sustainable Development*, 2017, 2.

Target 8.8, provides for the protection of labour rights and the promotion of safe and secure working environments for all workers, including migrant workers and those in precarious employment.[11] Statistics show that annually, about 2.3 million people die as a result of an occupational disease while 860,000 get injured daily.[12] This, as a result, costs businesses an annual amount of 2.8 trillion US Dollars, which forms 4 per cent of global gross domestic product. This for the treatment of occupational diseases and injuries, rehabilitation, compensation, lost working time and interruptions in production. What then comes up as an urgent matter is the need for a global culture of prevention. A culture respecting the right to a safe and healthy working environment with emphasis on the rights and responsibilities of employers and workers.

In looking at how the goal for decent work integrates with the other SDG's, goal 3, on Good-Health and Well-Being is of importance to occupational safety and health as the productive capacity of the workforce is increased by healthy workers and safe working conditions. This is because work affects the economy and vice versa. With a larger healthy working population, the economy can grow and sustain the population.

Work has been regulated at the international, regional and local level, the right to work having been recognised as a socio-economic right.[13] As a result, various pieces of legislation regulate work and reasonable working conditions including international human rights treaties and conventions, both general and ILO focused. This includes the Occupational Safety and Health Convention (OSHC) of 1981[14] and related legislation. In addition, regional human rights treaties as well as local legislation on health, labour and the Constitution of Kenya (2010) hereinafter referred to as the Constitution of Kenya.

On the relation of occupational health and safety with human rights, Kofi Annan, former UN Secretary General at his Worker's Memorial Day Speech, New York, 28 April 2002, stated that, the safety and health of workers is part and parcel of human security and that safe work is not only sound economic policy but a basic human right.[15] The law regulating workers'

[11] International Labour Organisation, *Decent Work and the 2030 Agenda for Sustainable Development*, 2017, 7.
[12] International Labour Organisation, *Decent Work and the 2030 Agenda for Sustainable Development*, 2017,17.
[13] Donnelly J, *Universal Human Rights in Theory and Practice*, 3rd ed, Cornell University Press, USA, 2013, 41.
[14] *The Occupational Safety and Health Convention,* 3 June 1981, No.155. This Convention entered into force on 11 August 1983 and is not ratified by Kenya.
[15] Shalini T, 'An assessment of Occupational Health and Safety Risks in the Hospitality Industry: The case of Sarova Stanley Hotel, Nairobi, Kenya', Unpublished Masters' Thesis, University of Nairobi, 2016, 15.

rights should then mirror the workers' human nature. It should respect human dignity and ensure the safety of man in his entirety, that is, physically, emotionally, spiritually, and mentally.

According to Part 1 of the OSHC of 1981, providing for its scope and definitions, health has been defined. It defines health, in relation to work, as not merely the absence of disease and infirmity but includes the physical and mental elements which affect health and are directly related to safety and hygiene at work. The World Health Organisation (WHO) defines an ideally healthy workplace as one in which, workers and managers collaborate to protect and promote the health, safety and well-being of workers. They do this by considering the health and safety concerns in the physical work environment, the psychosocial work environment which includes the organisation of work, workplace culture and personal health resources in the workplace.[16] This is a seemingly nuanced definition of a healthy workplace, revealing the various factors to be taken into consideration while setting up a workplace.

There is a distinction to be found between mental health and mental well-being by defining the former as a state of well-being in which an individual can cope with the normal stresses of life, work productively, realise his abilities and contribute to his community.[17] Mental well-being, on the other hand, is an active process involving a person's feelings and actions, and their awareness and will to make choices towards a healthy and fulfilling life. Intentional living. Mental illness then is the state in which an individual's mood, thinking and behaviour has been affected by a variation of mental conditions.

Occupational diseases have been defined as those diseases that are a consequence of the exposure to conditions or substances harmful to health while carrying out activities at work.[18] Depending on their attribution to work, that is, the extent to which work can be seen as the cause of the disease, they have been classified into 'real' and 'work-related' occupational diseases.[19] This is as some can directly be attributable to work while others are only intensified by work but have multiple other causes. A challenge brought about by the

[16] Burton J, 'WHO Healthy workplace framework and model: Background and supporting literature and practices', WHO Global Workshop in Geneva, 22-23 October 2009, 15 <http://www.who.int/occupational_health/healthy_workplaces/en/index.html> on 19 February 2020.
[17] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 15.
[18] Verbeek J, 'When Work is Related to Disease, What Establishes Evidence for a Causal Relation?', 111.
[19] Verbeek J, 'When Work is Related to Disease, What Establishes Evidence for a Causal Relation?', 111.

distinction includes the fact that even for diseases that are directly attributable, various other factors have had a role to play in their cause.

Major global developments have occurred in the world of work. There is an increase in the demand for psychologically-oriented jobs in comparison to manual work.[20] This has resulted in variations in working conditions and exposure to traditional and emerging occupational risks, such as psychosocial risks.[21] A resolution by the UN General Assembly, [22] reported that 90% of the determinants of health issues are based on the social and physical environment of persons.[23] According to the WHO,[24] social determinants have been defined as the circumstances in which people are born, live and work and the systems in place to assist everyone, especially those suffering from illnesses. This is not to mean that the risks are entirely novel, however, they pose greater health hazards as time goes by. Like the health hazards faced by physically demanding jobs, psychosocial health hazards may have an equal or greater effect on the human body.

They may result in mental disorders which are seen to cause several challenges. This includes disability, economic loss and suffering.[25] Moreover, mental health disorders may be evidenced by increased cases of suicides, homicides and domestic violence, among others.[26] Therefore, mental disorders may be seen to have a wider scope in terms of the effects to the life of a person.

Therefore, what exactly are these psycho-social risks? A simple understanding classifies them in terms of work content and work context.[27] Work content pertains to the working environment and employment conditions. Examples of psychosocial risks regarding content being, low wages, poor leadership, lack of advancement, sustainability and a generally poor

[20]Stansfeld S and Candy B, 'Psychosocial Work Environment and Mental Health- a meta-analytic review,' 32 *Scandinavian Journal of Work, Environment and Health* 6, 2006,443.
[21]Kortum E, Leka S and Cox T, 'Perceptions of psycho-social hazards, work-related stress and workplace priority risks in developing countries',53 *International Journal of Environmental Medicine and Occupational Health*, 2011, 144.
[22] UNGA, *Transforming Our World: the 2030 Agenda for Sustainable Development*, UN A/RES/70/1 (25 September 2015).
[23] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 35.
[24] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 35.
[25] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 2.
[26] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 5.
[27]Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries: Health impact, priorities, barriers and solutions', 23 *International Journal of Environmental Medicine and Occupational Health* 3, 2010,', 229.

working environment. The work context pertains to the organisation of work, work schedule, physical and psychological safety provisions and interpersonal relationships.[28] The examples of the risks that may arise are, lack of control over work processes, high workload, discrepancies between skills and job demands, poor management practices, lack of participation in decision making, hours worked, time-constraints, psychological and sexual harassment affecting both male and female workers and poor social support. Because the examples allude to systems utilised in daily life, it is very easy not to notice that possible risks may arise from the same.

There are two major theories discussed in relation to psycho-social risks.[29] The first is the Job-Demand-Control-Support theory in which,[30] it was suggested that combinations of high demand and low decision latitudes, meaning that, having a high workload and not having the discretion to choose how to do the work can lead to mental strain. The basic concepts of the theory are, demand, a big workload, pressure to work long hours and hurried work pace or high intensity of work. This high-strain model has been associated with a higher prevalence for psychiatric morbidity and higher rates of major depressive episodes, depressive syndrome and dysphoria.[31] Looking at this theory, work or the manner of carrying out work is just as complex as the human person and there is need to be very vigilant while regulating the same.

The Effort-Reward-Imbalance model is the second theory.[32] It presupposes that high effort and low rewards are associated with psychological disorders such as depression and anxiety. High-cost vis a vis low gain conditions are found to be particularly stressful.[33] In addition, this could be associated with cardiovascular disease, poor self-perceived health and mental disorders. Work is then seen to have more psychological connotations to it than we generally take notice of. Basically, showing that work means more to a person than just the physical and because of this connection, is more human than not.

---

[28] Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries', 230.
[29] Kortum E, Leka S and Cox T, 'Perceptions of psycho-social hazards, work-related stress and workplace priority risks in developing countries', 145.
[30] Karasek R, 'Job demands, job decision latitude, and mental strain: Implications for Job Redesign', 24 *Administrative Science Quarterly* 2, 1979, 303.
[31] Stansfeld S and Candy B, 'Psychosocial Work Environment and Mental Health- a meta-analytic review,' 452.
[32] Kortum E, Leka S and Cox T, 'Perceptions of psycho-social hazards, work-related stress and workplace priority risks in developing countries', 145.
[33] Siegrist J, 'Adverse health effects of high cost/ low reward conditions',1 *Journal of Occupational Health Psychology* 1, 1996, 27.

Psycho-social risks are challenges faced in the modern-day workplace, in both developed and developing countries.[34] However, expertise in the area is reportedly weak in developing countries. This poses the question as to the level of awareness present in developing countries in terms of psycho-social risks and related health hazards.

There have been several instances in the Kenyan context that have manifested the occurrence of psychosocial risks and their effects in the workplace. In the recent past, reports of Kenyan employees committing suicide, strongly associated with the existence of psychosocial risks in the workplace have been made. A recent case is that of Stephen Mumbo, an employee at PricewaterhouseCoopers (PWC) who fell seventeen (17) floors to his death.[35] After his suicide, a conversation was sparked on whether working overtime can threaten the mental health of an employee. Psychologist Faith Atsango, stated that work related stress ought to be classified as a health hazard.[36] She added that those who work in factories are normally provided with safety gear, but questioned the steps, if any, taken to protect those working in high stress environments.

1.2 STATEMENT OF THE PROBLEM

In Kenya and in the world, there has been an increase and variation in the types of psychosocial health hazards. As a result, there is a provision for the right to reasonable working conditions under Article 41(2) of the Constitution of Kenya. However, in as much as regulations have been developed to combat physical health hazards, a sense of neglect lingers over the ever so emerging psychosocial risks in the workplace which are equally if not more, harmful. This is because the impact of psychosocial risks affects not only the individual but the society at large. Consequently, there is need for adequate research on psychosocial risks. Furthermore, research ought to be carried out on the ways in which they manifest themselves and whether there is need for regulation specific to work and working conditions, in order to deal with the situation in a sustainable and wholesome manner.

[34] Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries', 225.
[35]Achuka V and Odongo D, 'PWC worker led gloomy life, gave in to pressure', The Standard, 20 October 2018. To elaborate further on the Stephen Mumbo case, he had allegedly suffered several work-related burnouts in the last two years before his death. In one such instance, he fell asleep in the middle of a presentation with a client. Thereafter, the employer allegedly only allowed him to nap in the office and to later continue with the work. On another occasion, supposedly the day in which he committed suicide, he left work at midnight and arrived at the office by six a.m. the next day.
[36]Achuka V and Odongo D, 'PWC worker led gloomy life, gave in to pressure', The Standard, 20 October 2018.

1.3 JUSTIFICATION OF THE STUDY

This study is important, first and foremost, because of human dignity and the need to uphold it, especially, in relation to work as a fundamental human activity as tied in with the constitutional right to reasonable working conditions and its fulfilment. Conducting research on the existence of psychosocial health hazards in the workplace and identifying the ways in which they manifest themselves will lead to more vigilance in their identification and the creation of awareness. This will enhance the fight against the increasing psychosocial risks in the workplace. Looking at the statistics from the ILO, Europe has reported stress as the second most frequent work-related health problem. Its effects include the impaired health, economic performance and organisational effectiveness of the employee. This is keeping in mind that statistics of such a nature are unavailable with reference to the Kenyan workspace. Furthermore, investigating the regulation of the hazards will emphasize the importance of the protective role of the law in society. Consequently, the study will go a long way in the development of labour law and its evolution. Thus, promoting development and narrowing of the gap between policy and implementation.

1.4 SIGNIFICANCE OF THE STUDY

This research addresses a fundamental aspect of human life, which is work. It aims to highlight and emphasize the role of the law as a means of promoting the common good. This by addressing psychosocial health hazards in the workplace and preventing their effects on the worker's mental and physical health. It will benefit labourers, their families and the society at large, therefore, immensely impacting the lives of the citizenry of Kenya.

1.5 STATEMENT OF AIM AND OBJECTIVES

This research aims to investigate the regulation of psychosocial risks in the workplace with respect to the creation of reasonable working conditions.

The objectives of the study are:

1. Acknowledging the existence and growth of psychosocial risks in the workplace.
2. Investigating the possible causes and the negative impact of psychosocial risks.
3. Proposing avenues to improve the regulation of Occupational Safety and Health in Kenya.
4. Proposing possible solutions and measures.

1.6 RESEARCH QUESTIONS

1. Are psychosocial risks a health hazard in the workplace and how do the effects manifest themselves?
2. To what extent is occupational health and safety regulated to adequately cover psychosocial risks as health and safety hazards in the workplace?
3. What challenges hinder the regulation of psychosocial risks?

1.7 HYPOTHESES

1. Psychosocial risks have not been recognised as health hazards in the workplace.
2. There is limited or inadequate regulation of psychosocial health hazards in the workplace.
3. Physical health has been extensively catered for at the expense of mental health.
4. Lack of regulation of psychosocial hazards has led to wide-ranging negative effects on the health and safety of workers.

1.8 THEORETICAL FRAMEWORK

The theory of paternalism is defined as the interference of a person's liberty that is justified by the welfare, good, happiness, needs, interests or values of the person being coerced.[37] This being a definition by Gerald Dworkin on his discussion of paternalism as defined by John Stuart Mill. Dworkin divides paternalistic interferences into two classes, namely pure and impure.[38] The former involving the same class of persons whose freedom is restricted being beneficiaries, while the latter, involves an additional class of persons who do not benefit but whose freedom is restricted.

Horacio Spector describes labour law as, a complex bundle of restraints, on the freedom of contract, in the labour market.[39] This contributes to the conception that the regulation of the employment relationship constitutes an interference of the same. However, Mill, while discussing the theory of paternalism, states that government interference with individual choice is taken for the individual's good and it does not intend to take away from one's liberty.[40] He gives the example of the laws on maximum working hours, stating that, such measures are required not to overrule the judgement of individuals but to give effect to it.

[37]Dworkin G, Paternalism, 56 *The Monist* 1, 1972, 65.
[38]Dworkin G, Paternalism, 56 *The Monist* 1, 1972, 68.
[39]Spector H, 'Philosophical Foundations of Labour Law,' 1120.
[40]Spector H, 'Philosophical Foundations of Labour Law', 1139.

Essentially, the purpose of the law, is to give effect to the wishes of the individual that would have otherwise been brushed aside.

Regulatory legislation, regarding labour and the law, is said to be legislation that directly lays down the rules of employment. Previously, the policy of the law was, not to regulate the employment relationship by statute, whereby it could be effectively done contractually or by collective bargaining. Over time, the need to use regulatory legislation arose as some of the issues could not be negotiated through collective bargaining.[41] Key among these issues is safety at the workplace, which includes to a large extent, psychosocial risks.

As psychosocial risks fall under the realm of health and safety in the workplace, research on the extent of their regulation and the need for its enhancement, falls squarely within the theory of paternalism. This follows from the urgency of the matter and the nature of the regulation, which calls for government intervention.

1.9 RESEARCH METHODOLOGY

The research methodology for this paper is doctrinal. This involves the review of laws in the form of legislative instruments such as statutes, policies, directives and constitutional provisions. It also entails looking at case law, the opinion of scholars through books and journal articles, research papers, both from individuals and conferences, newspapers and online internet sources. This will constitute a review of literature, at the local, national, regional and international levels. Through synthesis and analysis of the information from the documents, the study will be carried out and effectively concluded.

1.10 LITERATURE REVIEW

Psychosocial risks in the workplace as defined are an emerging health hazard that is growing more prevalent due to the changing world of work. A study done on the hotel industry in Kenya, found that, workers have complained more about psychosocial risks in the workplace than they have of any other type of health hazard.[42] The effects of these psychosocial health hazards on workers are wide-ranging resulting in unimagined consequences.

Sergio Iavicoli *et al*, state that psychosocial risks are considered as a contemporary challenge for health due to their close link to work-related stress. This has been evidenced to have a detrimental impact on worker's health and safety by leading to cardiovascular diseases,

[41]Davies P and Freedland M, '*Kahn-Freund's Labour and the Law*', 3rd ed, Stevens and Sons Ltd, London, 1983, 37.
[42]Shalini T, 'An assessment of Occupational Health and Safety Risks in the Hospitality Industry: The case of Sarova Stanley Hotel, Nairobi, Kenya', Unpublished Masters' Thesis, University of Nairobi, 2016, 74.

mental, musculoskeletal, and chronic degenerative disorders.[43] Interestingly, the effects go beyond physical and psychological, to economic.

Leka *et al*, pointed to a recent study which concluded that, the social cost of 'job strain', that is just one aspect of work-related stress in France, amounted to at least two to three billion euros. This is after taking into account the healthcare expenditure related to absenteeism, giving up of work by people and premature deaths.[44] Similarly, the Japanese government reported that the economic and social loss from mental disorders and suicides was at least two-point seven (2.7) trillion yen in the year 2009, equivalent to zero-point seven (0.7) percent of the Gross Domestic Product (GDP) of such an industrialized country.[45] This was attributed to work-related stress and the presence of psychosocial risks in the workplace.

Various scholars have discussed the changing nature of work and the likely ways in which psychosocial risks emerge. Korunka *et al*, investigated the concept of 'social acceleration', defining it as the increase in the speed of working life, leaving employees with less time for more tasks and an increasing need to adapt to continuous organizational changes.[46] This has resulted in the emergence of new intensified job demands for employees, which carry different levels of negative and positive work-related outcomes.[47]

Another major way in which work has changed is through fissuring of the workplace. David Weil describes a fissured workplace as one characterised by complex contractual relations created by subcontracting, franchising and supply chain management. Consequently, this leaves workers with no employer of record, who is effectively responsible for their labour and employment obligations.[48] This poses a challenge, especially, regarding the regulation of psychosocial risks in the workplace. Similarly, Professor Seiner points out the fact that, lack of regulation of the technology sector contributes to harassment. This being a result of

[43]Iavicoli S, Cesana G et al, 'Psychosocial factors and workers' health and safety', BioMed Research International, 2015, 1.
[44]Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future',BioMed Research International, 2015, 2.
[45]Kuroda S and Yamamoto I, 'Worker's mental health, long work hours and workplace management: Evidence from workers' longitudinal data in Japan', Research Institute of Economy, Trade and Industry, Keio University, RIETI Discussion Paper Series 16-E-O17, 2016,8 <https://www.rieti.go.jp/en/publications/summary/16030014.html> on 27 February 2020.
[46]Korunka C, Kubicek B and Paskvan M, 'Changes in work intensification and intensified learning: Challenge or hindrance demands?',30*Journal of Managerial Psychology* 7, 2015, 786.
[47]Korunka C, Kubicek B and Paskvan M, 'Changes in work intensification and intensified learning: Challenge or hindrance demands?',788.
[48]Marzan R, 'The fissured workplace: David Weil, Book Review', 19 *Employment Rights and Employment Policy Journal* 2, 2015, 332.

the widespread classification of workers as independent contractors.[49] Workers, therefore, have no protection from the obligations created for employers and end up having increased exposure to psychosocial risks.

Employees are required to adapt to the changing world of work, yet as human beings, age is never static. Canazza widens the perspective on considerations to be taken for good working conditions. She points out the lack of attention paid to the working conditions of ageing workers.[50] Consequently, she calls for the development of policies and legislation to address the needs of ageing workers and to ensure decent conditions of work and life for them.

In a similar way, with the emergence of psychosocial risks, there is need to develop regulation to curb hazardous effects and ensure reasonable working conditions. Various studies have been done investigating the extent of the regulation of psychosocial risks in the workplace.

There exists a substantial degree of diversity across strategies to prevent and manage work-related psychosocial risks. Whereas it is common to distinguish between organizational and individual interventions, the important level of policy interventions has been largely neglected.[51] Policy-level interventions to be taken were specified as, but not limited to, the development of legislation, the specification of best practice standards at national and stakeholder levels and the signing of agreements.[52] The general application of this envisioned legislation, in terms of all organisations and the specificity to psychosocial risks, would go a long way in the regulation and management of these risks.

Looking at regulation on an organizational level, Weissbrodt *et al* analysed the effect of labour inspectorate interventions, in the prevention of psychosocial risks at the workplace. Labour inspectorates play a central role in informing, advising and monitoring of workplaces, yet the complexity of psychosocial risks remain a challenge for companies and regulating bodies. This is because inspectors are only able to inspect a fraction of workplaces, which may not be the worst ones.[53]

---

[49]Hirsch J,'#MeToo in the workplace', 23 *Employment Rights and Employment Policy Journal*1, 2019, 9.
[50] Canazza C, 'Improving working conditions for ageing workers in the European Union: New approaches', 7 *European Labour Law Journal*2, 2016, 263.
[51]Leka S, Jain A, Zwetsloot G and Cox T,'Policy-level interventions and work-related psychosocial risk management in the European Union',24 *Work & Stress* 3, 2010, 298.
[52]Leka S, Jain A, Zwetsloot G and Cox T, 'Policy-level interventions and work-related psychosocial risk management in the European Union' ,299.
[53]Weissbrodt R, Arial M et al,'Preventing psychosocial risks at work: An evaluation study of labour inspectorate interventions', 110 *Safety Science* ,2018, 355.

Similarly, psychosocial risk management as discussed by Janetzke and Ertel has been defined as a systematic process operating at the organizational level to prevent potential psychosocial risks and create a healthy work environment.[54]However, in order to ensure a sustainable and comprehensive integration of psychosocial risk management in the workplace, there is need for enforcement by a regulatory framework from the initial stages.[55] Therefore, organizational level regulation can only be effective with a higher-level regulatory framework.

Since there exists regulation of psychosocial risks, however limited, there is need to look into whether it adequately caters for the same. Leka *et al* state that, even though the regulations address certain aspects of mental health and the psychosocial work environment, the terms 'mental health', 'stress' and 'psychosocial risks' are not mentioned explicitly in most pieces of legislation.[56]An example is the European Framework Directive 89/391/EEC on the safety and health of workers at work. It urges employers to ensure workers health and safety, by addressing all types of risk but fails to explicitly mention psychosocial risks or work-related stress. The closest it comes to addressing the risks, specifically, is by the indirect reference to employers to adapt work to the individual person.[57] This is evidence that legislation addressing psychosocial risks in the workplace remains far from nuanced, resulting in the widening gap between policy and practice.

Leka *et al* looked into the results from a survey done pointing to a debate in scientific and policy literature, on the lack of clarity as regards regulatory frameworks on psychosocial risks.[58]The European Survey of Enterprises, on New and Emerging Risks (ESENER), looked into over 28,000 enterprises in 31 countries. They found that, only about half of the establishments informed their employees about psychosocial risks and their effects on health and safety. Additionally, less than a third, had procedures in place to deal with work-related stress. This, even though work-related stress was declared a key occupational safety and health concern in Europe.

[54]Janetzke H and Ertel M, 'Psychosocial risk management in more and less favourable workplace conditions', 10 *International Journal of Workplace Health Management* 4, 2017, 300.
[55]Janetzke H and Ertel M, 'Psychosocial risk management in more and less favourable workplace conditions',310.
[56]Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future', 2.
[57]Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future', 3.
[58]Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future',3.

Furthermore, it has been noted that some European Union member states have legislation that is more specific referring to work-related stress, bullying, harassment and even psychosocial risks. However, even fewer countries had a list of occupational diseases that included stress-related diseases.[59]This evidencing that there is still close to no sense of nuanced regulation of psychosocial risks in the workplace.

Despite the call for legislation, it has been noted that legal developments have not had the impact anticipated by experts and policy makers in terms of practice.[60] The main reason cited for the gap between policy and practice, was lack of awareness coupled with lack of expertise, research, and appropriate infrastructure. One of the reasons being that findings were reported from stakeholder surveys stating that, many stakeholders still perceived workplace hazards as primarily relating to only physical aspects of the work environment.[61]Additionally, this could be because of the existing regulation being too general, failing to lay out, in a nuanced manner, existing psychosocial risks.

Marzan recognises the fact that taking a legislative route may be a long and protracted process.[62] Similarly, Hirsch discusses the **#me-too** movement on sexual harassment in the workplace. He glaringly points to the fact that, the recognition of sexual harassment and making genuine headway in addressing the problem are two different things.[63] He states that, following judicial decisions that have narrowly interpreted legal provisions on sexual harassment, coupled with the cultural resistance to discuss the problem, it remains a significant dilemma in the workplace. Although this may be true, sexual harassment as a psychosocial risk has made significant strides. In terms of its recognition, it has started vital conversations and raised awareness in comparison to other psychosocial risks in the workplace. This is a big step, however small, in the right direction.

In conclusion, psychosocial risks have been an emerging health hazard at the workplace due to the changing nature of work. It can be established that, in terms of their regulation, there is urgent need for research to investigate the existing legislative framework and the ways to improve it, especially in Kenya.

---

[59]Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future', 4.
[60]Leka S, Jain A, Zwetsloot G and Cox T, 'Policy-level interventions and work-related psychosocial risk management in the European Union', 300.
[61]Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future', 3.
[62]Marzan R, 'The fissured workplace: David Weil, Book Review', 339.
[63]Hirsch J,'#MeToo in the workplace', 1.

1.11 DELIMITATION

This study will mainly be focused on the regulation of psychosocial risks in the Kenyan workplace. Regarding matters to do with occupational safety and health, the psychological effects of work will be investigated and by extension, the physical ones. As the study is doctrinal, the research will be done through review of existing literature. Therefore, interviews, surveys and questionnaires will not be used.

1.12 CHAPTER BREAKDOWN

Chapter 1-Introduction and Background.

Chapter 2-The Legal and Regulatory Framework (International, Regional and Local).

Chapter 3-The State of Mental Health in Kenya and Lessons from Japan.

Chapter 4-Challenges and Milestones.

Chapter 5-Conclusions and Recommendations.

CHAPTER 2:

THE LEGISLATIVE AND REGULATORY FRAMEWORK

This chapter will explore the provisions on reasonable working conditions at the international, regional and local level. It aims to address the various ways in which mental health has been catered for and the extent of the identification and regulation of psychosocial health hazards. Looking at both ratified and non-ratified laws, with the purpose of encouraging the ratification or adoption of best practice provisions at the local level.

2.1 INTERNATIONAL LAW AND REASONABLE WORKING CONDITIONS

International law as discussed in this paper is basically law as formulated and established on a global scale. The international law to be discussed in this section of the paper will consist of International Conventions and Treaties, Human Rights Conventions and the ILO Conventions and their recommendations. Focus is had on the provisions relating to mental health and in particular, psychosocial risks in the workplace. More importantly, this paper expounds on international law that not only binds Kenya but also international law instruments which have persuasive influence over the legal and regulatory framework relating to mental health issues in the country.

2.1.1 International Human Rights Treaties

Labour rights have been categorised as human rights in various instances, and as discussed earlier, the ILO had as one of its major achievements, the integration of labour rights into the realm of human rights. As a result, an analysis of the core human rights treaties will follow to establish the extent of the provision for labour rights and the recognition of occupational health and safety as a human rights concern if any.

The nine core human rights treaties include; [64] the International Convention on the Elimination of All Forms of Racial Discrimination 1965 (ICERD),[65] the International Covenant on Economic, Social and Cultural Rights 1966 (ICESR),[66] the International Covenant on Civil and Political Rights 1966 (ICCPR),[67] the Convention on the Elimination

[64] Wheatley S, *The Idea of International Human Rights Law*, 1st ed, Oxford University Press, Oxford, 2019, 95.
[65] *The International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195. It entered into force on 4 January 1969 and has been acceded by Kenya.
[66] *The International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3. It entered into force on 3 January 1976 and has been acceded by Kenya.
[67] *The International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171. It entered into force on 23 March 1976 and has been acceded by Kenya.

of All Forms of Discrimination Against Women 1979 (CEDAW),[68] the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 (CAT),[69] the Convention on the Rights of the Child 1989 (CRC),[70] the International Convention on the Protection of the Rights of All Migrant Workers and members of their families 1990 (ICMRW),[71] the Convention on the Rights of Persons with Disabilities 2006 (CRPD)[72] and the International Convention for the Protection of All Persons from Enforced Disappearance 2006 (ICPPED).[73] Looking at these treaties and having read through them, it is observed that five of them have incorporated provisions requiring working conditions that are reasonable. Seeing as the treaties vary in their scope, various vulnerable groups such as children, women, disabled persons and migrant workers have been recognised through the different treaties.

The Universal Declaration of Human Rights (UDHR) states that everyone has the right to work and to just and favourable conditions of work. [74] Article 24 provides for the right to rest and leisure, including a reasonable limitation of working hours and periodic holidays with pay. Even though it is not binding as a law, it has been instrumental in influencing the framing of the treaties that came after it. It recognises the fact that work is fundamental to human life but similarly points out the fact that it is required to be regulated due to the importance of rest.

Under the ICESR, there is the right to the enjoyment of favourable and just working conditions. This ensuring safe working conditions that are also healthy, fair wages, rest, reasonable working hours and remuneration for holidays.[75] Article 12 provides for the right to the highest attainable standard of physical and mental health requiring states to prevent, treat and control occupational diseases. This treaty may be considered authoritative in the sense that the right to work and to have reasonable conditions of work has been recognised

[68] *The Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, 1249 UNTS 13. It entered into force on 3 September 1981 and has been acceded by Kenya.
[69] *The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment,* 10 December 1984, 1465 UNTS 85. It entered into force on 26 June 1987 and has been acceded by Kenya.
[70] *The Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3. It entered into force on 2 September 1990 and has been acceded by Kenya.
[71] *The International Convention on the Protection of the Rights of All Migrant Workers and members of their families*, 18 December 1990, 2220 UNTS 3. It entered into force on 1 July 2003 and has not been ratified by Kenya.
[72] *The Convention on the Rights of Persons with Disabilities,* 13 December 2006, 2515 UNTS 3. It entered into force on 3 May 2008 and has been ratified by Kenya.
[73] *The Convention on the Protection of All Persons from Enforced Disappearance,* 20 December 2006, 2716 UNTS 3. It entered into force on 23 December 2010 and has been signed but not yet been ratified by Kenya.
[74] Article 23, *Universal Declaration of Human Rights*, 10 December 1948.
[75] Article 7, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.

as an economic and social right.[76] In addition, occupational safety and health has been recognised, by tying in the need for reasonable conditions of work that are healthy.

Looking at vulnerable groups and the recognition of the right to reasonable working conditions from a discriminatory point of view, some of the treaties have made provisions for protection. The ICERD, 1965, in its Article 5 provides for the enjoyment of a number of rights without distinction in any of the ways provided but with a focus on race. The economic, social and cultural right to work and to reasonable conditions of the same was duly recognised. Additionally, Article 11 of the CEDAW, 1979, provides for their protection in employment. It recognises the right to work as inalienable and in addition, emphasises the right to safe and healthy working conditions, with a special provision for the safeguarding of reproduction.

Article 25 of the ICRMW, 1990, provides that they should not be treated with less favourable conditions for the purposes of employment. This includes the terms for remuneration and safe and healthy working conditions and other conditions of work including overtime, work hours, weekly pay and termination.

Article 27 of the CRPD, 2006, provides for the right to just and favourable conditions of work, with safe and healthy working conditions including protection from harassment. This introduces a new angle to what has been considered unsafe and unhealthy in a working environment.

The right to work and to be provided with reasonable working conditions has been recognised internationally as a human right, through the provisions in various treaties. Psychosocial hazards were recognised expressly and equally, indirectly, through the requirements for rest and leisure, safe working conditions, as well as the prohibition of harassment. Having ratified all the treaties mentioned above,[77] except the ICRMW, and by virtue of Article 2 (6) of the Constitution of Kenya, these provisions form part of Kenyan law. They are therefore binding and create the need, at the local level, to recognise labour rights and to uphold them.

---

[76] Donnelly J, *Universal Human Rights in Theory and Practice*, 3rd ed, Cornell University Press, USA, 2013, 41.

[77] United Nations Human Rights Office of the High Commissioner, UN Treaty Body Database: Ratification Status for Kenya, -<< https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN>> on 24 August 2020.

2.1.2 The International Labour Organisation and Occupational Health and Safety

The ILO as discussed earlier was mandated to establish international labour standards through the creation of an international system of labour legislation. Essentially, the standards of global best practice in terms of labour are established by the ILO and therefore, even if the laws have not been specifically ratified by the various states, they are required to be either incorporated into the local legislation or to be persuasive in nature. This following from the definition of best practice as good practice in a specific context,[78] in this case, general standards for the occupational health sector as prescribed by the ILO.

The ILO has been said to be a credible source of international labour law as provided for in its conventions and recommendations in addition to its documents.[79] Of the various conventions and recommendations provided, Kenya has not ratified any,[80] however, it is paramount to investigate their provisions to determine the status of occupational safety and health internationally. This is because even though the conventions and recommendations are not binding pursuant to their status of non-ratification, they are international standards that constitute the elements of global best practice and are therefore highly persuasive in nature.

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up was adopted in 1998 for the promotion of the fundamental rights that have been grouped into four categories.[81] The categories consist of the right to collective bargaining, the elimination of forced labour, the abolition of child labour and the elimination of discrimination for the purpose of binding ILO members who have not yet ratified the relevant conventions. It can be recognised that the promotion of reasonable working conditions has not been expressly recognised as a fundamental right for work, however, it can be implied into the rights recognised first and foremost by the fact that workers can collectively bargain for better conditions. In addition, forced labour and child labour in turn are muddled by poor working conditions.

---

[78] Caruso G, 'The Concept of 'Best Practice': A Brief Overview of its Meanings, Scope, Uses and Shortcomings', *International Journal of Disability Development and Education*, 2011, 7.

[79] International Labour Organisation, International Labour Law,- <<https://www.ilo.org/inform/online-information-resources/research-guides/labour-law/lang--en/index.htm>> on 29 July 2020.

[80] International Labour Organisation, International Labour Standards on Occupational Safety and Health, -<< https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>> on 24 August 2020.

[81] International Labour Organisation, ILO Declaration on Fundamental Principles and Rights at Work, -<<https://www.ilo.org/declaration/lang--en/index.htm>> on 30 July 2020.

2.1.2.1 International Conventions and their Recommendations

The laws providing the general provisions regarding occupational safety and health internationally, as listed by the ILO are twelve.[82] An analysis of these laws will follow to establish the extent of the recognition of psychosocial hazards in the workplace, at the international level.

The main piece of legislation internationally is the OSHC of 1981, that was previously discussed in the introductory chapter. Article 1 states that the scope of the convention is all the branches of economic activity which have been defined as the branches in which workers are employed including the public service.[83] Of importance to the issue on psychosocial health hazards is that the convention defines health, in relation to work, as not merely the absence of disease and infirmity but includes the physical and mental elements which affect health and are directly related to safety and hygiene at work.

Part 2 of the Convention discusses the principles of national policy requiring signatory states to have them formulated, implemented, and periodically reviewed. Article 4 points out the aim of the national policy as the prevention of accidents and injury to health while Article 5 states what the policy would need to consider as the main spheres of action. Under this section, there are indicators of the identification of certain spheres related to work and the working environment that may pose psychosocial risks. The spheres mentioned include working time, work organisation, work processes and their effects to the physical and mental capacities of the workers.

Part 3 investigates action at the national level. It is noteworthy that Article 11, providing for the functions of the competent authority to give effect to the national policy is mainly if not solely focused on physical health hazards. Despite being the main law on the subject internationally, it is important to note that psychosocial health hazards have been mentioned in passing and the focus is on physical health and the hazards related to that. This convention has not been ratified in Kenya; however, it is noted that submissions have been sent to the relevant authorities pursuing the same.[84]

---

[82] International Labour Organisation, *List of Instruments by Subject and Status*,- <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO:::#Occupational_safety_and_health>> on 3 June 2020, Section 12.1.

[83] Article 3, *Occupational Safety and Health Convention*, 22 June 1981, C155.

[84] International Labour Organisation, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:13300:0::NO:13300:P13300_INSTRUMENT_ID:312300>> on 30 July 2020.

The Protocol to the OSHC 1981 of 2002[85] defines an occupational disease, under Article 1, as a disease contracted because of the exposure to risk factors arising from work activity. In its preamble, the protocol is said to have been established to strengthen the recording and notification procedures in terms of occupational accidents and occupational diseases, of which it focuses on throughout its provisions.

In the Occupational Safety and Health Recommendation of 1981,[86] part II on the technical fields of action addresses the measures that need to be taken to eliminate hazards at their source and various technical fields were identified. This being in pursuit of Article 4 of the Convention on the adoption of a policy. These include those related to psychosocial hazards such as the prevention of harmful physical and mental stress due to conditions of work and supervision of the health of workers. All the other fields mainly focused on physical health hazards and they include but are not limited to the use and maintenance of machinery, occupational hazards due to noise and vibration, radiation protection and the establishment of emergency plans.

Article 4 on national policy requires that competent authorities in each country issue and approve regulations on occupational health and safety in the work environment considering the links existing between safety and health on one hand and hours of work and rest breaks on the other. There is also a requirement to undertake research on hazards and to find means of overcoming them.

Obligations have been placed on employers under Article 10 and they include, ensuring that work organisation, particularly with respect to hours of work and rest breaks, does not adversely affect occupational safety and health. In addition, they are required to take all reasonably practicable measures to ensure that they eliminate excessive physical and mental fatigue. There is needed, a workers' safety and health committee and/or representatives who may be consulted in case of a change in the work content or work organisation that may affect the safety and health of workers as per Article 12.

The Occupational Health Services Convention of 1985[87] in its preamble recognises the mandate of the ILO under its Constitution of protecting the worker against sickness, disease

[85] *The Protocol to the Occupational Safety and Health Convention*, 3 June 2002, No.155 of 1981. It entered into force on 9 February 2005 and has not been ratified by Kenya.
[86] *The Occupational Safety and Health Recommendation*, 22 June 1981, No.164. It has been submitted to the competent Kenyan authorities.
[87] *The Occupational Health Services Convention*, 25 June 1985, No.161. It entered into force on 17 February 1988 and has not been ratified by Kenya.

and injury arising out of his employment. Article 1 defines occupational health services as services entrusted with essentially preventive functions, responsible for advising the employer, workers and their representatives on a safe and healthy work environment for optimum physical and mental health and the adaptation of work to the capabilities of workers considering their state of physical and mental health.

Under Article 5, the functions of occupational health services have been laid out and are seen to exhibit the fact that the mental health of workers is considered as more of an afterthought in the occupational safety and health industry. Out of ten functions, only two seemed to be inclined to the consideration of mental health and this includes adapting work to the worker and participating in the analysis of occupational accidents and diseases.

Article 22 of the Occupational Health Services Recommendation, 1985[88], states that occupational health services should provide workers with personal advice concerning their health in relation to the work they do. This recognises the fact that when it comes to occupational diseases and accidents, work may be affected differently as a result of their individual differences and their adaptation to the work.

The preamble of the promotional framework for the OSHC of 2006[89] recognises the fact that as part of the ILO's agenda for decent work, it is required to promote occupational safety and health.

In the Protection of Workers' Health Recommendation 1953,[90] it largely addresses physical health hazards with its parts including the technical measures for the control of risks to the mental health of the workers as part I. This part includes things such as the prevention of the accumulation of dirt and suitable atmospheric conditions. In addition, Part II addresses medical examinations while for Part III, it deals with the notification of occupational diseases.

In the Welfare Facilities Recommendation of 1956,[91] there is provision for feeding, rest and transportation facilities by the employer for the benefit of the employees. These provisions

[88] *The Occupational Health Services Recommendation*, 7 June 1985, No.171.
[89] *The Convention Concerning the Promotional Framework for the Occupational Safety and Health Convention*, 31 May 2006, No.187. It entered into force on 20 February 2009 and has not been ratified by Kenya.
[90] *The Protection of Workers' Health Recommendation*, 4 June 1953, No.97. The have been no submissions made to the competent authorities in Kenya.
[91] *The Welfare Facilities Recommendation*, 26 June 1956, No.102. Submissions have not yet been made to the competent Kenyan Authorities.

may be said to directly affect the employee's physical and mental health in that, they are able to have a wholesome working environment allowing for rest and rejuvenation.

The Preamble of the List of Occupational Diseases Recommendation of 2002[92] considers the various objectives of having a list of occupational diseases. They include the need to strengthen the identification, recording and notification procedures for occupational accidents and diseases, in order to identify their causes, establish preventive measures, promote the harmonization of recording and notification systems, and improve the compensation process. Furthermore, a simplified procedure for the regular review and update of the list.

Section 2 of the piece of legislation requires that there be national lists of occupational diseases. These lists are to contain diseases established after consultation with the organizations representing employers and workers. Examples of the diseases to be included in the list are those enumerated in Schedule I of the Employment Injury Benefits Convention 1964 as amended in 1980, the diseases contained in the annex to the list recommendation and a section titled suspected occupational diseases. Moreover, members of the ILO are required to give annual comprehensive statistics on occupational accidents and diseases.[93]

The list of occupational diseases, as revised in 2010, contains, in its first part, diseases caused by exposure to agents arising from work activities. This including three sub-sections containing chemical agents, physical agents and biological agents on infectious and parasitic diseases. The second part, containing diseases by target organ systems, contains, four sections. Respiratory, skin diseases, muscoskeletal disorders, mental and behavioural disorders. The list identifies mental disorders as occupational diseases, expressly recognising post-traumatic stress disorder while categorising every other mental disorder as other disorders. The criteria required to classify a mental disorder as an occupational disease is, the establishment of a direct link scientifically between the exposure to risk factors arising from work activities and the mental and behavioural disorders contracted by the worker. Section 3 provides for occupational cancer while section 4 provides for other diseases that may not have been included in the list but from which a direct link can be established.

[92] *Recommendation Concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases,* 20 June 2002, R194. Submissions have been made to the competent Kenyan authorities.

[93] Section 6, *Recommendation Concerning the List of Occupational Diseases and the Recording and Notification of Occupational Accidents and Diseases*, 20 June 2002, R194.

Looking into the international instruments regarding occupational safety and health, it can be observed that the instruments under the category of protection against specific risks include instruments solely relating to physical health hazards.[94] The instruments include; The Radiation Protection Convention and Recommendation of 1960 (No.114 and 115), the Occupational Cancer Convention and Recommendation of 1974 (No.139 and 147), the Working Environment (Air, Pollution, Noise and Vibration) Convention and Recommendation of 1977(No.148 and 156), Asbestos Convention and Recommendation of 1986 (No.162 and 172), Chemicals Convention and Recommendation of 1990(No.170 and 177) and the Prevention of Major Industrial Accidents Convention and Recommendation of 1993(No. 174 and 181).

The subsequent category including instruments related to protection in specific branches of activity similarly regulate physical health hazards.[95] They include; Hygiene (Commerce and Offices) Convention and Recommendation of 1964 (No.120), Safety and Health in Construction Convention and Recommendation of 1988 (No.167 and 175), Safety and Health in Mines Convention and Recommendation of 1995 (No. 176 and 183) and Safety and Health in Agriculture Convention and Recommendation of 2001 (No.184 and 192).

After the analysis of the international labour standards (ILS) on occupational safety and health by the ILO, it may be concluded that physical health hazards have been heavily regulated. This, at the expense of the mental health hazards that will require nuanced regulation. This is because it has been generally recognised yet, there is need for more clarity and regulation for it to be properly addressed as an occupational health concern.

Kenya is one of the countries that has failed to ratify core ILO conventions on Occupational Health and Safety, and this has led to failure in adequately addressing it in the country.[96] This resulting from the apparent deficiency in the regulatory system and the need to spread awareness on the same. However, the persuasive nature of the laws is such that it has encouraged their indirect incorporation in local laws as will be seen in a subsequent discussion.

---

[94] International Labour Organisation, *List of Instruments by Subject and Status*,- <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO:::#Occupational_safety_and_health>> on 3 June 2020, Section 12.2.

[95] International Labour Organisation, *List of Instruments by Subject and Status*,- <<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO:::#Occupational_safety_and_health>> on 3 June 2020, Section 12.3.

[96] Shalini T, 'An assessment of Occupational Health and Safety Risks in the Hospitality Industry', 24.

2.2 REGIONAL LAWS

Regional laws discussed in this section include the laws within the region that is the African Continent, at both the wider and narrower regional levels. This is with a focus occupational safety and health, at least, with regards to mental health.

2.2.1 Regional Human Rights Instruments

The African Charter on Human and People's Rights, hereinafter referred to as the Banjul Charter, provides for the right to work under satisfactory and equitable conditions.[97] In addition, Article 16 addresses the right to the best attainable state of health, both physically and mentally. At the regional level therefore, the right to reasonable working conditions and the preservation of health has been recognised and therefore, its importance emphasised. Kenya being a signatory to this treaty is therefore bound by its provisions, in this case, the obligation to create favourable working conditions.

2.2.2 The East African Community and Occupational Safety and Health

In the treaty for the establishment of the East African Community (EAC), the scope of co-operation in terms of free movement, labour and right of establishment and residence has been set out.[98] It includes the obligation on the partner states for the maintenance of common employment policies and the harmonisation of labour policies, programmes and legislation, with special emphasis on those referring to occupational safety and health. The legislative organ of the EAC, the East African Legislative Assembly (EALA) has the mandate to create laws, by passing bills,[99] which only become law when assented to by the heads of states of the member states.[100] So far, the EALA has not passed any bills directly related to occupational health and safety, although as previously discussed, it is an issue that the EAC aspires to deal with in pursuit of the harmonisation of laws within the community.

From an analysis of laws at the regional level, one may conclude that there is a desire to uphold the rights to reasonable working conditions and the highest attainable state of health, both physically and mentally. There is therefore a need to encourage research and implementation of occupational safety and health laws, with a focus on psychosocial hazards, at the regional level. This will ensure that the subsequent harmonisation of laws

[97] Article 15, *African Charter on Human and People's Rights,* 27 June 1981, 1520 UNTS 217. It entered into force on 21 October 1986 and has been ratified by Kenya.
[98] Article 104, *The Treaty for the Establishment of the East Africa Community*, 30 November 1999, Revised 2007. It entered into force on 7 July 2000 leading to the creation of the East African Community.
[99] Article 59, *The Treaty for the Establishment of the East Africa Community*, 30 November 1999, Revised 2007.
[100] Article 63, *The Treaty for the Establishment of the East Africa Community*, 30 November 1999, Revised 2007.

will lead to better recognition of the importance of mental health and the consequences of its neglect, especially in the workplace.

2.3 DOMESTIC LAWS AND REGULATIONS

Under this section, Kenyan laws are discussed in order to establish the extent of the recognition of psychosocial hazards in the occupational safety and health regime. Being binding in nature, it is important to recognise the impact of the provisions as they are on the working environment. In addition, to look at the extent of policy regulation from a persuasive point of view.

2.3.1 The Constitution and Acts of Parliament

These are the binding laws under the Kenyan legal system, creating legal obligations. The laws primarily relating to the system on labour will be focused on first before looking at the health system. This is to establish the position of psychosocial hazards in the occupational safety and health regime from a wholesome perspective.

2.3.1.1 The Constitution of Kenya (2010)

The Constitution of Kenya, hereinafter referred to as the Constitution, provides for labour rights in which, every person has the right to fair labour practices,[101] fair remuneration and reasonable working conditions.[102] In this context, the Constitution requires working conditions that are 'reasonable', which reflect the right to human dignity[103] and the need for its respect and protection.

In the framing of the Constitution, there were demands by the people to recognise workers' rights, at least, under the Bill of Rights.[104] The statement speaks volumes because, there was a realisation that lack of recognition of various workers' rights led to various injustices, hence, showing the importance of the same.

In terms of health, Article 43 of the Constitution provides for the highest attainable standard of health as a right for all. Looking at the constitutional mandate, it being the supreme law of the land,[105] it can be concluded that workers have been expressly protected and that reasonable conditions of work ought to be created and maintained.

[101] Article 41 (1), *Constitution of Kenya* (2010).
[102] Article 41 (2) (a), (b), *Constitution of Kenya* (2010).
[103] Article 28, *Constitution of Kenya* (2010).
[104] Constitution of Kenya Review Commission, *Final Draft*, 2005, 10.2.4, (xxii).
[105] Article 2, *Constitution of Kenya* (2010).

2.3.1.2 The Employment Act[106]

The Employment Act, being the primary law on labour in Kenya, briefly outlines some of the conditions relating to occupational safety and health, in terms of psychosocial hazards. Sexual harassment has been adequately described with need for a policy on the same, for every employer with twenty or more employees, after their consultation.[107] In addition, when addressing the minimum conditions of employment, various others were highlighted. These include the need for regulated hours of work, the provision for annual leave, maternity leave, sick leave and medical attention.[108] These mainly revolve around the need for a break from work, hence addressing overwork. However, they also refer to any other written law, expressing the fact that they may not be adequate for the intended purposes.

The Employment Act therefore discusses sexual harassment on a wider scale than it does any other psychosocial hazard. It emphasises the importance of having a break from work as it caters for the regulation of various instances in which there is a need for work-life balance, such as maternal and paternal obligations, sickness, and leisure.

2.3.1.3 The Occupational Safety and Health Act[109]

In Kenya, occupational health has mainly been regulated by the Occupational Safety and Health Act (OSHA). The purpose of the Act is providing for the safety, health and welfare of workers and all persons lawfully present at workplaces, in addition, the establishment of the National Council for Occupational Safety and Health and connected purposes.[110]

A careful analysis of the Act reveals that there is a general intention to uphold the health of the employee. However, the same lacks a nuanced approach in that, there is overemphasis on physical health hazards. Illustrations of wide-ranging provisions of the Act will follow in the attempt to prove its inclination to the regulation of physical as opposed to psychosocial health hazards.

In part II of the Act, on general duties, every occupier ought to ensure the safety, health and welfare at work of all persons working in his workplace.[111] An occupier being the person or

[106] *Employment Act* (CAP 226, Revised 2012). It commenced on 2 June 2008.
[107] Section 6, *Employment Act* (CAP 226, Revised 2012).
[108] Section 27, 28, 29, 30 and 34, *Employment Act* (CAP 226, Revised 2012).
[109] *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010). It commenced on 26 October 2007.
[110] *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[111] Section 6(1), *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).

persons in actual occupation of a workplace, whether as the owner or not and includes an employer.[112] Just the mentioning of the occupier alone shows that the regulation is intended for the physical space and not the general work conditions that may pose psychosocial risks. This is as, an occupier has little or nothing to do with the organisation of work for the employees.

As protective law, the Act prescribes for every occupier to revise a written statement of his general policy with respect to the safety and health at work of his employees and the organisation and arrangement for carrying out the policy.[113] This similarly applies to self-employed persons and their employees.[114] Such provisions prove useful to the regulation of occupational health and safety. However, they can only do so much without the recognition of psychosocial risks at the workplace that will be subsequently left out of policy.

Every occupier is to establish a safety and health committee if there are twenty or more persons employed at the workplace.[115] The occupier of a workplace is also required to carry out a safety and health audit of his workplace at least once in every period of twelve months by a health and safety advisor.[116] We can see that the Act is quite detailed in its attempt to regulate health and safety. However, there is a huge inclination to physical health hazards.

There is a requirement for every person to avoid engaging in any improper activity or behaviour that may create or constitute a hazard,[117] this being defined as boisterous play, scuffling, fighting, practical jokes, unnecessary running or jumping and similar conduct. Again, all that has been described involves physical health hazards, failing to consider psychosocial risks such as sexual harassment or 'bullying by bosses.'

Manufactured products and emissions have also been regulated on, this using the general health requirements of a workplace. These include cleanliness, prohibition against overcrowding, ventilation, lighting, drainage of floors and sanitary conveniences.[118]

Out of the forty prescribed occupational diseases under the Act, not even a single disease was related to mental health.[119] A shocking revelation bearing in mind the kind of effects

[112] Section 2, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[113] Section 7, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[114] Section 12, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[115] Section 9, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[116] Section 11, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[117] Section 16, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[118] Section 47,48,49, 50,51,52, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
[119] Second Schedule, *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).

caused by psychosocial health hazards. One of the first indications of references to the possibility of psychosocial risks can be grasped from the mandate given to the director of Occupational Safety and Health, overseeing the administration of the Act. He or She is required to conduct research on occupational safety and health, looking into the studies of psychological factors involved and relating them to innovative methods of dealing with occupational health and safety.[120] This is a provision that may be used to create a revolution in the occupational health space and improve the recognition and regulation of psychosocial hazards.

On looking at general safety provisions, the Act addresses mental health in a subsection where it is stated that, every employer is required to take necessary steps to ensure that workstations, equipment and work tasks are adapted to fit the employee and the employee's ability including protection against mental strain.[121] Albeit indirectly, some of the psychosocial risks have been highlighted by this provision and it attempts to encompass the risks.

A National Council for Occupational Safety and Health is established under the Act with the aim of advising the Minister.[122] The various issues the Minister is to be advised on include but are not limited to, the formulation of a national policy framework on occupational safety and health, legislative proposals including the means for the implementation of ILO and other conventions, strategic means for the promotion of best practices and improving the quality of working life in Kenya. This body can be used to assist in the incorporation, under the Kenyan system, of ILO and other global standards as discussed earlier.

The Act generally, or rather, in its totality, has widely addressed various risks under occupational health but by overemphasis on physical health hazards, barely any room has been left to address psychosocial risks. However, it is paramount to note that the institutions in place pursuant to their provisions in the Act can be useful in the creation of an improved occupational safety and health regime, with the right guidance and focus on psychosocial workplace hazards.

[120] Section 24, *Occupational Safety and Health Act,* (Act No 15 of 2007, Revised 2010).
[121] Section 76(2), *Occupational Safety and Health Act,* (Act No 15 of 2007, Revised 2010).
[122] Section 27, *Occupational Safety and Health Act,* (Act No 15 of 2007, Revised 2010).

2.3.1.4 Work Injury Benefits Act[123]

After the establishment of the fact that an occupational injury has been suffered, there is normally provision for redress where in most cases, compensation is sought. Thus, the need for the Work Injury Benefits Act (WIBA) to regulate the same. Under WIBA, compensation has been granted for temporal[124] and permanent disablement.[125] This is for diseases provided for in the first schedule, all of them being related to physical bodily injuries such as those to the upper and lower body limbs.[126]

In addition, there is compensation for occupational diseases suffered during employment.[127] Similarly, the diseases listed as occupational are all related to physical injuries such as poisoning.[128] This is another indication of the limited extent to which psychosocial risks have been regulated in Kenya. This then begs the question as to what redress is available for persons who have suffered as a result of psychosocial workplace hazards.

2.3.1.5 Labour Institutions Act[129]

The Labour Institutions Act mainly deals with the establishment of institutions to deal with all matters labour. However, it recognises the importance of labour that considers the health of workers. It allows a medical officer to either prohibit or allow an employee to go to work based on his/her health.[130] This is one of the provisions that buttresses the importance of maintaining the employee's health status and may also allude to both psychosocial and physical health hazards.

B.THE HEALTH REGULATORY FRAMEWORK

Having looked at the laws on labour, and the extent to which they address occupational health matters, it is paramount to look at the laws on health, and their regulation of mental health. This is in order to establish the position of mental health under the Kenyan legal system and the possible effects on occupational health and safety regarding psychosocial workplace hazards.

---

[123] *Work Injury Benefits Act*, (CAP 236, Revised 2012). It commenced on 20 December 2007.
[124] Section 28, 29, *Work Injury Benefits Act*, (CAP 236, Revised 2012).
[125] Section 30, *Work Injury Benefits Act*, (CAP 236, Revised 2012).
[126] First Schedule, *Work Injury Benefits Act*, (CAP 236, Revised 2012).
[127] Section 38, *Work Injury Benefits Act*, (CAP 236, Revised 2012).
[128] Second Schedule, *Work Injury Benefits Act*, (CAP 236, Revised 2012).
[129] *Labour Institutions Act*, (Act No 12 of 2007, Revised 2012). It commenced on 2 June 2008.
[130] Section 37 *Labour Institutions Act*, (Act No 12 of 2007, Revised 2012).

2.3.1.6 The Health Act[131]

The Health Act, being the primary piece of legislation regarding the Kenyan health system was enacted to establish a unified health system.[132] This pursuant to the devolution of the government and the need for the co-ordination of the national and county government functions, and the regulation of health care service, service providers, health products and technologies.

Section 2 defines health as the complete state of physical, mental and social well-being and not merely the absence of disease or infirmity. Section 73 then provides for mental health legislation,[133] to protect the rights of individuals suffering from mental conditions and to ensure research is conducted for the identification of factors associated with mental health.

It is therefore safe to conclude that with regards to the health sector, mental health has been identified as part of the aspects of one's health and the need for legislation to regulate the same has been noted.

2.3.1.7 The Mental Health Act[134]

The Mental Health Act is a law enacted to regulate the care of persons suffering from mental illness and to ensure that matters relating to them are handled with utmost care. It does not directly address mental illness as a result of work-related causes. However, it establishes various institutions, such as the Kenya Board of Mental Health,[135] whose functions under Section 5 include the co-ordination of mental health care activities in Kenya and advising the government on the state of mental health and health care facilities in Kenya. For the board to function effectively, Section 6 establishes the office of the Director of Mental Health as one in the public service.

Part VIII makes special provision for the admission of members of the armed forces into a mental health facility for both observation and treatment, in which one of the officers required to sign for the clearance of officers from the facility is a psychiatrist. This provision indirectly addresses the fact that the nature of work done by members of the armed forces may have mental health effects.

---

[131] *Health Act*, (2017). It commenced on 7 July 2017.
[132] *Health Act*, (2017).
[133] Section 73, *Health Act*, (2017).
[134] *Mental Health Act*, (CAP 248, Revised 2012). It commenced on 1 May 1991.
[135] Section 4, *Mental Health Act*, (CAP 248, Revised 2012).

In as much as this law primarily deals with mental health, it lacks greatly in terms of a multi-sectoral approach to the prevention of mental illness, in this case from a labour perspective.

2.3.2 The Policy Framework

2.3.2.1 The Kenya Mental Health Policy, 2015-2030[136]

Having looked at the laws creating legal obligations in the sense that they are binding, it is also important to consider policies that help shape the legislative framework. In this case, as regards the status of mental health in Kenya. The Mental Health Policy was created, to be implemented through a strategic plan that spans 5 years.[137] However, the recent Mental Health Taskforce Report highlighted challenges in this due to lack of a Mental Health Action Plan.[138]

The guiding principles to the establishment of the policy included interesting arguments for the case of mental health. Some of the principles were that mental health is considered a human right and that it requires a multi-sectoral approach, creating a focus on mental health in all sectors, including but not limited to education and labour.[139] The recognition of mental health as a right creates an obligation on the state to protect it.

The rationale to the multi-sectoral approach involves the fact that, as mental health problems have been caused by multiple factors, multidisciplinary and intersectoral collaboration is what is required to alleviate this problem.[140] Having recognised that there is need for a multisectoral approach in order to comprehensively address the issue, incentive is created to recognise psychosocial workplace hazards in the labour sector.

One of the major challenges the country faces is to do with human resource, and the fact that there is an acute shortage of mental health workers or workers trained and skilled in this area.[141] Consequently, one of the recommended priority actions is that of integrating mental health into the training of all health workers.

---

[136] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015.
[137] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 21.
[138] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 7.
[139] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 7.
[140] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 10.
[141]Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 9.

Lack of funding of the mental health sector has also resulted in several challenges in the provision of access to services.[142] Yet, mental health services are required to be accessible, affordable, equitable, sustainable and of good quality.[143]

Based on Article 43 of the Constitution, on the right to the highest attainable standard of health and healthcare services, mental health is of utmost importance. As a result, the development of policy to ensure that these high standards of mental health are met has been encouraged.

This through Resolution WHA65.4, from the 65th World Health Assembly, on the global burden of mental disorders and the need for response.[144] In addition, Resolution WHA66.8, from the 66th assembly, went further to require the development of comprehensive mental health action plans pursuant to and in line with the Global Comprehensive Mental Health Action Plan of 2013 to 2020.

The policy framework is seen to identify various issues affecting the mental health system in the country. As a result, there is need to consider the provisions of policy and to subsequently integrate them into the legislative framework to create binding obligations and to improve the system.

2.3.2.2 Covid-19 and Mental Health

During the Covid-19 Pandemic in 2020, the Kenyan Government was seen to lay emphasis on the mental health of its citizens.[145] The Chief Administrative Secretary of Health, Rashid Asman stated that the Ministry of Health would provide mental health and psychosocial support strategies and measures. Healthcare and Frontline workers are among those identified to be at high risk regarding stress and trauma related disorders. The government took measures such as the provision of Mental Health and Psychosocial Support (MHPSS) through the provision of mental health and psychological services to the general public, quarantined and hospitalized persons, healthcare workers and high-risk vulnerable

[142] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 10.
[143] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 12.
[144] Ministry of Health Kenya, *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015, 1.
[145] Ministry of Health, *Government Prioritize Mental Health in COVID-19 Response*, 20 June 2020, <<https://www.health.go.ke/government-prioritize-mental-health-in-covid-19-response-nairobi-saturday-june-20-2020/>> on 12 August 2020.

populations. There was also provision of hotline numbers 1199 and 719 for tele-counselling services and psychological care.

Mathare Mental Hospital was also stated to be in the process of being transformed into a parastatal for the purposes of the provision of referral specialised care, training and research in mental health. This being confirmed later in the year 2020 by the President's Seventh State of the Nation Address as was discussed earlier.

On 29 June 2020, the Directorate of Occupational Safety and Health Services published an Occupational Safety and Health Post-COVID 19 Return to Work Advisory. The Advisory provides for various measures to be put into place to prevent the spread of the virus through the carrying out of occupational safety and health risk assessments and the preparation of policies. In addition, assessment of non-essential work that can be done from home, safe commuting to and from work for employees, medical examinations and the issuance of certificates of fitness as corresponds to the COVID-19 status of the employees and measures to take to react to employees who have tested positive for the virus.

Of relevance to mental health and well-being, the Advisory recognises the fact that, with the changing conditions of work, there is an increased demand for support. Discussions are encouraged between employers and employees on the ways in which the pandemic has affected their lives in general and their work, recommendations being made for affected persons to be linked to a mental health support programme.

The pandemic in 2020 created an avenue for the recognition of psychosocial workplace hazards by identifying that working conditions have effects on the mental health of persons. Of importance is that it is not only under special circumstances that these effects are seen, but that psychosocial risks exist all the time. The steps taken to help alleviate the effects caused by these risks can be incorporated permanently into the working system in order to develop a new workplace culture that takes note of the consequences that may arise from poor working conditions.

2.3.2.3 Executive Order on the Establishment of a Mental Health Facility

While addressing the nation on the Seventh State of the Nation Address in November 2020, the president of Kenya gave an executive order for the establishment of a mental health facility.[146] The aim being the creation of an ultra-modern National Mental Health Hospital

[146] President Uhuru Kenyatta, 'The Seventh State of the Nation Address', 12 November 2020, <https://www.president.go.ke/2020/11/12/the-seventh-7th-state-of-the-nation-address-by-h-e-uhuru-kenyatta-

through the elevation of Mathare National Teaching and Referral Hospital as a semi-autonomous specialised hospital. This is in response to the growing concern that is a result of the increase in mental illness in the country. This move being a milestone in the sense that it will be the first of its kind in East Africa.

The facility will investigate training and research in the field of psychiatry with a focus on specialised and forensic services. In addition, it will deal with child to adolescent issues and rehabilitation for substance abuse related and addictive disorders.

Through this kind of development, the government of Kenya is boldly taking a step in the right direction in terms of its role in the mental health sector. It is hoped that the kind of research done at the hospital will cover psychosocial risks in the workplace and will largely contribute to the management and regulation of the same.

Having analysed various laws and policy under the Kenyan labour and health systems, it can be concluded that mental health has been recognised as an issue in need of regulation in addition to the provision of the right to reasonable working conditions. Despite numerous provisions for institutions dealing with labour, health and occupational health and safety, it is noteworthy that there has been little recognition of psychosocial hazards in relation to work.

This may have numerous effects on workers who have suffered illness as a result of these hazards. Pursuant to this realisation, an analysis of case law from Kenyan courts, dealing with occupational health and safety will follow. This is in order to analyse the effects of the lack of regulation of psychosocial risks on workers who have claimed their rights to reasonable working conditions and to evaluate the way courts handle such cases.

2.4 HOMEGROWN CASE LAW

Cases regarding employment disputes, as between the employer and employee and occurring in the course of employment, are handled by the Employment and Labour Relations Court.[147] This in accordance with both the constitutional, under Article 162 of the Constitution and statutory mandates of the court. The jurisdiction of the court being both original and appellate as provided for under Section 12 of the Employment and Labour Relations Court

c-g-h-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-kenya-defence-forces-at-parliament-buildings-nairobi-on-n/. on 3 December 2020.

[147] Section 12, *Employment and Labour Relations Court Act (*Act No.20 of 2011, Revised 2016).

Act, cases dealing with occupational safety and health and work injury benefits find their way to the court in various forms.

It is apparent through the assessment of case law in Kenya that cases to do with psychosocial risks mostly take the form of dismissal suits. In the case, *Josephine Kirigo v Waruhiu Construction Ltd*,[148] the facts in issue were whether the claimant issued a relevant notice of resignation, as the defendants claimed that she gave a 14-day notice of termination of employment but deserted immediately. It was held that, owing to the reasons given for resignation, the fact that there were unconducive working conditions at her workplace that included overwork, poor pay and lack of privacy, if proved, her resignation would fall under the province of constructive dismissal.[149]

The defendants did not dispute the fact that the working conditions were unconducive, allowing the evidence to be in favour of the claimant. Of concern to us, however, is how the Court addressed the matter of the 'unconducive work environment.' Apart from declaring the termination unfair,[150] as it was due to the conduct of the respondent, the court did not investigate the need for conducive work environments, which is a worrying trend, if not a glimpse of the disaster we are likely to be facing.

Another case, addressing psychosocial risks but in a more open way was, *Kudheidha Workers v the Director of the Central Police Station Canteen*.[151] The case concerned a cook, Mr. Kituto, whose working conditions were questionable in that, he was earning a basic salary of two thousand (2,000) Kenyan Shillings while his daily work started from 4.30 am to 9.00 pm. A timeframe of about sixteen hours per day, indicating overwork.

This is in comparison to the normal working hours as stipulated under international law being around eight hours a day and forty-eight hours a week.[152] His salary was later increased to 7,000 shillings but nothing more was paid. He later suffered from work-related stress and had to use very expensive medication. As a result, he claimed for better pay. Surprisingly,

[148] *Josephine Kirigo Kagwanja v Waruhiu Construction Ltd* (2016) eKLR, 1.
[149] In the case of *Coca Cola East and Central Africa Limited v Maria Kagai Ligaga* (2015) eKLR, the concept of constructive dismissal was discussed. It was seen to constitute the termination of a contract by an employee without notice, with or without malice, because of circumstances caused by the conduct of an employer. The behaviour of the employer must be shown to be so heinous or intolerable, without reasonable cause and in a manner likely to destroy the employment relationship, making it continuously difficult for the employee to continue working. The employee's resignation is then treated as an actual dismissal, worthy of the payment of compensation for the same.
[150] *Josephine Kirigo Kagwanja v Waruhiu Construction Ltd* (2016) eKLR, 2.
[151] *Kudheidha Workers v Director of Central Police Station Canteen* (2019) eKLR, 1.
[152] Article 2, *Hours of Work (Industry) Convention,* 1919 (No.1).

he was terminated on the grounds that he was mad. Consequently, he referred the matter to the labour office for conciliation, but this failed as the respondent did not attend.

The claimant's case was, however, that of unfair termination, another indicator that claims relating to psychosocial risks at work are only mentioned and barely addressed if not related to termination. Does this indicate the ignorance of workers on their rights to reasonable working conditions as per the Constitution? Is compensation for poor working conditions a justification of it being 'okay' to have them?

The respondent in the case denied the averments by the plaintiff, contended that the claimant's employment was terminated for lawful cause, due to his gross misconduct and absenteeism from work, denied that he worked for long hours but admitted that he requested leave to take medicine. It was denied that the mental health deterioration was as a result of the unfavourable working conditions,[153] the causality being a challenge faced in this area.

It was held that the claimant's termination was unfair as per Section 45 of the Employment Act in that the respondent could not show cause for termination and in addition, he was entitled to compensation.[154] However, as the issue on his mental health was not disputed, it was not addressed. This begs the question, whether the mental status of a person can easily be reduced to a sum of money, and if so, what the provisions are for it.

An interesting discussion on the doctrine of freedom of contract is brought about in a case, still surrounding termination but with various claims for pay on overtime and annual leave. This is after a man resigned on medical grounds due to cardiac disease. The discussion on the doctrine was as regards minimum wage and it was the Court's view that, parties cannot agree to pay and receive monthly salaries, below the minimum wage set by law.[155] In the same way that he was able to claim compensation on the grounds of minimum wage, with better legislation on psychosocial risks, the doctrine of freedom of contract would be limited in terms of the reasonability of working conditions and the causes of the lack thereof as in this case, where he was diagnosed with cardiac disease.

It has been highlighted in research that cardiac disease is a possible consequence of psychosocial risks in the workplace.[156] In addition, it supports the sentiments of one judge, that, it is the responsibility of litigants to consider the ramifications of the method they

[153] *Kudheidha Workers v Director of Central Police Station Canteen* (2019) eKLR, 2.
[154] *Kudheidha Workers v Director of Central Police Station Canteen* (2019) eKLR, 6.
[155] *Nicholas Juma Ojuok v Pentagon Elite Security Services Limited* (2018) eKLR,2.
[156] Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries',230.

choose to proceed or prosecute their respective cases.[157] However, how do we expect psychosocial risks to be considered as facts in issue in cases if the legal regime does not adequately recognise them and give them priority?

In the case, *Beth Mwema v Brand Kenya Board*,[158] the issue in dispute was whether there was a violation of the claimant's constitutionally and legally protected right to fair labour practices, to equality and freedom from discrimination at the place of employment, to human dignity, to safe working environment, to compensation for injuries and diseases sustained in the course of employment and to payment of overtime for work done outside normal working hours.

In the application for an interlocutory injunction, from the ruling, the claim was brought about due to the psychosocial risks that were consequently a health hazard to the claimant. The claimant was a receptionist who was diagnosed with hypertension and work-related stress that the doctor believed had been the cause of her multiple admissions in the year, 2012.[159] It was then recommended that she steers clear of a noisy environment and constant use of the telephone, which she claims, was not heeded by the employer who continued to expose her to such risks contrary to the doctor's prescription. In addition, it is alleged that the claimant had been continuously verbally abused and discriminated against by the Human Resource and Administrative manager, factors that contributed to her stress.

It was held that interim orders could not be granted as the Court was not satisfied that the claimant would suffer irreparable injury before the determination of the main suit. However, the court seemed to concern itself with the matter at hand by sounding a warning that, if the alleged infractions are proven, that is, those of unfavourable working conditions, the Court will not hesitate to make recommendations to the appropriate authorities in the Government of Kenya. This highlighting the fact that there are bodies in charge of these matters and there is need to see them regulate such matters. In this case, we mean occupational health and safety matters.

A sexual harassment suit finds its way into the discussion because sexual harassment is one of the popular psychosocial risks in the workplace. In the case *BWK v EK* and another, [160] the claimant brought a sexual harassment suit against the defendant, a manager at the hotel

[157] *Josephine Kirigo Kagwanja v Waruhiu Construction Ltd* (2016) eKLR,2.
[158] *Beth Kalondu Mwema v Brand Kenya Board* (2015) eKLR,1.
[159] *Beth Kalondu Mwema v Brand Kenya Board* (2015) eKLR,1.
[160] *BWK v EK and another* (2017) eKLR, 1.

she worked at, as a receptionist. She claimed that he repeatedly assaulted, battered, sexually assaulted and oppressed her on diverse dates. On one occasion, he allegedly went to her house and tried to have sexual intercourse with her, forcefully. She, however, failed to prove the same, as she did not have any evidence to corroborate her claims and she also reported the assault only after her termination due to claims of rudeness to guests and other employees.

What was of interest, however, was the way the Court handled the case. In its determinations, the Court stated that sexual harassment is a serious charge and ought to be treated as such.[161] It stated that it demeans one's dignity and violates Article 27 of the Constitution, and it may have the effect of reducing one to the status of a chattel.

It was further stated, that, as was held in *Siraj Din v Ali Mohammed Khan* (1957), the quantum of proof required in civil litigation is not such as resolves all doubt, but such as establishes a preponderance of probability in favour of one party. It was emphasised that to say that all doubt whatsoever must be dispelled is to invoke a test, which is even higher than the standard required in criminal matters.[162]

After careful consideration of the plaintiff's evidence, the court held that it did not meet the required threshold due to loose ends as there were certain reasonable steps a person in her situation would take that she did not. This is such as going to the police if she felt she was too scared to make a complaint at work.[163] In addition, failure to take advantage of the Sexual Harassment Policy at her workplace and the various avenues provided by the company to deal with such claims. In this case, the plaintiff failed on her own accord and not by any limitation of law or policy, which is faced by other psychosocial hazard claims. Sexual Harassment is therefore one of the well-regulated psychosocial risks.

In *Ruth Nthenya Kilonzo v Standard Chartered Bank*,[164] the plaintiff was afflicted with illness while she served the defendant and it resulted in the termination of her service. Her ailment persisted thereafter, and she attributed causation to the conditions in which she had been working, bringing the suit to claim damages. The claimant suffered osteoarthritis after exposure to long work hours and poor work posture. In addition, she suffered stress, particulars of her injuries being neck-bone erosions, cervical spondylitis, depressive illness,

[161] *BWK v EK and another* (2017) eKLR, 17.
[162] *BWK v EK and another* (2017) eKLR, 18.
[163] *BWK v EK and another* (2017) eKLR, 18.
[164] *Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd* (2007) eKLR, 1.

and numbness in her upper right arm. Particulars of her loss involved inability to secure alternative employment and loss of normal and enjoyable life.

It was contended that the defendant failed to take adequate precaution for the employee's safety by subjecting her to long and excessive hours of work without any, or adequate breaks and that she was subjected to arduous and excessive workloads without regard to her health and without allowing her to take annual leave. Attempts were made in the case to determine causality, that is, the link between her illness and working conditions, through the examination of expert witnesses, in this case, doctors.[165] A lot of evidence pointed to the fact that she was likely ill because of the poor working conditions and not ageing or natural reactions.

Counsel for the plaintiff cited a case in which the employer's negligent acts were seen to be contrary to law. In *Wilson and Clyde Co. Ltd v English*, [166] it was held that all employers have a duty to take reasonable care to ensure the safety of their employees, and in the provision of a safe place of work, safe tools and equipment and a safe system of work.

An interesting discussion on negligence followed as cited in the English Court of Appeal decision of *Hatton v Sutherland-Barber v Somerset County Council-Jones v Sandwell Metropolitan Borough Council-Bishop v Baker Refractories Ltd (Consolidated) (2002)*, the decision stated factors to be taken into consideration to establish a threshold. These included the nature and extent of the work done by the employee and signs by the employee of impending harm to health. The employer would be found to be in breach of duty only if he had failed to take the steps which would be reasonable in the circumstances, bearing in mind the magnitude of the risk of harm occurring, the gravity of the harm which might occur, the costs and practicability of preventing it and the justifications for running the risk. It was held that in all the cases, it was necessary to first determine the steps which the employer both could and should have taken before finding him in breach of his duty of care.[167]

In the determination of the case, the fact that the claimant took the claim in negligence, had the judge attempt to establish causality and a duty of care on the part of the defendant. As has occurred in previous cases, establishing causality was the hardest part, and the judge found the expert opinion evidence insufficient as there was no certainty as to the cause of

[165] *Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd* (2007) eKLR, 5.
[166] *Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd* (2007) eKLR, 9.
[167] *Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd* (2007) eKLR, 10.

her illness, it was possibly caused by the low calcium in her blood or work-related stress. The plaintiff therefore failed on that basis. She only succeeded on the fact that she had communicated about her illness to the managers who took no reasonable steps to reduce her workload and that this may have contributed to her ailment.[168] We can then see that, in as much as the plaintiff claimed under a negligence suit, she would have had a higher probability level of succeeding had there been a legal basis, or rather, regulation on working conditions and possible effects of the contravention of the same.

Contrary to the cases dealing with psychosocial hazards, physical hazards are generally addressed as major issues in cases and not just pursuant to claims of unfair termination. In the case of *Rashid Ali Faki v A.O. Said Transporters*, a turn boy, while engaging in the repair and maintenance of an oil truck suffered thirty percent (30%) body surface area burns.[169] Looking at how the case was handled, seeing as it was an appeal to the trial court's decision, discussions were carried out on the liability of an employer, a distinction being made between a 'detour' and 'a frolic of one's own'.[170] The former being satisfied to be an act in the course of employment while the latter, an act in one's own interest.

In the case, the employee was seen to have suffered injury while on a detour but similarly, to have acted negligently and so the trial court's decision was reversed and the liability shared between the employer and employee,[171] because the employer had a duty to create a safe working environment and in addition, safe working equipment like safety gear.

It is apparent from the case analysis carried out herein above that the lack of reference to psychosocial hazards within the occupational safety and health legal regime has led to difficulty in dealing with cases addressing these types of hazards. It is safe to conclude that with the incorporation of psychosocial hazards into the legal framework, there may be increased awareness and emphasis on such hazards, that will lead to better regulation of the same.

2.5 CONCLUSION

After careful analysis and consideration of the legislative and regulatory framework at the international, regional and local level, it can be concluded that physical health hazards have largely been catered for while psychosocial hazards have been neglected. There is little

[168] *Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd* (2007) eKLR, 20.
[169] *Rashid Ali Faki v A.O Said Transporters* (2016) eKLR, 2.
[170] *Rashid Ali Faki v A.O Said Transporters* (2016) eKLR, 5.
[171] *Rashid Ali Faki v A.O Said Transporters* (2016) eKLR, 7.

incorporation of psychosocial hazards, which only appears in a general sense and is not very detailed. The analysis of case law has shown that the handling of cases dealing with physical hazards differs from those dealing with psychosocial health hazards in the workplace, posing a challenge due to lack of adequate regulation. There is need to adequately regulate psychosocial health hazards if there is to be progress in addressing the challenges faced by those who suffer from the same.

CHAPTER 3:
THE STATUS OF MENTAL HEALTH IN KENYA AND LESSONS FROM JAPAN

This chapter will delve into the status of mental health in Kenya, in terms of what action has been taken to investigate the matter and address it appropriately. This is in order to establish what the conversation around mental health is, as this essentially forms the background of the conversation around psychosocial hazards in the workplace. In addition, an analysis of some of the measures taken to deal with mental health in the workplace in Japan will follow. This, to draw inspiration on some of the measures that can be applied in Kenya to address the same.

3.1 KENYA: THE STATUS OF MENTAL HEALTH

This section of the chapter will focus on Kenya and some of the measures that have been taken in pursuit of the recognition of mental health as a matter of concern.

3.1.1 Kenya's Mental Health Taskforce

In His Excellency President Uhuru Kenyatta's Madaraka Day speech in June 2019, he pointed out the severity of the status of mental health in the country and the requirement that action be taken.[172] He ordered the Ministry of Health to address the issue by the implementation of programmes and policies.[173]

Consequently, a Cabinet directive in November 2019, led to the formation of a taskforce charged with the responsibility of investigating the causes of the burden of mental health in the country.[174] This was flagged as a major development as the taskforce was the first of its kind, indicating the severity of the problem and the urgent need to address it. The Taskforce was officially constituted and mandated on November 11, with an 80-day period of work.[175]

Lack of a unified leadership structure in the mental health field was recognised with the taskforce calling for the formation of a National Mental Health and Happiness

[172] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 2.
[173] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 4.
[174] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 11.
[175] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 4.

Commission.[176] The body will be in charge of carrying out an annual happiness index survey to promote mental well-being through the creation of public policy.[177] The Building Bridges Initiative Report, calling for amendments to the Constitution was also seen to call for the creation of a body to monitor the state of mental health in the country.[178] This has been observed even in the most recent version of the report,[179] with the call for the development of legislation on mental health establishing the Mental Health and Happiness Commission.

Summarising key recommendations, it was stated that the second week of October should be gazetted as the National Mental Health Awareness Week.[180] In addition, there was encouraged, support for the Senate Mental Health Amendment Bill 2018 and recognition of the fact that key taskforce recommendations would go a long way in addressing the challenges arising from the COVID-19 pandemic.

With the support of interesting statistics, such as the fact that for every shilling invested in mental health, the government should expect five shillings back in benefit, the funding of the mental health sector is encouraged.[181] In addition, the provision of avenues to address mental health issues such as health insurance covers.[182] The burden of disease has also been compared to the funding allocated for mental health, being 13% to 0.1% respectively.

The taskforce points out the fact that in the domestic health system, mental health and wellbeing has been relegated to the side-lines while physical illnesses take centre stage.[183] Among the key recommendations to remedy this, includes the implementation of policies and programmes for a healthy working environment.

Kenyans responses to stress being caused as a result of labour issues involved majorly issues of unemployment stress, and for the employed, complaints revolved around stress imposed

[176] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 7.
[177] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 17.
[178] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 12.
[179] The Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce, *Building Bridges to a United Kenya: From a Nation of Blood Ties to a Nation of Ideals*, 2020, 8.
[180] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 8.
[181] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 10.
[182] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 17.
[183] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 16.

by managers and requests for the training of bosses on mental health.[184] The taskforce recommended a mental health impact assessment by the Government to ensure that policies are assessed in order to reduce the risks socially associated with mental illness and to investigate the development of new policies.

Among the key taskforce recommendations, in the executive summary to the report, the labour and education sector were flagged although indirectly as areas of concern with respect to mental health and well-being.[185] This through the requirement for employers and educational institutions to provide for healthy working spaces and wellness centres with psychologists, respectively. In addition, there was a recommendation to declare mental ill health a national emergency and to promote mental health literacy at all levels.

Narrowing down to the category of mental health and special populations, disciplined forces, as per the taskforce, require psychological services while all workplaces are required to have regular staff briefings on mental health and well-being.[186] Security officers have been pointed out as being among the vulnerable groups when it comes to mental health and well-being.[187] The nature of the work they do makes them prone to suffering from mental health disorders and the taskforce recommends the provision of psychological services in addition to the establishment of regular staff support sessions in the workplace. The Government and the Ministry of Health were also called out to work together to make mental health a priority in all sectors starting with the disciplined forces.

The report by the Mental Health Taskforce is one of a kind, an initiative by the government to find out the state of mental health in the country and to address it. This is a good starting point for the re-evaluation of the laws and policies governing all sectors that deal with mental health and it is an opportunity for the occupational health and safety regime to be looked at with a new perspective and a better lens. It creates an avenue to begin advocating for the recognition of psychosocial workplace hazards, this with the initiation of the conversation on mental health in the country.

[184] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 16.
[185] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 4.
[186] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 5.
[187] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 30.

3.1.2 Mental Health Amendment Bill of 2018

The preamble of this Bill states that it is intended to amend the Mental Health Act of 1991, as revised in 2012. The Bill aims at the promotion of the mental health and well-being of all persons, the reduction of the incidences of mental illness, the increased access to mental health care, the reduction of the impact of illness looking at effects such as stigma and the protection of the rights of persons suffering from mental illness.[188]

The Bill differs considerably from the Act, making provisions that once enacted may be able to make a significant difference in the mental health sector. To highlight some of the changes, the first is the provision of various guiding principles have been provided for the implementation of the Bill and they include but are not limited to the achievement of the highest standard of health, the preservation of human dignity and freedom, fair treatment including freedom from discrimination, accountability and public participation.[189] These show the importance of having underlying principles motivating the formulation and interpretation of various laws. They give the rationale for having a specified law on mental health and the need for the same.

The Bill then devolves the governments mental health functions at both the national[190] and county[191] levels. This by stipulating both their individual and collaborative obligations that include but are not limited to the provision of resources, the development of infrastructure and the provision of funding. Looking at the intervention at the county level, it is important to note the obligation to provide comprehensive early intervention treatment.

In addition, there is an elaborate list of rights of persons suffering from mental illness.[192] This includes but is not limited to the access to medical, legal and social services, protection against abuse and discrimination and the right to participate in activities. A right that will be a game changer is that of medical insurance for mental illness provided by the national and

[188] Section 2A, *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).
[189] Section 2B, *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).
[190] Section 2C, *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).
[191] Section 2D, *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).
[192] Section 3, *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).

county government.[193] This will largely address the problem of funding, incentivising the government and ensuring the provision of funds for the mental health sector.

The preliminary provisions in the Amendment Bill present a wholesome and intentional approach to mental health in the country. This through the provision of guiding principles and the rights of persons suffering or likely to suffer from mental illness. This is a step in the right direction in the development of mental health law in the country in addition to spreading awareness on the same.

3.1.3 Milestones in the Kenyan Workplace: Safaricom as a Case Study

In 2018, Safaricom was ranked by Forbes as the best employer in Africa and at the 67th position worldwide.[194] The results were based on a survey done on employees asked to rate their own employer or employers they admired, and the likelihood they would recommend the company to a friend or family member. Some of the unique programs to promote the well-being of their employees at work include but are not limited to the training of line managers as life coaches. As a result, this creates support for employee wellness, performance management and leadership development.

Looking at the Safaricom website, on the Employer-Employee relationship, the values that they uphold include but are not limited to diversity and inclusivity, offering of dynamic workspaces and unique well-being propositions.[195] Safaricom has a holistic employee wellness program known as Thrive, a work-based intervention programme designed to provide support to members of staff and create a happy, healthy and productive workforce. This in efforts to be human at work. The program has been designed to support and sustain the integrated well-being of staff through the body, heart, soul and mind. The mind involving mental health and well-being through mindfulness, meditation, connections with family, gratitude and empathy. By 2019, the program, which was in its second phase, was reported to have a ninety (90) percent reach across the business.

An employee engagement program known as the 'SEMA survey' and the staff turnover has been used to measure the morale of employees but at the same time, as an avenue for them

[193] Section 3D, *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).

[194] Alushula P, 'Safaricom Best Employer in Africa', Business Daily, 13 October 2018,- <<https://www.businessdailyafrica.com/news/Safaricom-best-employer-in-Africa/539546-4803594-iaawogz/index.html>> on 4 August 2020.

[195] Safaricom, Our Employees, - <<https://www.safaricom.co.ke/sustainabilityreport_2019/stakeholder-engagement/our-employees/>> on 4 August 2020.

to air out any grievances.[196] In addition, other avenues have been provided for, such as the Staff Council and the 'Sema na CEO' chat room.

It is apparent from the evaluation of the workplace culture created at Safaricom that they have identified some of the psychosocial hazards in the workplace. This is because the nature of the work done is formal and therefore, psychosocial hazards pose a greater risk in comparison to physical health hazards. However, this only caters for a tiny fraction of workers compared to the multitude who are not protected from psychosocial hazards, one of the causes being the failure of the legal system to regulate the same.

3.2 JAPAN: A CASE STUDY

This section of the paper will focus on Japan and some of its developments in dealing with psychosocial risks as workplace hazards. Japan has struggled with mental health in the workplace as one of the major issues facing the country, this with alarming statistics from the year 2014 of 1,456 claims for work-related mental health disorders with 213 being suicide related.[197]

3.2.1 The Stress-Check Program

In Japan, various steps have been taken to combat workplace stress and this is evident through the partial amendment of the Industrial Safety and Health Act of 2014, to include an occupational health policy known as the Stress Check Program.[198] The program aims at the prevention of mental health problems through its objectives.[199] They include; raising awareness of psychosocial stress through an annual survey, managing stress related diseases for workers with high levels of stress through the provision of a physician to interview them and analyse their survey results and improving the work environment in relation to psychosocial risks through the analysis of group data from the surveys conducted.

A study was done on the effectiveness of the program. The first thing that was pointed out was the fact that all employers with 50 employees or more were required to assess the stress

[196] Safaricom, Our Employees, - <<https://www.safaricom.co.ke/sustainabilityreport_2019/stakeholder-engagement/our-employees/ on 4 August 2020.
[197] Tsutsumi et al, 'Implementation and Effectiveness of the Stress Check Program, a National Program to Monitor and Control Workplace Psychosocial Factors in Japan: A Systematic Review', 2020 *International Journal of Workplace Health Management*, 2020, 1.
[198] Imamura K et al, 'Effect of the National Stress Check Program on Mental Health Among Workers in Japan: A 1-Year Retrospective Cohort Study', 60 *Journal of Occupational Health*, 2018, 299.
[199] Imamura K et al, 'Effect of the National Stress Check Program on Mental Health Among Workers in Japan: A 1-Year Retrospective Cohort Study', 299.

levels of their employees at least once a year.[200] However, workplaces were not mandated to improve their work environments pursuant to the data collected through the surveys and this posed a major challenge in relation to the effectiveness of the program.[201] The study then concluded that for the improvement of psychological distress in the workplace, it is a requirement that the data collected through the survey is acted upon.

The stress-check program in Japan has been compared to the psychosocial risk management strategy used in Europe, in efforts to control and manage risks at work.[202] The latter having been proposed by the ILO and WHO, it is seen to focus on the work environment as opposed to the individual, in contrast with the program in Japan.

3.2.2 The European Psychosocial Risk Management Program

Janetzke and Ertel discuss psychosocial risk management in favourable workplace conditions and define it as a systematic process operating at the organizational level and preventing potential psychosocial risks at the workplace as well as creating a healthy work environment.[203] It is a complete process cycle with a problem-solving approach that occurs in four stages, those of preparation, assessment of psychosocial risks, implementation of measures and outcome evaluation.

Seen as an employer's responsibility, it is characterised by participation. The unique manifestation of psychosocial risks necessarily precludes the way they are to be managed. According to Janetzke and Ertel, psychosocial risk management is conducted in a participative way. This occurs through regular team meetings, regular employee surveys and their involvement in decision making structures.[204] They state that it has been embedded in the European legislation on occupational safety and health, that is, the European Framework Directive 89/391/EWG on the Safety and Health of Workers at work and has been specified in national law. Despite the increased recognition of psychosocial risks, it is stated that they are still underrepresented in systematic risk management in comparison to physical and environmental risks.

---

[200] Imamura K et al, 'Effect of the National Stress Check Program on Mental Health Among Workers in Japan: A 1-Year Retrospective Cohort Study',300.
[201] Imamura K et al, 'Effect of the National Stress Check Program on Mental Health Among Workers in Japan: A 1-Year Retrospective Cohort Study', 304.
[202] Tsutsumi et al, 'Implementation and Effectiveness of the Stress Check Program, a National Program to Monitor and Control Workplace Psychosocial Factors in Japan: A Systematic Review', 18.
[203] Janetzke H and Ertel M, 'Psychosocial risk management in more and less favourable workplace conditions', 300.
[204] Janetzke H and Ertel M, 'Psychosocial risk management in more and less favourable workplace conditions', 302.

3.2.3 The Lessons

The program in Japan is an exemplary one, as it considers the unique nature of psychosocial workplace hazards in that causality is not always easy to establish. The approach taken focusing on the individual seems to be better and more geared towards dealing with the problem in addition to the regulation of workplaces and working systems or cultures. However, a combination of the Stress Check Program as carried out in Japan and the Psychosocial Risk Management system in Europe will lead to a nuanced approach to the control of psychosocial workplace hazards. This is because there will be regulation of the work systems and the individuals allowing for the recognition of diversity in terms of psychosocial hazards, their manifestations and their effects.

3.3 CONCLUSION

Looking at the status of mental health in Kenya, as was pointed out by President Kenyatta, it is a crisis in need of attention. A silent pandemic of some sorts, that is slowly eating up the Kenyan citizenry from the inside out. Efforts have begun to address the emerging mental health crisis through the Mental Health Taskforce. The need for awareness raising and research being heavily pointed to. The response to COVID-19 has also seen mental health being addressed as a result of the change in working conditions, with the increased pressure on frontline workers.

Additionally, Safaricom, has gained notoriety as an exemplary employer due to the unique programs set up to manage the psychosocial hazards in the workplace. In as much as mental health is a sensitive topic, developments have occurred in the Kenyan space, sparking conversations around it in efforts to demystify and normalise it.

Looking at Japan, legislative developments in the form of the Stress Check Program have been implemented in order to deal with mental health in the workplace. This being an approach aimed at addressing the challenges faced by the individual contrary to the European Psychosocial Risk Management system that is focused on the work environment. Japan and Europe have both utilised interventions at the national level to deal with psychosocial health hazards in the workplace, a step that Kenya will need to take in order to deal with the emerging crisis.

CHAPTER 4:

CHALLENGES AND MILESTONES

This chapter will investigate the various challenges that may be faced and hindrances to the achievement of better regulation of psychosocial hazards under the occupational safety and health regime. This is in line with the status of mental health in the country. In addition, various milestones in the pursuit of a wholesome perception of health, especially regarding labour, will also be outlined.

4.1 CHALLENGES FACING THE RECOGNITION AND MANAGEMENT OF PSYCHOSOCIAL HAZARDS

In the same way that the road to hell has been paved with good intentions, there is no real victory without struggle. Several challenges face the pursuit of an inclusive regulatory health and safety regime, with a focus on mental health, have been outlined below.

4.1.1 The Sensitivity of the Issue

Occupational health has been perceived as a luxury, resulting in the lack of political action and goodwill to address the same.[205] This is because mental health problems are often perceived as being sophisticated and trivial. This then contributes to the silence when it comes to mental health and its effects, leading to reduced awareness and consequently, fewer resources. This makes it difficult to recognise psychosocial risks as health hazards in comparison to physical health hazards.

The perception of mental health as an issue consequently affects workplace culture and the willingness to admit to the detrimental effects of work on one's health. It was pointed out that the culture on the organizational level differed in the sense that the openness to address workload depended on the occupational group. For example, in Danish and Swedish case studies, nurses were seen to be more willing to discuss such problems as opposed to physicians.[206] There is some sort of stigma that is assumed to follow the admission that work may affect one's mental health. This would however be different if the conversation were normalised, perhaps if the regulatory approach were of a national level.

[205] Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries',226.
[206] Janetzke H and Ertel M, 'Psychosocial risk management in more and less favourable workplace conditions', 309.

4.1.2 Lack of Adequate Research/Data

Additionally, there has been poor data collection and weak enforcement of occupational health and safety regulations.[207] In terms of the collection of statistics on occupational health, it being a dynamic field, there is need to be intentional if psychosocial risks are to be considered. In the Occupational Safety and Health Act, the Director of Occupational Safety and Health services is required to develop and maintain an effective program for the collection of data covering work injuries and illnesses.

It is apparent that the main target of this data collection is on physical health hazards as examples given include disabling, serious and significant injuries and illnesses.[208] This narrow approach to occupational health and safety hazards has made collection of data on the same quite challenging. In addition, there is lack of information and adequate tools to deal with the risks effectively, caused by lack of awareness, resources and training.[209] This further adding to the burden.

4.1.3 Establishing Causality

Overwork has been widely acknowledged in Japan as one of the main culprits behind mental health issues. The belief is seen to have spread widely after Japan's Supreme Court ruled in favour of a worker who died from overwork in Japan, in 2000.[210] The problem is the lack of strong evidence in epidemiology of the link between long working hours and mental health problems. As observed in many of the cases, the establishment of causality is one of the main problems faced, hence, this makes it hard for decisions to be made based on psychosocial risks as health hazards.

Another challenge when it comes to establishing causality is that there are differences in individual vulnerability to work stressors and this may be a reason for the inconsistency of stressor effects across studies.[211] This is as some employees are easily affected in comparison to others. This makes data collection very difficult and additionally, it gets harder to draw conclusions on risks and their subsequent effects.

---

[207] Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries',226.
[208] Section 25, *Occupational Safety and Health Act,* (Act No 15 of 2007, Revised 2010).
[209] Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future', 3.
[210] Kuroda S and Yamamoto, I, 'Worker's Mental Health, Long Work Hours and Workplace Management',2.
[211] Stansfeld S and Candy B, 'Psychosocial Work Environment and Mental Health- a meta-analytic review',445.

4.1.4 Lack of Collaboration

According to the Regional Office for Africa (AFRO), a joint initiative by the WHO and ILO, inadequate human resources, insufficient level of collaboration between ministries of health and labour, weak policies, lack of preventive and curative services and insufficient budget were determined to be barriers to developing and implementing consistent and satisfactory policies and services.[212] In this case, lack of collaboration between bodies dealing with occupational health and safety matters is a challenge to actively addressing the same.

4.1.5 Lack of Effective Enforcement Mechanisms

There is lack of an effective enforcement mechanism for the laws on Occupational Health and Safety in the country.[213] This is as psychosocial risks have not been provided for. In addition, consequences for the breach of various provisions under the Occupational Health and Safety Act and related legislation, have barely been provided for. This makes it difficult to address such matters when they arise.

Due to lack of effective enforcement mechanisms and the challenge of establishing causality, imputing liability to the employer has been a challenge. This can be observed through the various manifestations of the effects of poor working conditions that include but are not limited to the pressure from lead firms, using the example of Apple Computer on their supplier Foxconn in China who have been blamed for very stressful and high-paced work at Foxconn leading workers to commit suicide while the lead firms fail to be responsible for those deaths.[214] This being similar to the structure of a fissured workplace, the same challenge of imputing liability is faced in such situations.

4.1.6 The Litigation Funnel

Jeffrey Hirsch discusses a major impediment to addressing sexual harassment in the workplace by looking into Professor Charlotte Alexander's article on the me-too movement and the litigation funnel.[215] He states that she examines a common perception among most employment discrimination experts that it is very difficult to obtain a remedy for sexual harassment claims. In addition, looking at Professor Seiner's discussion on the presence of mandatory arbitration agreements in the technology sector that promote confidentiality, they result in the hinderance of the widespread knowledge on the occurrence of incidents of

[212] Burton J, 'WHO Healthy workplace framework and model: Background and supporting literature and practices,'17.
[213] Shalini T, 'An assessment of Occupational Health and Safety Risks in the Hospitality Industry', 27.
[214] Marzan R, 'The fissured workplace: David Weil, Book Review', 338.
[215] Hirsch J,'#MeToo in the workplace',2.

harassment.[216] The litigation system is an uphill task even for already recognised psychosocial risks like sexual harassment.

However, thankfully the aim of legislation is far from simply obtaining a remedy and involves preventive measures and sensitisation to promote knowledge and awareness on issues. The regulation of psychosocial risks, far from assisting in enforcement mechanisms goes a long way in awareness raising and can be transformative in terms of culture.

4.1.7 Lack of Funding

Owing to the fact that in the domestic health system, mental health and wellbeing has been relegated to the side-lines while physical illnesses take centre stage, there has been lack of funding for mental health.[217] The burden of disease compared to the funding allocated for mental health, was set out to be 13% to 0.1% respectively. This is a major challenge as funding assists in the access to services for mental health and therefore, is a major setback in the efforts to address psychosocial risks.

Various challenges have been highlighted, in the fight against the presence of psychosocial hazards in the workplace. These are challenges both being faced and likely to be faced in efforts to address these workplace hazards.

4.1.8 The Dynamic Work Environment

The COVID-19 pandemic has exposed the world to yet another facet of the changing nature of work and the work environment. While emergency response workers and those in the production and service industries are exposed to longer hours and increased workloads coupled with consecutive shifts and reduced rest periods,[218] other groups, especially those working from home,[219] are seen to experience either work overload or underload.

In addition, work-life balance has become increasingly difficult to achieve, considering the varied responsibilities faced by workers, some may have more conducive environments compared to others.[220] Now more than ever before the boundaries between work and personal life have been increasingly blurred with a great effect on the social life of the workers, as a result of the requirement to avoid unnecessary social interaction. All these

[216]Hirsch J,'#MeToo in the workplace', 9.
[217] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 16.
[218]Azzi M and Papandrea D, *Managing Work-Related Psychosocial Risks During the Covid-19 Pandemic*, International Labour Organisation, 2020, 14.
[219] Malik S and Holt B, *The Impact of New Working Methods- A Psychosocial Risk Perspective*, International Institute of Risk and Safety Management, 2015, 7.
[220] Azzi M and Papandrea D, *Managing Work-Related Psychosocial Risks During the Covid-19 Pandemic*, 18.

changes coupled with the isolation that many have suffered due to the imposed lockdowns may have negative effects on the mental health of workers.

There is a need to look out for psychosocial risks likely to arise such as increased anxiety and stress while imposing new working methods.[221] This will help the employees cope better and attempt to address the changing nature of work.

4.2 MILESTONES

Several milestones have been achieved regarding the recognition of a wholesome definition of health, giving mental health the attention, it deserves. Some of these milestones have been discussed below and this goes to show that some steps have been taken in the fight for a healthier population.

4.2.1 A plethora of laws

Even though physical health hazards have largely been catered for at the expense of psychosocial hazards in the workplace, there is the existence of a regulatory framework. The Occupational Safety and Health regime both internationally and locally is not completely at a loss as mental health has been recognised as an important aspect of health. The right to reasonable working conditions has continuously been reiterated, the importance of work to the human person being emphasised. In attempting to critically address psychosocial hazards in the workplace, efforts will be towards adding to the existing regime and not necessarily starting from scratch.

4.2.2 The Mental Health Taskforce

In His Excellency President Uhuru Kenyatta's Madaraka Day speech in June 2019, he pointed out the severity of the status of mental health in the country and the requirement that action be taken.[222] He ordered the Ministry of Health to address the issue by the implementation of programmes and policies.[223] As a result, a Cabinet directive in November 2019, led to the formation of a taskforce charged with the responsibility of investigating the causes of the burden of mental health in the country.[224] Thus, the Mental Health Taskforce was born, with the mandate to look into the status of mental health in the country. This was

[221] Azzi M and Papandrea D, *Managing Work-Related Psychosocial Risks During the Covid-19 Pandemic, 9.*
[222] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 2.
[223] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 4.
[224] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 11.

flagged as a major development as the taskforce was the first of its kind, indicating the severity of the problem and the urgent need to address it.

4.2.3 Covid-19 Response

Responding to the pandemic that started in March 2020, as a result of the Coronavirus, the Kenyan Ministry of Health considered the possible mental health effects to frontline workers and came up with various measures to combat them. The government therefore took measures such as the provision of Mental Health and Psychosocial Support (MHPSS) through the provision of mental health and psychological services to the general public, quarantine and hospitalized persons, healthcare workers and high-risk vulnerable populations.[225] There was also provision of hotline numbers 1199 and 719 for tele-counselling services and psychological care.

4.2.4 Organizational Regulation of Mental Health

In 2018, Safaricom was ranked by Forbes as the best employer in Africa and at the 67th position worldwide.[226] As an exemplary employer, this organisation has managed to incorporate various employee wellness programs aimed at raising awareness on mental health in the workplace and combatting the same.

4.3 CONCLUSION

The challenges faced in the pursuit of a better regulatory framework in terms of the psychosocial risks in the workplace are wide-ranging. They include but are not limited to, the perception of mental health by the community and Kenyan citizenry hence the sensitivity of the issue, lack of adequate research, difficulty in establishing causality, lack of collaboration, lack of effective enforcement mechanisms, lack of funding and the difficulty in the pursuit of justice through litigation.

However, even with the numerous challenges being faced, various milestones have been achieved. The recognition of mental health as a subject of concern in the Kenyan community has grown. The spotlight has slowly been directed towards the issue with the establishment of a Mental Health Taskforce to investigate the matter and the inclusion of psychosocial support in response to the changes brought about by the COVID-19 pandemic.

---

[225] Ministry of Health, *Government Prioritize Mental Health in COVID-19 Response*, 20 June 2020, <<https://www.health.go.ke/government-prioritize-mental-health-in-covid-19-response-nairobi-saturday-june-20-2020/>> on 12 August 2020.

[226] Alushula P, 'Safaricom Best Employer in Africa', Business Daily, 13 October 2018,- <<https://www.businessdailyafrica.com/news/Safaricom-best-employer-in-Africa/539546-4803594-iaawogz/index.html>> on 4 August 2020.

Safaricom has various programs to help its employees maintain wellness, both physically and mentally. In addition, the occupational safety and health regulatory regime is not completely useless as it has structures in place and various provisions that can be put to better use. Despite the glaring bias towards physical health hazards regarding regulation, there is hope that with the current status of mental health in Kenya and the increased conversations around the matter, it should be easier to make the regime more inclusive by better addressing psychosocial workplace hazards.

CHAPTER 5:

CONCLUSION AND RECOMMENDATIONS

This chapter will summarise and conclude the study while giving various recommendations.

5.1 SUMMARY OF THE STUDY

This study, having been focused on the right to reasonable working conditions, with an emphasis on mental health under the occupational health and safety regime sets out to investigate the efficiency of the regulatory framework.

The first chapter attempts to establish the existence of psychosocial risks in the workplace. This is done through first looking into work and health as fundamental aspects of human life and consequently examining the integration of the two. The manifestation and effects of these kinds of hazards in the workplace are demonstrated calling for the need to investigate the matter more keenly.

The second chapter investigates the extent of regulation of psychosocial health hazards at the international, regional and local level. An analysis of laws and policies is done to establish the place of these hazards in the occupational safety and health regime and to satisfy the fact that there is a need for further regulation. Case law is also analysed in order to establish the way cases of this nature are handled and the effects of limited regulation on such decisions.

The third chapter establishes the status of mental health in Kenya. This in order to determine what the conversation around mental health is, as this essentially forms the background to the conversation around psychosocial hazards in the workplace. In addition, a study on Japan is done with a minor comparison to Europe on programs set up by the government to deal with psychosocial risks in the workplace. This to draw some lessons from regions that have experienced the effects of psychosocial workplace hazards on a large scale.

The fourth chapter outlines the challenges faced and milestones accomplished in the pursuit of the preservation of the mental health of workers. Challenges are inclusive from a global to local scale, as most challenges faced or to be faced are similar. The milestones are however only outlined from a local point of view.

The fifth chapter then concludes the study by summarising it and offering recommendations, with a brief conclusion.

5.2 CONCLUSION AND FINDINGS

5.2.1 Conclusion

After careful analysis and consideration of the legislative and regulatory framework at the international, regional and local level, it can be concluded that physical health hazards have largely been catered for while psychosocial hazards have been neglected. There is need to adequately regulate psychosocial health hazards if there is to be progress in addressing the challenges faced by those who suffer from the same. The challenges faced in the pursuit of a better regulatory framework in terms of the psychosocial risks in the workplace are wide-ranging. However, even with the numerous challenges being faced, various milestones have been achieved. The recognition of mental health as a subject of concern in the Kenyan community has grown.

Despite the glaring bias towards physical health hazards regarding regulation, there is hope that with the current status of mental health in Kenya and the increased conversations around the matter, it should be easier to make the regime more inclusive by better addressing psychosocial workplace hazards. Japan and Europe have both utilised interventions at the national level to deal with psychosocial health hazards in the workplace, a step that Kenya will need to take in order to deal with the emerging crisis.

In conclusion, there are some legal provisions on psychosocial risks, however, it is an area that still requires robust research and adequate coverage. Being an increasing health hazard at the workplace, we ought to be vigilant in the fight against it. Open mindedness and a return to humanity as a basis for employment and its laws is fundamental to the achievement of a successful occupational health and safety regime.

5.2.2 Findings

The study finds that psychosocial risks do qualify as a health hazard in the workplace. Some of its effects can be observed from symptoms of work-related stress however, they are often recognised because of suicide or termination from work.

The legal and regulatory framework, both internationally and locally, does not adequately cover psychosocial health hazards in comparison to physical health hazards.

Various challenges have also been faced and continue to be faced in addressing psychosocial hazards both legally and socially, including but not limited to stigma, ignorance and the glaring lack of adequate research and mental health services.

5.3 RECOMMENDATIONS

5.3.1 Increased Regulation of Psychosocial Risks

These emerging risks ought to be integrated into comprehensive occupational health and safety policy frameworks.[227] Through this practice, work environments will be improved as people will actively work at reducing the presence of psychosocial risks at work. In addition to this, provisions should be included in the Occupational Health and Safety Act to address psychosocial work stressors.[228] This will work at introducing a nuanced approach to the regulation of occupational health and safety.

In the same way that Occupational Health and Safety officers are given the power to enforce the provisions of the Act by inspecting work premises that they think could be a hazard to a person's health,[229] they ought to inspect work policies and investigate the possible psychosocial risks posed by the environment. This will raise the initiative to address psychosocial risks in the workplace.

One of the solutions for a fissured workplace has been said to be the enforcement of labour and employment laws through the government's incentive and the imposition of penalties. This with the aim of ensuring that the centres of command and control better enforce labour standards in the fissured parts of the contemporary workplace.[230] This will enable us to deal with the problem of imputing liability on the employer for the consequences of poor working conditions even with these complicated work relationships.

5.3.2 Healthy Workplaces and Reasonable Working Conditions

The primary goal of creating healthy workplaces is seen to be the organization and changing of working conditions in such ways that health-supportive aspects of the job are increased, and harmful aspects are decreased.[231] Therefore, changing working conditions, in general, are seen to achieve a much broader impact on employee health than solely focusing on individual risk factors. Similarly, having regulation that applies to the wide-ranging organisations of workers results in better protection of the workers and this can be approached from both a national and an international scale.

---

[227] Kortum E, Leka S and Cox T, 'Perceptions of psycho-social hazards, work-related stress and workplace priority risks in developing countries',144.
[228] Shalini T, 'An assessment of Occupational Health and Safety Risks in the Hospitality Industry', 143.
[229] Section 32, *Occupational Safety and Health Act,* (Act No 15 of 2007, Revised 2010).
[230] Marzan R, 'The fissured workplace: David Weil, Book Review', 333.
[231] Jimenez P and Dunkl A, 'Assessment of Psychosocial Risks and Mental Stress at Work: The Development of the Instrument Orgfit', 7 *Journal of Ergonomics* 2017, 2017, 1 << https://www.omicsgroup.org/journals/assessment-of-psychosocial-risks-and-mental-stress-at-work-the-development-of-the-instrument-orgfit-2165-7556-1000188.php?aid=85640>> on 15 October 2020.

Employees need to be assigned workloads that are manageable and in addition, thorough task analysis should be carried out to ensure even and fair role allocation.[232] This is with regards to the organisation of work in the working environment. Better working techniques should be suggested and provided for under policy to develop conducive working environments.

5.3.3 Raising Awareness and Increased Research

There is need to create awareness in terms of occupational safety and health in Kenya.[233] Research should be carried out and information shared on the same. This will increase knowledge on the importance of better working conditions and the possible effects of poor conditions.

Under the key recommendations of the taskforce report, it was stated that the second week of October should be gazetted as the National Mental Health Awareness Week.[234] In addition, there was a recommendation to declare mental ill health a national emergency and to promote mental health literacy at all levels.

5.3.4 Inter-disciplinary Approach to Mental Health Awareness and Regulation

More importantly, psychologists ought to be consulted and employed in workplaces. This will help in monitoring employees' mental health. Instead of their employment however, employees should be encouraged to occasionally check on their mental and physical wellbeing. They ought to also be able to communicate with their bosses in case of any strain caused by their working conditions. This will go a long way in addressing psychosocial risks.

5.3.5 Change in Perspective

There is need for a change in perspective in terms of what constitutes health. An interesting discussion on the definition of health for a worker was done by Ania Zbyszewska on her discussion of the European Union's Working Time Directive.[235] There was a proposition involving the incorporation of work-family reconciliation in the definition of health. On that basis, decisions by Courts found that on-call work arrangements deprived employees of the

[232] Safari C,'Psychosocial Environment on Employee Service Delivery', 83.
[233] Muigua K, 'Realising Occupational Safety and Health as a Fundamental Human Right in Kenya', Mount Kenya University Law Journal, 2012, 23 << http://kmco.co.ke/wp-content/uploads/2018/08/Realising-Occupational-Safety-and-Health-as-a-Fundamental-Human-Right-in-Kenya.pdf>> on 20 October 2020.
[234] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 8.
[235] Zbyszewska A, 'Reshaping EU Working-Time Regulation: Towards a More Sustainable Regime', 7 *European Labour Law Journal* 3, 2016, 338.

effective control over time interfering with their ability to rest and participate in social life as they had to remain in the workplace. The broad interpretation of health is seen as important in the protection of the health and safety of employees.

5.3.6 Nuanced Regulation of Psychosocial Risks

In support of the argument on whether regulation is nuanced and the need for the same in combatting psychosocial risks, Jimenez and Dunkl conclude that to reach the goal of healthy workplaces, high-quality instruments need to be developed in line with international standards, such as ISO-45001 and ISO-10075-1.[236] They discuss an instrument known as the OrgFit which was developed in order to capture all relevant areas of work-related stress according to the ISO-10075-1.[237] The instrument classified the areas of work related to stress into four major dimensions which include, work activities and tasks, organizational climate, work environment and work flow.[238] The results showed the complex ways in which psychosocial risks manifest themselves and the need for and importance of having nuanced regulation.

The four major dimensions included; work activities and tasks, which involve task requirements such as the cognitive or emotional demands of tasks, organizational climate which involves the aspects of the organization or social contacts such as information and communication structures, participation possibilities or co-operation with leaders and co-workers, work environment involving physical, biological and chemical conditions, visual, acoustic and climate conditions and having enough work space and work equipment. Lastly, workflow and work organization, which involves organizational processes such as the order of the work steps, interferences, and interruptions as well as quantitative workload.[239]

This kind of nuanced approach investigates the possible ways in which psychosocial risks will emerge and how to address them. This allows for comprehensive regulation of the same.

[236] Jimenez P and Dunkl A, 'Assessment of Psychosocial Risks and Mental Stress at Work: The Development of the Instrument Orgfit', 1.
[237] Jimenez P and Dunkl A, 'Assessment of Psychosocial Risks and Mental Stress at Work: The Development of the Instrument Orgfit', 2.
[238] Jimenez P and Dunkl A, 'Assessment of Psychosocial Risks and Mental Stress at Work: The Development of the Instrument Orgfit', 2.
[239] Jimenez P and Dunkl A, 'Assessment of Psychosocial Risks and Mental Stress at Work: The Development of the Instrument Orgfit', 2.

5.3.7 Establishing a Body Responsible for Mental Health at the National Level

Lack of a unified leadership structure in the mental health field was recognised as a challenge, with the taskforce calling for the formation of a National Mental Health and Happiness Commission.[240] The body will be in charge of carrying out an annual happiness index survey to promote mental well-being through the creation of public policy.[241] The Building Bridges Initiative Report, calling for amendments to the Constitution was also seen to call for the creation of a body to monitor the state of mental health in the country.[242]

5.3.8 Private Sector Strategy Adoption at the National Level

Lessons can be drawn from private sector practices in companies such as Safaricom as earlier discussed in the paper. The strategies they have used to incorporate psychosocial workplace hazards and to promote employee wellbeing include the THRIVE programme and the SEMA NA CEO chatroom that can be adopted nationally and additionally used to influence law and policy formulation. This will go a long way in raising awareness in terms of healthy working practices, encouraging further research and implementation around the area.

[240] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 7.
[241] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 17.
[242] Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020, 12.

BIBLIOGRAPHY

Books

1. Davies P and Freedland M, '*Kahn-Freund's Labour and the Law*', 3rd ed, Stevens and Sons Ltd, London, 1983.
2. Donnelly J, *Universal Human Rights in Theory and Practice*, 3rd ed, Cornell University Press, USA, 2013.
3. Wheatley S, *The Idea of International Human Rights Law*, 1st ed, Oxford University Press, Oxford, 2019.

Journal Articles

1. Canazza C, 'Improving working conditions for ageing workers in the European Union: New approaches', 7 *European Labour Law Journal* 2, 2016.
2. Caruso G, 'The Concept of 'Best Practice': A Brief Overview of its Meanings, Scope, Uses and Shortcomings', *International Journal of Disability Development and Education*, 2011.
3. Dworkin G, Paternalism, 56 *The Monist* 1, 1972.
4. Hirsch J,'#MeToo in the workplace', 23 *Employment Rights and Employment Policy Journal* 1, 2019.
5. Hughes S, 'The International Labour Organisation', 10 *New Political Economy* 3, 2005.
6. Iavicoli S, Cesana G et al, 'Psychosocial factors and workers' health and safety', *BioMed Research International*, 2015.
7. Imamura K et al, 'Effect of the National Stress Check Program on Mental Health Among Workers in Japan: A 1-Year Retrospective Cohort Study', 60 *Journal of Occupational Health,* 2018.
8. Janetzke H and Ertel M, 'Psychosocial risk management in more and less favourable workplace conditions', 10 *International Journal of Workplace Health Management* 4, 2017.
9. Jimenez P and Dunkl A, 'Assessment of Psychosocial Risks and Mental Stress at Work: The Development of the Instrument Orgfit', 7 *Journal of Ergonomics,* 2017.
10. Karasek R, 'Job demands, job decision latitude, and mental strain: Implications for Job Redesign', 24 *Administrative Science Quarterly* 2, 1979.
11. Kortum E, Leka S and Cox T, 'Perceptions of psycho-social hazards, work-related stress and workplace priority risks in developing countries',53 *International Journal of Environmental Medicine and Occupational Health*, 2011.

12. Kortum E, Leka S and Cox T, 'Psycho-social risks and work-related stress in developing countries: Health impact, priorities, barriers and solutions', 23 *International Journal of Environmental Medicine and Occupational Health* 3, 2010.
13. Korunka C, Kubicek B and Paskvan M, 'Changes in work intensification and intensified learning: Challenge or hindrance demands?',30 *Journal of Managerial Psychology* 7, 2015.
14. Lee R, 'Introduction to emotions at work: The employment relationship during an age of anxiety', 19 *Employee Rights and Employment Policy Journal* 1, 2015.
15. Leka S, Jain A, Iavicoli S and Di Tecco C, 'An evaluation of the policy context on psychosocial risks and mental health in the workplace in the European Union: Achievements, challenges, and the future', *BioMed Research International*, 2015.
16. Leka S, Jain A, Zwetsloot G and Cox T,'Policy-level interventions and work-related psychosocial risk management in the European Union',24 *Work & Stress* 3, 2010.
17. Marzan R, 'The fissured workplace: David Weil, Book Review', 19 *Employment Rights and Employment Policy Journal* 2, 2015.
18. Muigua K, 'Realising Occupational Safety and Health as a Fundamental Human Right in Kenya', Mount Kenya University Law Journal, 2012, << http://kmco.co.ke/wp-content/uploads/2018/08/Realising-Occupational-Safety-and-Health-as-a-Fundamental-Human-Right-in-Kenya.pdf>>.
19. Siegrist J, 'Adverse health effects of high cost/ low reward conditions',1 *Journal of Occupational Health Psychology* 1, 1996.
20. Spector H, 'Philosophical Foundations of Labour Law,' 33 *Florida State University Law Review* 4, 2006.
21. Stansfeld S and Candy B, 'Psychosocial Work Environment and Mental Health- a meta-analytic review,' 32 *Scandinavian Journal of Work, Environment and Health* 6, 2006.
22. Thomas A, 'The International Labour Organisation-It's Origins, Development and Future', 135 *International Labour Review* 3-4, 1996.
23. Tsutsumi et al, 'Implementation and Effectiveness of the Stress Check Program, a National Program to Monitor and Control Workplace Psychosocial Factors in Japan: A Systematic Review', 2020 *International Journal of Workplace Health Management*, 2020.
24. Verbeek J, 'When Work is Related to Disease, What Establishes Evidence for a Causal Relation?', 3 *Safety and Health at Work*, 2012.

25. Weissbrodt R, Arial M et al,'Preventing psychosocial risks at work: An evaluation study of labour inspectorate interventions', 110 *Safety Science* ,2018.
26. Zbyszewska A, 'Reshaping EU Working-Time Regulation: Towards a More Sustainable Regime', 7 *European Labour Law Journal* 3, 2016.

Institutional Authors

1. The Constitution of Kenya Review Commission, *Final Draft*, 2005.
2. International Labour Organisation, *Decent Work and the 2030 Agenda for Sustainable Development*, 2017.
3. Azzi M and Papandrea D, *Managing Work-Related Psychosocial Risks During the Covid-19 Pandemic*, International Labour Organisation, 2020.
4. Malik S and Holt B, *The Impact of New Working Methods- A Psychosocial Risk Perspective*, International Institute of Risk and Safety Management, 2015.

Research Papers

1. Kuroda S and Yamamoto I, 'Worker's mental health, long work hours and workplace management: Evidence from workers' longitudinal data in Japan', Research Institute of Economy, Trade and Industry, Keio University, RIETI Discussion Paper Series 16-E-O17, 2016, <https://www.rieti.go.jp/en/publications/summary/16030014.html>.

Thesis

1. Shalini T, 'An assessment of Occupational Health and Safety Risks in the Hospitality Industry: The case of Sarova Stanley Hotel, Nairobi, Kenya', Unpublished Masters' Thesis, University of Nairobi, 2016.

Cases

1. *Beth Kalondu Mwema v Brand Kenya Board (2015) eKLR.*
2. *BWK v EK and another (2017) eKLR.*
3. *Josephine Kirigo Kagwanja v Waruhiu Construction Ltd* (2016) eKLR.
4. *Kudheidha Workers v Director of Central Police Station Canteen* (2019) eKLR.
5. *Nicholas Juma Ojuok v Pentagon Elite Security Services Limited (2018) eKLR.*
6. *Ruth Nthenya Kilonzo v Standard Chartered Bank Kenya Ltd* (2007) eKLR.
7. *Rashid Ali Faki v A.O Said Transporters* (2016) eKLR.

Legal Instruments

International Instruments

1. *The Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment*, 10 December 1984, 1465 UNTS 85.
2. *The Convention on the Elimination of All Forms of Discrimination Against Women,* 18 December 1979, 1249 UNTS 13.
3. *The Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3.
4. *The Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3.
5. *Hours of Work (Industry) Convention,* 28 November 1919, No.1.
6. *The International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, 660 UNTS 195.
7. *The International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, 993 UNTS 3.
8. *The International Convention on the Protection of the Rights of All Migrant Workers and members of their families,* 18 December 1990, 2220 UNTS 3.
9. *The List of Occupational Diseases Recommendation*, 3 June 2002, No.194.
10. *The Occupational Health Services Convention*, 25 June 1985, No.161.
11. *The Occupational Health Services Recommendation*, 7 June 1985, No.171.
12. *The Occupational Safety and Health Convention,* 3 June 1981, No.155.
13. *The Occupational Safety and Health Recommendation*, 3 June 1981, No.164.
14. *The Promotional Framework for the Occupational Safety and Health Convention,* 31 May 2006, No.187.
15. *The Protection of Workers' Health Recommendation*, 4 June 1953, No.97.
16. *The Protocol to the Occupational Safety and Health Convention,* 3 June 2002, No.155 of 1981.
17. *The Universal Declaration of Human Rights*, 10 December 1948.
18. UNGA, *Transforming Our World: the 2030 Agenda for Sustainable Development*, UN A/RES/70/1 (25 September 2015).
19. *The Welfare Facilities Recommendation*, 6 June 1956, No.102.

Regional Instruments

1. *The African Charter on Human and People's Rights,* 27 June 1981, 1520 UNTS 217.
2. *The Treaty for the Establishment of the East Africa Community*, 30 November 1999, Revised 2007.

National Legislation

1. The *Constitution of Kenya* (2010).
2. *Employment Act* (CAP 226, Revised 2012).
3. *Employment and Labour Relations Court Act (*Act No.20 of 2011, Revised 2016).
4. *Health Act*, (2017).
5. *Kenya Mental Health Policy 2015-2030: Towards Attaining the Highest Standard of Mental Health*, 2015.
6. *Labour Institutions Act*, (Act No 12 of 2007, Revised 2012).
7. *Mental Health Act*, (CAP 248, Revised 2012).
8. *The Mental Health (Amendment) Bill 2018*, (Kenya Gazette Supplement No.136, Senate Bills No.32).
9. *Occupational Safety and Health Act*, (Act No 15 of 2007, Revised 2010).
10. *Work Injury Benefits Act*, (CAP 236, Revised 2012).

Reports

1. Ministry of Health Kenya, *Mental Health and Well-Being: Towards Happiness and National Prosperity, A Report by the Taskforce on Mental Health in Kenya*, 2020.
2. The Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce, *Building Bridges to a United Kenya: From a Nation of Blood Ties to a Nation of Ideals*, 2020.

Newspaper Articles

1. Achuka V and Odongo D, 'PWC worker led gloomy life, gave in to pressure', The Standard, 20 October 2018.
2. Alushula P, 'Safaricom Best Employer in Africa', Business Daily, 13 October 2018.

Online Sources

1. Burton J, 'WHO Healthy workplace framework and model: Background and supporting literature and practices', WHO Global Workshop in Geneva, 22-23 October 2009, <http://www.who.int/occupational_health/healthy_workplaces/en/index.html>.
2. International Labour Organisation, Decent Work, - << https://www.ilo.org/global/topics/decent-work/lang--en/index.htm>> on 29 July 2020.

3. International Labour Organisation, International Labour Law,-<<https://www.ilo.org/inform/online-information-resources/research-guides/labour-law/lang--en/index.htm>> on 29 July 2020.
4. International Labour Organisation, International Labour Standards on Occupational Safety and Health, -<< https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/occupational-safety-and-health/lang--en/index.htm>> on 24 August 2020.
5. International Labour Organisation, ILO Declaration on Fundamental Principles and Rights at Work, -<<https://www.ilo.org/declaration/lang--en/index.htm>> on 30 July 2020.
6. International Labour Organisation, *List of Instruments by Subject and Status*,-<<https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO:::#Occupational_safety_and_health>> on 3 June 2020.
7. International Labour Organisation, <<https://www.ilo.org/dyn/normlex/en/f?p=1000:13300:0::NO:13300:P13300_INSTRUMENT_ID:312300>> on 30 July 2020.
8. Ministry of Health, *Government Prioritize Mental Health in COVID-19 Response*, 20 June 2020, <<https://www.health.go.ke/government-prioritize-mental-health-in-covid-19-response-nairobi-saturday-june-20-2020/>>.
9. Paulus I, 'Laborem Exercens', The Holy See, 1<http://w2.vatican.va/content/johnpaulii/en/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens.html> on 10 February 2020.
10. President Uhuru Kenyatta, 'The Seventh State of the Nation Address', 12 November 2020, <https://www.president.go.ke/2020/11/12/the-seventh-7th-state-of-the-nation-address-by-h-e-uhuru-kenyatta-c-g-h-president-of-the-republic-of-kenya-and-commander-in-chief-of-the-kenya-defence-forces-at-parliament-buildings-nairobi-on-n/.
11. Safaricom, Our Employees, -<<https://www.safaricom.co.ke/sustainabilityreport_2019/stakeholder-engagement/our-employees/>> on 4 August 2020.
12. United Nations Human Rights Office of the High Commissioner, UN Treaty Body Database: Ratification Status for Kenya, -<< https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=90&Lang=EN>> on 24 August 2020.