



Strathmore
UNIVERSITY

**SAFEGUARDING CHILD CONTENT CREATORS: TOWARDS ENHANCED LEGAL
PROTECTIONS IN KENYA'S DIGITAL PLATFORM ECONOMY**

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DEDICATION

To Almighty God, to my deeply beloved family and the resilient spirits of Kenyan children.

DECLARATION

I, TEMBETE CARLA MUJISA, 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: 19th DECEMBER 2023.

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

Signed: 

Dr. Melissa Muindi

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ABSTRACT

The Kenyan digital platform economy as of July 2022, has had 11.8 million active social media users, 4.9% of which are children. Within the percentage, there is the inclusion of children who create content over different platforms including Instagram, Tiktok, YouTube and Facebook. The content is either posted on the children's personal page if they are over the age of 13, or on the pages of parent-run accounts. The content which varies, has the capability, through endorsements, advertisements or affiliate marketing to earn the creators' money. Naturally, for child creators, the money is deposited to the parents' accounts due to the children's inability to be bank account owners. This inevitably creates the concern of the possibility of children not being able to tangibly benefit from the work that they do on social media. It further raises the question on the labour practices and laws in place to regulate the.

In Kenya, the legislation that exists does not adequately protect children who actively work in the digital platform economy, which in turn potentially exposes the children in question to vulnerabilities due to the lack of protection. This dissertation therefore purposes to examine the need for new or amended child labour laws and compensation guidelines for children providing labour on social media platforms in the Kenyan context.

This dissertation, through comprehensive literature review, a comparative analysis with other jurisdictions and research sought out to first investigate on the legal framework in place within Kenya in regard to child labour and the protection of child rights, identify the gaps in the area and the impact that they have on the children who work in the digital platform economy. The dissertation was able to identify the main gap as the current legal framework's lies failure to anticipate and effectively contend with the emergence of children as active participants in the digital platform economy. The impact of this on children ranging from physical and mental consequence and the risk of exploitation and abuse. It has further sought to evaluate whether the production of content by children on social media platforms in Kenya meets the legal criteria of work as defined by Kenyan laws and international legal instruments. Through this, it was able to positively confirm that it does. The dissertation further set out to propose legislative reforms in Kenya that would better protect children who work in the digital platform economy including; legislative reforms, collaboration and adequate monitoring and enforcement.

Finally, the dissertation makes the conclusion that the current legal framework is wanting but makes the observation that with proper legislative reforms, it would be able to adequately ensure the protection of children.

LIST OF ABBREVIATIONS

1. CRC - Convention on the Rights of the Child
2. EU – European Union
3. ICT – Information Communication Technology
4. ILO – International Labour Organization
5. UNHRC – United Nations Human Rights Commission

LIST OF LEGAL INSTRUMENTS

1. California Labour Code
2. Children Online Privacy Protection Act (United States of America)
3. Children's Act (2022)
4. Convention on the Rights of the Child
5. Conventions on Minimum Age of Employment
6. Copyright Act (2012)
7. CRC - Convention on the Rights of the Child
8. Employment Act (2007)
9. European Council Directive
10. French Labour Code (2020)
11. ILO Convention No. 8 on the Worst Forms of Child Labour
12. Income Tax Act (2012)
13. Industrial Property Act (2012)
14. International Labour Organization Worst Forms of Child Labour Convention (no. 182)
15. Law of Contracts (2021)
16. Palermo Protocol on Trafficking in Persons
17. Penal Code (2012)
18. Trademark Act (2007)
19. UNHRC – United Nations Human Rights Commission
20. Constitution of Kenya (2010)

CHAPTER 1

THE PLACE OF CHILDREN PROVIDING LABOUR ON DIGITAL MEDIA PLATFORMS IN THE KENYAN CONTEXT

1.1 BACKGROUND

Children in Kenya under the law, enjoy specific protections regarding labour practices. The Constitution lays out that every child has a right to be protected from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment, and punishment, and hazardous or exploitative labour.¹ The Employment Act, under section 56 protects children under the age of 13 from any type of gainful employment or undertaking. It further provides the regulation of employment of children between the ages of 13 and 16.² The Children's Act protects children from economic exploitation and any work that is likely to be hazardous or interferes with the child's education.³

Internationally, Kenya is a signatory to conventions aimed at further protecting children from different types of exploitation.⁴ The country has ratified the United Nations Convention on the Rights of the Child, the Palermo Protocol on Trafficking in Persons and the International Labour Organization (ILO) Conventions on Minimum Age of Employment and the Worst Forms of Child Labour.⁵

¹ Article 53, *Constitution of Kenya* (2010).

² Section 56, *Employment Act* (2007).

³ Section 10, *Children's Act* (2022).

⁴ Introduction to the Kenya Law Treaties and Agreements Database -< [NCLR Home Page | Treaties Database \(kenyalaw.org\)](https://kenyalaw.org) >- on 11th January 2023; Malombe D, Mavunjina M, Mbatatru S, 'Kenya's Regional and International Human Rights Obligations' Kenya Human Rights Commission, 2015.

⁵ Introduction to the Kenya Law Treaties and Agreements Database -< [NCLR Home Page | Treaties Database \(kenyalaw.org\)](https://kenyalaw.org) >- on 11th January 2023.

All these laws are relevant and important towards the protection of children from harmful labour practices in Kenya and have seen success on that front.⁶ Despite this, across this broad expanse of laws, the existing laws fail to take into consideration the nuance that is found where children offer labour in the digital platform economy. The term digital platform economy refers to the digitally based economy model coming up through the activities of sites such as YouTube, Amazon and Facebook and is used interchangeably with the word social media.⁷ Within the digital platform economy, users of sites offered on the platform partake in activities in line with the site's specific niche. On Facebook, for example, users can post videos or pictures with short captions and on Instagram users can post videos up to 3 minutes long.⁸ The operators of digital platforms in recent years have enabled their users to monetize the content they create.⁹ Creators who monetize the content they create through partnerships with companies or advertisements are known as influencers.¹⁰

Over the past few years, the influencer space has been estimated to be worth 104 billion dollars globally.¹¹ Influencers cater to their audiences (who are users of these platforms) by taking advantage of different niches including fashion, travelling, sports and more recently children's lifestyle content. There has grown a large market for the consumption of content either created by children for child audiences or content by children for adult audiences.¹² Children on specific

⁶ Chibebe W, 'Let's End Child Labour in Kenya: Now is the Time to Take Urgent Action' UNICEF Kenya, 2021, 2.

⁷ Garcia A, Kenney M and Zysman J, 'Understanding Work in the Online Platform Economy: A Critical Review' Berkely Roundtable on the International Economy, BRIE Working Paper 2022-2, 2022, 14 —< [brie working paper 2022-2- understanding work in the online platform economy-a critical review.pdf \(berkeley.edu\)](https://brie.berkeley.edu/working-paper-2022-2-understanding-work-in-the-online-platform-economy-a-critical-review.pdf)>.

⁸ 'New Sharing Features on Instagram' Meta, 13th December 2022 —< [New Sharing Features on Instagram: Notes, Group Profiles and More | Meta \(fb.com\)](https://www.facebook.com/help/1016643559275424)>.

⁹ Content monetization is the way in which platforms leverage online content in social media so as to earn money either as users or subscribers consume the content. (Josephat Machagua, Bridgit Akinyi, 'Realizing Economic Value of Social Media Through Content Monetization' *Kenya Institute for Public Policy Research and Analysis*, 2019, 2 —< [Realizing Economic Value of Social Media through Content Monetization – KIPPRA](https://www.kippira.org/realizing-economic-value-of-social-media-through-content-monetization) > on 11th January 2023.

¹⁰ A person who is able to generate interest in something by posting about it on social media- Merriam Webster Dictionary, 4th ed.

¹¹ Gagliese J, 'The Rise of the Influencer: Predictions on Ways they'll change the World' Forbes, 2022,2.

¹² Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 500.

social media platforms with large followings can earn upwards of 26 million dollars annually as revenue streams from advertisements and sponsorships as a result of the content they post.¹³

Despite the massive growth that social media platforms have experienced there is not enough nuance in existing legislation to facilitate the control of the labour practices in this area for adults. Generally, there are guidelines in place regulating the tax payable by the creators from their revenue streams but no solid labour laws since they are classified as self-employed individuals.¹⁴ In the case of children, the existing laws touch on social media regulation in a more general protective sense.

In Kenya, the rights to privacy and protection from exploitative labour are enshrined in the Constitution.¹⁵ Additionally, the country, through the Communications Authority is working on the draft Industry Guidelines for Child Online Protection and Safety in Kenya that is aimed at regulating online activities for children. The guidelines form the basis for the development, use, management, sale, marketing and publicity of communication products and services in Kenya that may be accessed and targeted for use by children. It also provides safeguards for children's access to and use of ICT services in Kenya.¹⁶ The Digital Services Act in the European Union (EU) is aimed at creating a ban on targeted ads for children with the intention of reducing the number of children in the Digital Economy Space. The Children's Online Privacy Protection Act in America prohibits American companies from collecting personal information from children under 13 without parental consent.¹⁷

In regard to labour laws and child entertainers, America has the California Child Actor's Bill that aims to protect child actors from exploitation by parents by providing them with labour laws and compensation guidelines for their work. The California Child Actor's Bill is an Act that was passed in 1939 and is popularly known as the Coogan Law, named after Jackie Coogan, who was a child

¹³ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 592.

¹⁴ Section 3, *Income Tax Act, The Income Tax (Digital Service Tax) Regulations* (2020).

¹⁵ Article 31, *Constitution of Kenya* (2010); Article 30, *Constitution of Kenya* (2010).

¹⁶ Osore K, 'Communications Authority Releases Draft Guidelines to Protect and Keep Children Safe Online' *Vellum*, -< [Communications Authority releases draft guidelines to protect and keep children safe online – Vellum Kenya](#)>- on 11th September 2023.

¹⁷ *Children Privacy Protection Act 15 U.S.C.*

actor who was subjected to injustices. The act was passed with the intent of safeguarding a child actor's earnings where it is placed in a blocked trust until the age of majority is reached. The European Union has the EU Directive (94/33/EC) of 22nd June 1994 which insists that member states must prohibit the employment of children with the possible exception of cultural, artistic, sports and advertising activities.¹⁸ The above international regulations can provide us with a legal framework that can be applied in the country in the case of drafting in the country.

In Kenya, the legislation that exists does not adequately protect children who work in the digital platform economy. This is a worrying state of affairs as 11.75 million Kenyans are active social media users, representing 21.1 percent of the population, with an estimated 2 percent earning from said platforms.¹⁹ This in turn creates a huge gap in legislation that needs to be filled.

1.2 PROBLEM STATEMENT

The Kenyan digital platform economy as of July 2022, has had 11.8 million active social media users, 4.9% of which are children.²⁰ Within the percentage, there is the inclusion of children who create content over different platforms including Instagram, Tiktok, YouTube and Facebook. The content is either posted on the children's personal page if they are over the age of 13, or on the pages of parent-run accounts. The content which varies, has the capability, through endorsements, advertisements or affiliate marketing to earn the creators' money. Naturally, for child creators, the money is deposited to the parents' accounts due to the children's inability to be bank account owners. This inevitably creates the concern of the possibility of children not being able to tangibly benefit from the work that they do on social media. This is because they might not be fully aware of the money that they do make or are not aware that what they do generates money.

Additionally, the videos created by the children, under the instruction of their caregivers, are posted throughout different periods of the day showing different activities done by the children. This is at most times done with no regard to their school schedules, personal space or privacy as sometimes even the most intimate moments like baths or emotional breakdowns are shared. This,

¹⁸ Article 5(1), *European Council Directive*, 22nd June 1994, 94/33/EC.

¹⁹ The number is not an accurate representative figure as the number includes data from multiple and pseudo accounts from the social media platforms. (Datareportal, *Digital 2022: Kenya*, 15th February 2022, 5.

²⁰ Datareportal, *Digital 2022: Kenya*, 15th February 2022, 5.

if not regulated can lead to exploitation and abuse of children in a bid by the caregivers to earn more money.

In Kenya, the legislation that exists does not adequately protect children who actively work in the digital platform economy. There does exist legislation that protects children from labour and abuse. These include The Children's Act 2001, The Employment Act 2007 and The Kenyan Penal Code.²¹ Despite the existence of these laws, none is cross-cutting to ensure the protection of a child from their caregiver and their internet followers. This causes a gap in the law as there is nothing that can legally protect children from possible exploitation, labour and abuse, all under the pretext of fun and entertaining content creation.

This study therefore purposes to examine the need for new or amended child labour laws and compensation guidelines for children providing labour on social media platforms in the Kenyan context.

1.3 RESEARCH OBJECTIVES

1. To examine the provisions within Kenyan law that provide for the protection of children against child labour, children's rights and the place of children who work in the digital platform economy.
2. To evaluate whether the production of content by children on social media platforms in Kenya meets the legal criteria of work as defined by Kenyan laws and international legal instruments, by analysing the nature and extent of the activity, the compensation or benefits received, and other relevant factors.
3. To propose recommendations for new or amended child labour laws and compensation guidelines in Kenya that can better protect children who work in the digital platform economy, with a specific focus on social media platforms.

1.4 RESEARCH QUESTIONS

1. What is the existing legal framework in Kenya that deals with provisions relating to child labour and the protection of children's rights?

²¹ Section 10, *Children's Act* (2022); Section 56, *Employment Act* (2007); Section 266, *The Penal Code* (2012).

- b) What gaps are present in the law that hinder the protection of children who work in the digital platform economy.
 - c) What are the impacts of the gaps in the law that hinder the protection of children who work in the digital platform economy
2. a) Does the production of content by children on social media platforms in Kenya meet the legal criteria of work as defined by Kenyan laws and international legal instruments paying particular attention to the nature and extent of the activity, the compensation or benefits received, and other relevant factors?
 3. In what ways can the current child labour laws and compensation guidelines for children in the digital platform economy be amended to better protect them.

1.5 HYPOTHESIS

If proactive and well-informed measures are taken to establish comprehensive legislation specifically regulating the digital market economy, including the earnings derived from its users, then we can expect enhanced safeguards for children actively engaged in the digital platform economy, reducing their vulnerability to exploitation and ensuring fair compensation.

1.6 JUSTIFICATION

This study speaks to the need for new or amended child labour laws and compensation guidelines in respect to children providing labour on social media platforms in the Kenyan context, to prevent human rights abuses. There is an urgent need for the creation of laws that ensure the protection of children within the digital platform economy. This is because children are vulnerable to exploitation as a result of the dependent nature of their relationship with those around them.

This study will be useful to several groups of people as it touches in many different aspects. It will be useful to lawmakers as it makes recommendations on the amendment and creation of a new law. Further, it provides a framework for the creation or amendment of the law by highlighting the overwhelming need for it and the parameters the law will need to hit for it to be adequate. International human rights bodies such as the United Nations Human Rights Commission (UNHRC) will also find the study valuable since it uncovers children's rights violations that often

go unnoticed. The study also underscores the need for international laws that cut across borders to ensure children's protection worldwide. Furthermore, app developers and programmers can benefit from this study since it emphasizes the need for in-app safeguards to protect children. Finally, it will be a great benefit to all the stakeholders within a child's life, including their parents, caregivers and educators. It will be helpful by highlighting the dangers of the digital platform economy to children.

1.6 CONCEPTUAL FRAMEWORK

Children as Agents of Their Own Lives

This concept explores the capability of a child to make decisions that are for his own benefit, good or growth. It relates to the threshold at which a child is capable of consenting to ideas, the capability of a child to provide labour and the capability of a child to receive adequate compensation.

1.6.1 The Capable Child: A Child's Capacity to Provide Informed Consent

The concept of consent refers to the notion of a voluntary agreement to participate in an activity or action.²² For children, this involves their ability to understand the information presented to them, weigh the potential consequences, and make a decision to participate or not.

Kenyan legislation recognizes the child's evolving capacity to understand and evaluate information and affirms their right to participate in matters affecting them. Section 12 of The Children's Act 2001 and Article 12(1) of the United Nations Convention on the Rights of the Child both affirm the child's right to form and express their views, promoting their agency and autonomy.

Jelena Gligorijević highlights the importance of recognizing the child as a capable decision-maker and empowering them to actively participate in decision-making processes.²³ In the context of the digital platform economy, it is crucial to grant children the agency to consent to the production of content involving them. By allowing them to make informed decisions, they are aware of the

²² Black's Law Dictionary, 3rd ed.

²³ Gligorijević J, 'Children's Privacy: The Role of Parental Control and Consent' Volume 19 (2) *Human Rights Law Review*, 2019,210.

potential implications of their labour. Therefore, parental supervision and granting the child the capacity to provide informed consent are fundamental to promoting their autonomy and well-being.

1.6.2 The Capable Child; The Child as Being Able to Produce Labour

The concept of the capable child recognizes a child's ability to make informed decisions and take responsibility for their actions. This includes recognizing a child's capacity to engage in productive labour, only under the condition that it is not harmful to their health. Bronwyn Naylor in her work, has emphasized the importance of recognizing the child as a capable decision-maker and promoting their agency in decision-making processes.²⁴ She, together with Saunders, argues that children should be treated as active participants in society, with the ability to contribute to their own well-being and that of their families and communities.²⁵

The Children's Act 2001 recognizes a child's right to engage in activities that promote their development and well-being, including work that is not harmful to their health or development²⁶. The Act also affirms a child's right to be protected from economic exploitation and to receive just and favourable remuneration.

Other scholars such as Helen Haste and William Damon have argued that recognizing a child's capacity for agency and decision-making is essential for promoting their moral development and fostering a sense of responsibility and citizenship.²⁷ The children who are part of the digital platform economy are fully capable of having the actions they do considered as labour.²⁸ There is the common occurrence where what they do is dismissed due to their age but as shown above, children are fully capable of giving productive and substantial labour. In conclusion, the work they

²⁴ B Naylor 'Comparative Legal Approaches to Corporal Punishment: Regulating for Behavioural Change' in *Corporal Punishment of Children: Comparative Legal and Social Developments towards Prohibition and Beyond*. Stockholm Studies in Child Law and Children's Rights'; Vol. 4, Denmark, 2018.

²⁵ Naylor B, Saunders B.J. 'Whose Rights? Children, Parents and Discipline', *Alternative Law Journal*, 34 (2), 80-85, 2009.

²⁶ Section 12, *Children's Act* (2022).

²⁷ Damon W, 'The Path to Purpose: How Young People Find Their Calling in Life' *On Knowing Humanity Journal*, 2(2), 25, 2018.

²⁸ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 591.

do can be referred to as labour and should be accompanied by all the rights associated with the provision of labour.

1.6.3 The Capable Child; Child's Right to Fair Compensation

The concept of the capable child in recognizes a child's capacity for agency and decision-making. It further recognizes the child's ability to engage in productive labour and receive adequate compensation. As per the Children's Act 2001, a child has the right to engage in activities that promote their development and well-being, including work that is not harmful to their health or development.²⁹ The Act further confirms a child's right to be protected from economic exploitation and to receive just and favourable remuneration.

John Wall emphasizes the importance of promoting a child's agency in decision-making processes.³⁰ He argues that children should be treated as active participants in society, with the ability to contribute to their own well-being and that of their families and communities. Helen Haste argues that recognizing a child's capacity for agency is crucial for their moral development, fostering a sense of responsibility and citizenship.³¹

However, it is important to establish guidelines that protect children from economic exploitation and harmful working conditions. It is essential to ensure that any work a child engages in does not compromise their education or expose them to harmful conditions. Additionally, any work that children engage in should be age-appropriate and not interfere with their overall well-being.

Children who are part of the digital platform economy are entitled to fair compensation and as such, their age should not be a barrier to that. This concept helps bring this assertion to light as one that is in its entirety essential.

The concept of "Children as Agents of Their Own Lives" has served as a pivotal guiding principle throughout my dissertation, particularly in examining the digital platform economy's impact on children's agency, labor, and compensation. It underscores the fundamental concept of the capable

²⁹ Section 12, *Children's Act* (2022).

³⁰ Wall J, 'Ain't I a Person? :Reimagining Human Rights in Response to Children' Volume 30 (2) *Journal of the Society of Christian Ethics*, 2011, 45.

³¹ Haste H, 'Constructing the Citizen' Volume 24 (3) *Political Psychology Journal*, 2004, 425.

child, emphasizing their capacity to make informed decisions and actively participate in decision-making processes. This perspective is crucial in contexts such as the digital platform economy, where children often engage in content production. By acknowledging children as capable decision-makers, the dissertation argues for granting them autonomy through informed consent, ensuring they understand the implications of their labor. Through these discussions, the dissertation highlights the relevance and applicability of the conceptual framework in shaping policies and practices concerning children's rights and agency in the digital age.

1.7 LITERATURE REVIEW

So far, in Kenya there is scanty academic literature on the legislation or the lack thereof in the field that is the digital economy in regard to children. Some of the literature looks into the dangers of minors on social media platforms and the long- or short-term effects they may have on the subject and society.³² Gilgli further looks into the upcoming social media usage trends by adolescents in Kenya and how this impacts their behavioural growth. In his work, he expresses concern over how the continued usage will in turn affect their development.³³ This literature, although vital in the discourse surrounding children and their protection on social media, does not address the intersection between children, labour laws and social media. This dissertation in that case anticipates that it will be able to uniquely bridge this gap by going into not only the dangers that children are likely to face on social media but also investigating the need for laws that regulate the provision of labour by children within the digital space economy and compensation laws.

³² Njoroge R, 'Impacts of Social Media Among the Youth on Behaviour Change: A Case Study of University Students in Selected Universities in Nairobi, Kenya, *The University of Nairobi*, 2011, 23 <[Njoroge_Impacts+of+social+media+among+the+youth+on+behavior+change.pdf \(uonbi.ac.ke\)](#) > on 11th January 2023.

³³ Gilgli S, 'A Private Space- Examining the Use and Impact of Digital and Social Media Among Adolescents in Kenya, *Youth Policy*, 2013, 15 -< [A \(Private\) Public Space – Examining the Use and Impact of Digital and Social Media Among Adolescents in Kenya | Library | Youthpolicy.org](#) > on 11th January 2023.

1.7.1: On children working within the digital platform economy

Over the past few years, the world has seen the growth of social media platforms and with it the social media advertising industry, which has risen to a record 8-billion-dollar revenue earner.³⁴ Integral to this growth, has been the existence and the work of site users with large followings who have been dubbed influencers.³⁵ Influencers undertake marketing and advertisements of specific items or services on their pages, by generating interest in it in exchange for payment. Within the large umbrella that is influencers, there is a smaller group made up of children who also with large followings, take up the duties of marketing and advertising. Sapna Maheshwari in her work, coined the term ‘Kidfluencers’ in 2018 to refer to this young group of workers.³⁶ Kidfluencers are, according to Marin Masterson drawing from Maheshwari, children with large followings on social media and, most importantly, who receive compensation for posting sponsored content.³⁷ Maheshwari coined the term Kidfluencers to refer to children who have been posted online on different social media platforms, gaining large followings and subsequently earning money for sponsored content. The term been used in this study to refer to the same. Since it is impossible for children to be fully fledged influencers, all these activities are done with the support or under the supervision of their parents or caregivers who, consequently, are the beneficiaries of the proceeds of the work done by the children³⁸

Maeve Duggan brings out this idea perfectly in her work by highlighting that, 86% of the children who actively share content in a bid to earn from it, do so under the supervision and guidance of their parents.³⁹ Parents in these scenarios are the key players in charge of the production of the content, and its distribution and are the main recipients of any earnings that are derived from the

³⁴ Audrey Schomer, Influencer Marketing: State of the Social Media Influencer Market in 2020, BUS. INSIDER (Dec. 17, 2019, 2:07 PM), <https://www.businessinsider.com/influencer-marketingreport> [<https://perma.cc/V9ZS-HZEF>]

³⁵ Audrey Schomer, Influencer Marketing: State of the Social Media Influencer Market in 2020, BUS. INSIDER (Dec. 17, 2019, 2:07 PM), <https://www.businessinsider.com/influencer-marketingreport> [<https://perma.cc/V9ZS-HZEF>]

³⁶ Maheshwari S, ‘Online and Making Thousands, at Age 4: Meet the Kidfluencers’ *The New York Times*, 2019, 3-< [Online and Making Thousands, at Age 4: Meet the Kidfluencers - The New York Times \(nytimes.com\)](https://www.nytimes.com/2019/01/11/onlineandmakingthousandsatage4meetthekidfluencers.html) > on 11th January 2023.

³⁷ Masterson M, ‘When Play Becomes Work: Child Labour Laws in the era of “Kidfluencers”’ Volume 169 (577) *Pennsylvania Law Review*, 2021, 580.

³⁸ Duggan M, Lenhart A, Lampe C, Ellison N, ‘Parents and Social Media’ *Pew Research Centre*, 2015, 2 -< [Parents and Social Media | Pew Research Center](https://www.pewresearch.org/2015/03/05/parents-and-social-media/) >- On 5th March 2023.

³⁹Duggan M, Lenhart A, Lampe C, Ellison N, ‘Parents and Social Media’ *Pew Research Centre*, 2015, 2 -< [Parents and Social Media | Pew Research Center](https://www.pewresearch.org/2015/03/05/parents-and-social-media/) >- On 5th March 2023.

content.⁴⁰ As much as the main and most crucial part of the content is done by the child, most of the behind-the-scenes work is done by the parents who instruct and guide. This whole ‘production’ as overseen by the parents is done within their own homes, and it can look like family play, not work and is often passed as such in a bid to justify the working and the lack of compensation to the children.⁴¹

To try and rationalize the idea that what children do is not play but work due to its nature, Marin Masterson outlines the type of work done, the hours put in by the children and the compensation and benefits that they receive afterwards in her paper.⁴² Masterson states, that it is almost ridiculous for parents to try and claim that the videos, pictures or sound bites that they post of their children are done just for fun. She does this by illustrating that what children do; expound their energy for a period of time to create fun interesting videos, is work not only because there is the use of energy, but also because there is an expected compensation. Masterson firmly doubles down on the fact that whether or not the children know of the expected compensation is irrelevant to the conversation as long as they provide a form of labour.⁴³

There is a consensus among scholars that indeed the activities done by children in the digital space economy constitute work.⁴⁴ A dissenting opinion is Taylor Mooney. She states in her work, that it cannot be classified as work because the parents are simply filming what the children do daily.⁴⁵ The only difference, according to her, is that there is now a camera in front of them for a few minutes within their normal days. She states that the children are not affected in any way by this although firmly states that it is the responsibility of the parent to be aware of the concept of consent

⁴⁰ Shapiro J, ‘We Need New Labor Laws for The Digital Age’ *Gen.Medium*, 2018, 2-< [We Need New Child Labor Laws for the Digital Age | by Jordan Shapiro | GEN \(medium.com\)](#) > on 5th March 2023.

⁴¹ Ramirez R, ‘What will it Take?: In the Wake of the Outrageous “Balloon Boy” Hoax, A Call to Regulate the Long-Ignored Issue of Parental Exploitation of Children’ Volume 123 *University of Southern California Law Review*, 2011, 617.

⁴² Masterson M, ‘When Play Becomes Work: Child Labour Laws in the era of “Kidfluencers”’ Volume 169 (577) *Pennsylvania Law Review*, 2021, 500.

⁴³ Masterson M, ‘When Play Becomes Work: Child Labour Laws in the era of “Kidfluencers”’ Volume 169 (577) *Pennsylvania Law Review*, 2021, 580.

⁴⁴ Authors like Allie Volpe, Amelia Tait, Katherine Rosman, Van der Hof Simone and Valerire Verdoot, Taylor Mooney, Sapna Maheshwari, Langford, Olivia Teare, Harper Lambert, E.W Park and Madeline Holcombe have all written for major publications in agreement of the same.

⁴⁵ Mooney T, ‘Companies Make Millions Off Kid Influencers, and the Law Hasn’t Kept Up’, *Cbsn Originals*, 2019 - < [cbsnews.com](#) >- On 5th March 2023.

for children who can consent to filming. She brings forth the idea that parents are aware of what is best for their children and goes further into the concept of parental authority and its limits. This is looked at further in section 1.8.2.

1.7.2: On the role of caregivers in the production of the content and the limits of their parental consent

Most social media sites within the digital platform economy have a constant age limit for the creation of an account on the site. Instagram, Facebook and TikTok, for example, have a provision stating that people under the age of 13 years cannot legally create accounts under these platforms⁴⁶. Despite this, as mentioned there are a large number of content creators who are below the age of 13 on different sites therefore naturally, the accounts are created and run by the parents.

Parents, within the digital platform economy, play a very large role when it comes to the creation of content by Kidfluencers.⁴⁷ Julie Carrie Wong highlights the activities done by the parents in a bid to create content. She breaks it down to the specific activities done by the parents. First, there is the most obvious, which is the creation of the account on which the content will be posted. This can be done over different platforms, those where videos can be posted and those suited for pictures with captions. Additionally, the parents write scripts, prepare ‘sets’ within their homes, organize photo shoots, edit the content, upload it, and push and share the content for more engagement and followers. Apart from this, they reach out to brands or companies to partner with them or position themselves in a place to be noticed by the brands. This is most definitely not easy work, especially if the parents have full-time jobs aside from content creation.

Amanda Perelli, sets out to ask the question, why do parents and caregivers jump through all these hoops?⁴⁸ What is in it for them or their children in the long run? It has been found that the child influencer space is a very fiscally lucrative venture, especially for those that do it on a long-term basis. Research has found that content created by or featuring children under 13 years receives

⁴⁶ Section 312(3), *The Children’s Online Privacy Protection Act* (United States of America)

⁴⁷ Wong J, ‘It’s Not Play if You’re Making Money: How Instagram and YouTube Disrupted Child Labour Laws’ *The Guardian*, 2019, 1, -< [It's not play if you're making money': how Instagram and YouTube disrupted child labour laws | Social media | The Guardian](#) > on 11th January 2023.

⁴⁸ Perelli A, ‘Inside the Ryan’s World Business: Interview About YouTube, TV, Toys.’ *Business Insider*, 2020, 2, -< [Inside the Ryan's World Business: Interview About YouTube, TV, Toys \(businessinsider.com\)](#) >- On 22nd August 2023.

three times as much engagement as compared to that created by adults or children older than that.⁴⁹ Katherine Rosman notes that children, especially between the ages of two and four, are most likely to get more partnerships with brands due to the amount of content that can be pushed out consistently and the amount of engagement they get on their pages.⁵⁰ The tender age of the children who are most likely to be affected demonstrates a dire need for compensation and labour guidelines in this area.

The partnerships or advertisements gotten by these creators can earn the kidfluencers upwards of \$45,000 for a singular post.⁵¹ Even though the earnings are dependent on the number of followers on specific sites, it is still quite obvious that there is a lot of money to be earned from this space. Despite the huge amounts of money that is capable of being earned, there is the question as to whether the money justifies the disregard for the rights of children and to what extent the parents have the authority to decide to continue actively posting on behalf of their children.⁵²

Anya Kamanetz in her article explores the subject of the dangers that parents expose their children to by choosing to express their parental authority over them and posting videos and photos of their children on different sites.⁵³ She brings forth the idea that a lot of these kidfluencers are not able to consent let alone say the word 'influencer'. The children even if they can say that they are fine with being filmed, are not capable of understanding the extent to which the video or the picture is going to be shared. This brings in the question of the limits of parental consent. Legally, parents are authorized to consent on behalf of their children if the children are not able to make that decision for themselves. Are the parents still able to consent or deny consent on behalf of their children if it goes against their interest, which in this case is money? Are there limits to the consent

⁴⁹ Van Kessel P, Toor S, Smith A, 'A Week in the Life of Popular Youtube Channels' *Pew Research Centre*, 2019, 2 -< [A Week in the Life of Popular YouTube Channels | Pew Research Center](#) >-On 5th March 2023.

⁵⁰ Rosman K, 'Why Isn't Your Toddler Paying the Mortgage?', *New York Times*, 2017, 2 -< [Why Isn't Your Toddler Paying the Mortgage? - The New York Times \(nytimes.com\)](#) >- On 5th March 2023.

⁵¹ Schomer A, 'Influencer Marketing: State of the Social Media Influencer Market in 2022', *Business Insider*, 2022. 1 -< [Influencer Marketing 2022: Industry Stats & Market Research \(insiderintelligence.com\)](#) >- On 5th March 2023.

⁵² O'Neill E, 'Influencing the Future: Compensating Children in the Age of Social Media Influencer Marketing' Volume 72 *Stanford Law Review*, 2019, 3.

⁵³ Kamanetz A, 'The Problem of Sharenting' *The New York Times*, 2019, 2, -< [Opinion | The Problem With 'Sharenting' - The New York Times \(nytimes.com\)](#) >-On 5th March 2023.

or are children bound to their parental authority even when harmful to them? These are all questions that are essential when determining the need for guidelines in this regard.

Hua Hsu in her work rationalizes this by stating that parents rob children of their agency by consenting to the sharing of their videos to huge audiences.⁵⁴ This is because she states, children are not capable of fully understanding what is being consented to. The paradox in this is that despite being unable to consent, the children in question are still expected to produce labour, without guidelines regulating the manner in which they are to do so.

1.7.3: On compensation and fair labour practices for children within the digital platform economy

The child influencer space has grown over the years to be a massive cash cow for all the parties involved due to the massive profit it can generate.⁵⁵ Despite this, the party that has been placed at the biggest disadvantage is the child.⁵⁶ This, according to Allie Volpe, is because children who work within this economy, typically do not reap the fruits of their labour as it is directed towards their parents as there are not any guidelines requiring them to hand over the earnings to the children.

Katherine Rosman has highlighted that kidfluencers face a higher risk of financial exploitation due to the lack of regulations that safeguard their earnings. The dearth of legal ownership mechanisms for social media content earnings makes it challenging for kidfluencers to protect their compensation without their parents' voluntary consent.⁵⁷ Despite playing a crucial role in their channels' success, these children often lack legal rights to their hard-earned compensation and

⁵⁴Hsu, H 'Instagram, Facebook, and the Perils of "Sharenting"', *The New Yorker* 2019, 1 -< [Instagram, Facebook, and the Perils of "Sharenting" | The New Yorker](#) >- On 5th March 2023.

⁵⁵ Wong J, 'It's Not Play if You're Making Money: How Instagram and YouTube Disrupted Child Labour Laws' *The Guardian*, 2019, 1, -< [It's not play if you're making money': how Instagram and YouTube disrupted child labour laws | Social media | The Guardian](#) > on 11th January 2023.

⁵⁶ Volpe A, 'How Parents of Child Influencers Package Their Kids' Lives for Instagram', *The Atlantic*, 2019, 2 -< [Inside the Lives of Child Instagram Influencers - The Atlantic](#) >- On 5th March 2023.

⁵⁷ Rosman K, 'Why Isn't Your Toddler Paying the Mortgage?', *New York Times*, 2017, 2 -< [Why Isn't Your Toddler Paying the Mortgage? - The New York Times \(nytimes.com\)](#) >- On 5th March 2023.

sacrifice their privacy while working long hours further demonstrating an urgent need for nuanced legislation in this regard.⁵⁸

Further, kidfluencers may not qualify as "employees" of the sponsoring companies, given that the companies have limited control over the child's work.⁵⁹ Therefore, these children may not be protected under most employment statutes and are likely to lack benefits such as wage standards, workers' compensation, and the right to unionize. Their inability to exercise these rights illustrates the need for proper compensation and labour guidelines in this regard.

1.7.4 Conclusion

Despite the enormous impact scholars within this field have made on the specific question of the need for labour and compensation laws for children within the digital economy, this study is able to address some issues that theirs have not been able to.

This study is especially unique since it investigates this specific niche regarding Kenya. Most of the articles and scholarly works have their main area of consideration as their jurisdiction: the United States of America, the European Union, and the United Kingdom. The data they obtained and used was specific and suited to them. This study is done focusing on the Kenyan context, investigating data from Kenyan audiences by carrying out fieldwork on Kenyan subjects who are part of the digital platform economy and studying Kenyan law. There has been almost no Kenyan work written on the subject despite this being a large and growing field. This work is unique in that sense.

Further, this study brings a unique contribution to the discourse, where, unlike the other scholars who have the Coogan Laws as a point of comparison, this study relies purely on novelty as Kenya has almost no laws around children in the digital media space.

⁵⁸Arriagada A, 'Content Creators and Platform Evolution in the Social Media Ecology' *Sage Journals*, 2020, 13 -< ["You Need At Least One Picture Daily, if Not, You're Dead": Content Creators and Platform Evolution in the Social Media Ecology - Arturo Arriagada, Francisco Ibáñez, 2020 \(sagepub.com\)](#)> on 5th March 2023.

⁵⁹Mooney T, 'Companies Make Millions Off Kid Influencers, and the Law Hasn't Kept Up', *Cbsn Originals*, 2019 - < [\(cbsnews.com\)](#) >- On 5th March 2023.

1.8 METHODOLOGY

This study's research design is tailored to align with the objectives of investigating the need for legislation regulating children's work in the digital space economy and establishing appropriate compensation guidelines for them. The research approach consists of an examination of current laws, the identification of their limitations, and the formulation of recommendations for new legislation. This research design was chosen with the intention of ensuring the fulfilment of the research objectives by providing a structured and systematic framework for data collection and analysis that aligns closely with the specific goals and questions of the study.

In order to adequately do this, it relies on document analysis and document review. It depends on both primary and secondary sources of information. For the primary sources, it obtains information from statutory provisions within Kenyan law and international sources of law including but not limited to treaties, conventions and resolutions. In the case for the secondary sources, it uses journal articles, books and reports to be able to reach a conclusion for this study. Further, it intends to utilize a deductive method to achieve the aims of the study. The method of data collection is relevant to the study as it is in line with the second research objective on the examination of current laws.. This method, despite being useful has some pitfalls to it. One of them is that this method has a huge potential for bias arising from the authors of journal articles and books.⁶⁰ Further, this method offers limited control over the subject matter provided as there is almost full reliance on the methods and data presented by others, which may potentially limit the scope of the research. Working towards the aims of this study, it uses different methodology for different aspects of this study. This will enable the study to be thorough and well researched.

To evaluate whether the production of content by children on social media platforms in Kenya meets the legal criteria of work, as presented in the first research objective, employs the use of primary sources to assess the legislation that define work and its elements. It utilizes this method when examining the current legal framework in Kenya with respect to child labour, and protection of children's rights.

⁶⁰ Snyder H 'Literature Review as a Research Methodology: An Overview and Guidelines' Volume 104 (1) *Journal of Business Research* ' 336, 2019.

It uses comparative analysis when making recommendations for new or amended child labour laws and compensation guidelines in Kenya that can better protect children who work in the digital platform economy. This is in line with the third research objective in this study. This methodology is implemented by making a comparison of countries where there are existing laws towards this regard and evaluating how they can fit within the Kenyan context. The countries in question are the United States of America, the United Kingdom and South Africa. The use of these choice of countries is motivated by the similarity in legal systems for the United Kingdom and South Africa, and the success of the United States of America in the creation of laws in this regard. By using this method, it will be possible to better make recommendations as it will be able to assess the weaknesses in the application of these law other countries or in what ways they have excelled. This method although does present a disadvantage as it in some instances fails to make considerations for other determining factors like choice of variables and sample size that can affect the results of the study.⁶¹

1.9 CHAPTER BREAKDOWN

Chapter one forms the foundation and first part of the study. It includes the background of the study, the research objectives, the conceptual framework, and the justification of the study.

Chapter two undertakes comprehensive exploration of the current legal framework in place concerning child labour and the protection of children's rights. This chapter considers relevant international conventions and treaties that Kenya has ratified and evaluate the extent to which these international instruments have been adopted into Kenyan law. Through a thorough analysis of existing legislation, this chapter aims to examine the practical application of these laws in real-world scenarios. Moreover, this section looks into the legal gaps and shortcomings that exist within the current legislation, highlighting areas where further legal protections and amendments may be necessary to effectively safeguard the rights and well-being of children working in the digital platform economy. In this section, the paper further examines how the gaps in the laws around the digital media economy can negatively impact children working in this sector. It principally

⁶¹ Snyder H 'Literature Review as a Research Methodology: An Overview and Guidelines' Volume 104 (1) *Journal of Business Research* 334, 2019.

concentrates on the mental, physical, and emotional consequences that children operating within this sector may encounter due to the lack of regulation in this area. The analysis examines the potential harm that may arise as a result of exploitation, abuse, or other unethical practices that may manifest in the absence of clear guidelines and regulations to protect vulnerable children in the digital platform economy.

Chapter three focuses on the theory of work specifically concerning children. This chapter assesses whether the action of content creation done by children under the supervision of their caregivers meets the International and Kenyan legal threshold for work. This is done by analysing the nature and extent of the activity, the compensation or benefits received, and other relevant factors.

Chapter four proposes new or revised child labour laws and compensation guidelines in Kenya aimed at providing better protection for children working in the digital platform economy, particularly on social media platforms. The recommendations for updated or new laws takes light inspiration from countries that already have child labour laws on the entertainment industry, to tailor them to suit Kenya's specific needs.

Chapter five offers the culmination of this comprehensive study, serving as the final destination where all the gathered findings and considered recommendations coalesce harmoniously.

CHAPTER 2

AN ANALYSIS OF THE LEGAL FRAMEWORK FOR CHILD LABOUR

2.1 INTRODUCTION

This chapter aims to provide an analysis of the current legal framework in place concerning child labour and the protection of children's rights in Kenya. It delves into the relevant international conventions and treaties that Kenya has ratified and evaluate the extent to which these international instruments have been adopted into Kenyan law. Through an analysis of existing legislation, this chapter intends to examine the practical application of these laws in real-world scenarios. Furthermore, it highlights the legal gaps and shortcomings that exist within the current legislation, emphasizing areas where further legal protections and amendments may be necessary to effectively safeguard the rights and well-being of children working in the digital platform economy.

2.2 KENYAN LEGAL FRAMEWORK

Kenyan law in regard to protection of children is quite comprehensive in that there are several pieces of legislation that outrightly mention the protection of children from various forms of harm. There exists The Constitution, and The Children's Act .⁶²

These pieces of legislation specifically speak to the protection of children against physical abuse and labour. The Constitution, under Article 53 (1) (d), provides for the protection of children from abuse, neglect, harmful cultural practices, all forms of violence, inhuman treatment and punishment, and hazardous or exploitative labour.⁶³ This provision in the Kenyan Constitution, works as a guiding principle toward the different pieces of legislation in Kenya that specifically touch on children. In the context of child work and child abuse, it makes a provision that protects children from labour that can be considered exploitative or hazardous. The notion of exploitative labour refers to work conditions that deny the effective exercise of fundamental rights, which endanger life, health, freedom, human dignity and safety of workers.⁶⁴ This provision in the

⁶² Article 53, *Constitution of Kenya* (2010); Section 10, *Children's Act* (2022).

⁶³ Article 53, *Constitution of Kenya* (2010).

⁶⁴ McCann D, Unacceptable forms of work: A global and comparative study, *International Labour Office*, 2015.

Constitution seeks to protect children from these conditions in the actions they undertake in their daily lives.⁶⁵

The other piece of legislation that ensures the protection of children from abuse and labour is the Children's Act (2022). The Children's Act, under section 2, provides a comprehensive definition of child labour as work done by a child which is exploitative, hazardous or otherwise inappropriate for a person of that age and places at risk the child's well-being, education, physical or mental health, or spiritual, moral, emotional or social development.⁶⁶ This section is essential in identifying and creating a core difference between work that is acceptable for children and what qualifies as an abuse of their rights. Additionally, the Children's Act, under Section 18 provides for the protection of children from child labour. It states under subsection 3 that, no person shall use, procure or offer a child for slavery or practices similar to slavery, including begging, debt bondage, servitude, or forced or compulsory labour or provision of personal services, whether or not for gain.⁶⁷

This provision specifically ensures the protection of children from forced forms of labour. Within the same section under subsection (4), the Act makes a provision prescribing the kind of work that children may be engaged in and the age limits on these types of work. It provides that Cabinet Secretary responsible for matters relating to labour in consultation with the Cabinet Secretaries responsible for matters relating to children affairs and education, make Regulations prescribing the terms and conditions of work and the kind of work that may be engaged in by children.⁶⁸

The age categories in which children may engage in work of specific types under the act are; children who have attained the age of thirteen but have not attained the age of sixteen years; and children who have attained the age of sixteen but have not attained the age of eighteen years. Despite this, the Act has a precursor that requires that the regulations shall take account of the best interest of the child. This implies that whatever the regulations may bring forward, they should always be in the best interest of the child.⁶⁹

⁶⁵ Article 53, *Constitution of Kenya* (2010).

⁶⁶ Section 2, *Children's Act* (2022).

⁶⁷ Section 18, *Children's Act* (2022).

⁶⁸ Section 18, *Children's Act* (2022).

⁶⁹ Section 18, *Children's Act* (2022).

The Employment Act has very seemingly comprehensive provisions on the protection of children from child labour as compared to other acts of parliament in the country. Part VII of the Act provides for the specifics around children in employment and the guidelines around the type of work that is acceptable for children of a certain age to take part in.⁷⁰ It further makes a provision for the repercussions that may be faced by those who fail to adhere to the guidelines when taking a child into gainful employment.⁷¹ The Employment Act is the most thorough piece of legislation when it comes to the regulation of the employment of children.

Within Kenyan laws, the existing legislation and case law fail and are unsuccessful in laying out the modalities of children who take part in the digital platform economy.

2.2 INTERNATIONAL CONVENTIONS AND TREATIES

Apart from the local legislation, Kenya has adopted several other International Conventions touching on the protection of children from child labour. Some of the key international conventions and treaties related to child labour that Kenya has ratified, including the International Labour Organization (ILO) Convention No. 182 on the Worst Forms of Child Labour and the United Nations Convention on the Rights of the Child (CRC).⁷² Kenya, under these conventions and treaties has made obligations and commitments which will be examined under the lens of child labour in the digital platform economy.⁷³

Kenya is a signatory to ILO's Convention No. 8 on the Worst Forms of Child Labour which demonstrates the country's commitment to the elimination of the worst forms of child labour, including slavery, child prostitution, use of children in criminal activities, and dangerous labour.⁷⁴ This convention, in its articles, provides for sixteen distinct guidelines surrounding the worst forms

⁷⁰ Section 56, *Employment Act* (2007).

⁷¹ Section 64, *Employment Act* (2007).

⁷² Introduction to the Kenya Law Treaties and Agreements Database -< [NCLR Home Page | Treaties Database \(kenyalaw.org\)](#) >- on 11th January 2023

⁷³ Introduction to the Kenya Law Treaties and Agreements Database -< [NCLR Home Page | Treaties Database \(kenyalaw.org\)](#) >- on 11th January 2023

⁷⁴ Article 1, *International Labour Organization's Convention No. 8 on the Worst Forms of Child Labour*, 17th June 1999, No. 182.

of child labour. Enshrined within the sixteen articles, is what the International Labour Organisation considers the most extreme forms of child labour.⁷⁵

Kenya is a party to the United Nations Convention on the Rights of the Child (CRC), which is a landmark international treaty that outlines the rights and protections afforded to children.⁷⁶ In 2000, Kenya signed, but has not yet acceded to, the UN CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. However, during the reporting period, ratification of the Optional Protocol was formally introduced for consideration by the National Assembly, marking a significant step towards ratification.⁷⁷ The CRC provides a comprehensive framework for the protection of children's rights, including their right to be protected from economic exploitation and hazardous work.⁷⁸ Under the CRC, Kenya has committed to ensuring that children are protected from all forms of child labour, and it obligates the government to take appropriate measures to prevent such exploitation.⁷⁹

In light of Kenya's commitments under these international conventions and treaties, there is an obligation to align domestic legislation and regulations with these international standards. Despite the massive success of the application of these laws to the Kenyan scenario in ensuring the protection of children from different forms of child labour, there still exists legal gaps specific to children in the digital platform economy within the international space that Kenya is a signatory to.

⁷⁵ Article 1, *International Labour Organization's Convention No. 8 on the Worst Forms of Child Labour*, 17th June 1999, No. C182.

⁷⁶ Introduction to the Kenya Law Treaties and Agreements Database -< [NCLR Home Page | Treaties Database \(kenyalaw.org\)](#) >- on 11th January 2023.

⁷⁷ *Policies to Prevent and Tackle Labour Exploitation and Forced Labour in Europe*, ILO, 2021.

⁷⁸ Article 32, *Convention on the Rights of the Child*, 20th November 1989, General Assembly Resolution 44/25.

⁷⁹ Introduction to the Kenya Law Treaties and Agreements Database -< [NCLR Home Page | Treaties Database \(kenyalaw.org\)](#) >- on 11th January 2023.

2.3 PRACTICAL APPLICATION OF LAWS

The existing legal framework has, to a significant degree, succeeded in safeguarding children from child labour and its related activities.⁸⁰ The Kenyan government has achieved this through a dual approach: firstly, through the diligent application of pertinent legislation in instances of child labour adjudicated in court, and secondly, by rigorously enforcing these laws to ensure the safeguarding of children through various governmental agencies.

The court system in Kenya has been instrumental in upholding the laws that protect children from child labour, through comprehensively interpreting the law. The nuanced perspective adopted by the court systems in interpreting child labour laws has ensured robust protection for children in the event they become entangled in legal proceedings.⁸¹ A great illustration showcasing the effective jurisprudence of the Kenyan courts is evident in the legal precedent set by the case of *Felister Nduku Nzaku v Joyce Wairimu Gitau*.⁸² The court established that customary practices do not absolve individuals from compliance with statutory provisions. In this particular case, the defendant had engaged the services of a girl under the age of 15 as domestic help, asserting that such practices were commonplace within the country. Nevertheless, the judiciary successfully administered justice on behalf of the minor, unequivocally categorizing the defendant's actions as constituting child labour.

The country has also protected children through several enforcement mechanisms. There exist different agencies within the government have been tasked with the protection of children from child labour.⁸³ The Ministry of Labour, conducts labour inspections and enforces labour laws, including those related to child labour. The Office of the Director of Public Prosecutions additionally directs activities to promote awareness and withdraw children from child labour through its Child Labor Division. It further enforces laws through the prosecution of criminal

⁸⁰ Onyango P, 'Country-wide case studies: Kenya – A focus on ILO/IPEC and the Time Bound Programme' in Scanlon J, (eds) *Child Labour; A Public Health Perspective*, Oxford University Press, United States, 2010, 239.

⁸¹ Ooko-Ombaka O, 'The Law and Labour in Kenya' Volume 13, *Journal of East African Research and Development* 1983, 175.

⁸² *Felister Nduku Nzaku v Joyce Wairimu Gitau* (2016) eKLR.

⁸³ U.S Department of Labour, *Findings on the Worst Forms of Child Labour- Kenya*, 2021, 5.

offenses, including labour-related offenses. The Office of the Director of Public Prosecutions directs the National Police Service to investigate cases.⁸⁴

The laws have also been instrumental in protecting children in the digital space to a certain extent. Section 2 of the Children's Act protects children against certain content that exists in the digital space. It states that it constitutes child abuse to engage in the exposure of a child to emotionally, traumatic and age-inappropriate content, information and photos of any kind and the use or exposure of a child in, electronic or online, platforms for purposes of prostitution, pornography or any other unlawful sexual practice.⁸⁵ This provision is explicitly designed to safeguard children from any digital content that may pose harm or exploitation. It effectively guarantees the protection of minors in the digital realm by addressing and mitigating the presence of harmful material therein.

Notwithstanding the existence of this mechanism, it falls short of providing comprehensive protection to children within the entirety of the digital space. It confines its protective scope solely to information present therein, thus rendering its intended effectiveness limited, as it does not holistically address the entirety of the digital environment, but rather approaches it in fragmented segments.

2.4 LEGAL GAPS AND SHORTCOMINGS

As demonstrated, Kenya has an abundance of laws that are meant to protect its children from child labour. Despite this, the law still has some gaps and shortcomings that expose children to a significant number of vulnerabilities. One of the main challenges facing the law is its lack of evolution to keep pace with the rapidly changing modern world.⁸⁶ While the legal framework was designed to address traditional forms of child labour, it has struggled to adapt to the nuances and complexities of the digital age.

⁸⁴ U.S Department of Labour, *Findings on the Worst Forms of Child Labour- Kenya*, 2021, 5.

⁸⁵ Section 2, *Children's Act*, (2022).

⁸⁶ Mureithi M, 'The Internet Journey for Kenya: The Interplay of Disruptive Innovation and Entrepreneurship in Fuelling Rapid Growth' in Ndemo B, (eds) *Digital Kenya. Palgrave Studies of Entrepreneurship in Africa*, Macmillan, London.

A noteworthy gap in the current legal framework lies in its failure to anticipate and effectively contend with the emergence of children as active participants in the digital platform economy, encompassing various forms of content creation and online engagements. The existing legal provisions, particularly those established under the Children's Act of Kenya and child labour regulations, were indeed well-gearred to predict and combat scenarios where children might inadvertently encounter harmful material while navigating the digital landscape.⁸⁷ However, they have conspicuously lagged behind in recognizing and regulating the growing phenomenon of children actively shaping and participating in the digital ecosystem themselves.

Due to the fact that it exposes children to a wholly new set of risks and difficulties that were not considered when these rules were first drafted, this specific omission assumes paramount importance. Children now easily participate in content creation, social media activities, online gaming, and a variety of other digital interactions thanks to the digital platform economy.⁸⁸ In addition to giving kids some agency and autonomy, these activities also put them at risk of being exploited, having their privacy violated, and suffering psychological harm, all of which call for a specific legal and protective framework.

The fact that the digital world is global in scope and transcends regional boundaries only serves to exacerbate this problem and make regulation of it a difficult task with many facets.⁸⁹ The current legal system leaves a glaring gap in addressing the changing environment of digital labour and participation as it primarily focuses on specific cases of child labour in traditional industries like agriculture and industry. As a result, the legal structure frequently is not equipped to deal with situations in which youngsters are engaged in digital work, such as producing monetized material, engaging in influencer marketing, or taking part in virtual economies in online games.

Therefore, while the current legal provisions in Kenya have been instrumental in safeguarding children against certain online risks, there is an undeniable need for a comprehensive and forward-looking legal framework that recognizes and addresses the unique challenges posed by the digital platform economy. This framework should encompass proactive measures to ensure that children

⁸⁷ Section 2, *Children's Act* (2022).

⁸⁸ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 584.

⁸⁹ Gagliese J, 'The Rise of the Influencer: Predictions on Ways they'll change the World' *Forbes*, 2022,2.

engaging in digital activities are not exploited, that their rights are upheld, and that their online experiences are safe, secure, and conducive to their overall well-being. Such legislative evolution is vital to effectively protect and nurture the digital generation's growth and development while mitigating the potential harms they may encounter in the ever-expanding digital universe.

2.5 IMPACT ON CHILDREN IN THE DIGITAL PLATFORM ECONOMY

2.5.1 Mental, Physical, and Emotional Consequences

The lack of regulation of the area that is the digital platform economy has adverse effects to those who would be affected most; the children. The effects of the lack of regulation span across mental, physical and emotional effects to the children.⁹⁰ The main issues that present themselves from the lack of regulation of children who work in the digital platform economy are the lack of financial protection, the health risks associated with interactive media and extreme loss of privacy.⁹¹

The risk of financial exploitation facing children in the digital space economy has a dual nature, as they are susceptible to exploitation both by their parents and the companies that may sponsor them for advertising purposes.⁹² Children in these situations are particularly vulnerable to financial exploitation because there are currently no regulations safeguarding their earnings. Unless their parents willingly consent, there is presently no mechanism in place to legally grant them ownership of the income generated from their social media content. These children, who play a pivotal role

⁹⁰ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 593.

⁹¹ Maheshwari S, 'Online and Making Thousands, at Age 4: Meet the Kidfluencers' *The New York Times*, 2019, 3-<
[Online and Making Thousands, at Age 4: Meet the Kidfluencers - The New York Times \(nytimes.com\)](https://www.nytimes.com/2019/01/11/us/online-and-making-thousands-at-age-4-meet-the-kidfluencers.html) > on 11th January 2023.

⁹² Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 593.

in the success of their online channels, often sacrifice their privacy and invest significant hours of labour each week without possessing any legal entitlement to their compensation.⁹³

Furthermore, these children are typically not classified as "employees" of the sponsoring companies since the companies usually exert little to no control over the child's work.⁹⁴ Consequently, these children may not fall under the purview of most employment statutes, leaving them without crucial protections such as wage standards, workers' compensation, and the right to unionize as defined by the Labor Relations Act.⁹⁵ The absence of laws stipulating the precise mode of remuneration exacerbates the vulnerability of children working in the digital space economy.

The public nature of social media and the industry's reliance on peer approval also pose health risks to children engaged in the digital platform economy.⁹⁶ Given the novelty of this industry, there is limited information available regarding the psychological effects of child and adult influencing, apart from anecdotal accounts.⁹⁷ While studies have suggested that general social media usage is associated with negative body image, low self-esteem, and depression among young people, there is no conclusive research on the impact of social media fame on child stars.⁹⁸ However, both child and adult influencers are exposed to the loss of privacy and the potential for humiliation. Moreover, both portray themselves as authentic, which can be detrimental to children who are still shaping their self-identity while subject to criticism about their persona from a large audience. The extreme loss of privacy experienced by social media influencers presents a unique threat to the mental health and physical safety of children involved in this industry.⁹⁹

⁹³ Wong J, 'It's Not Play if You're Making Money: How Instagram and YouTube Disrupted Child Labour Laws' *The Guardian*, 2019, 1, -< [It's not play if you're making money': how Instagram and YouTube disrupted child labour laws | Social media | The Guardian](#) > on 11th January 2023.

⁹⁴ Section 56, *Employment Act* (2007).

⁹⁵ Section 4, *Labour Relations Act* (2007)

⁹⁶ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 595.

⁹⁷ Firth J, 'The Online Brain: How the Internet May Be Changing Our Cognition' Volume 2 *World Psychiatry*, 2019, 119.

⁹⁸ Duggan M, 'Experiencing Online Harassment' *Pew Research Centre*, 11th July 2017, 6.

⁹⁹ Duggan M, Lenhart A, Lampe C, Ellison N, 'Parents and Social Media' *Pew Research Centre*, 2015, 2 -< [Parents and Social Media | Pew Research Center](#) >- On 5th March 2023.

Children actively participating in the digital platform economy frequently face significant pressure to create, produce, or perform. The pursuit of online success can lead to high levels of stress and anxiety, with children feeling compelled to engage constantly with their digital audiences.¹⁰⁰ Moreover, cyberbullying, online harassment, and negative comments can have severe psychological impacts on young minds. The absence of legal protections can exacerbate these mental health challenges, leaving children without adequate support or avenues for recourse.¹⁰¹

In conclusion, the lack of regulation within the digital platform economy has far-reaching adverse effects, particularly on children who are the most vulnerable in this context. These repercussions encompass mental, physical, and emotional domains, underscoring the urgent need for regulatory measures.

2.5.2 Exploitation, Abuse, and Unethical Practices

The lack of legal regulation in the digital platform economy has had real world consequences where unfortunately children were at the receiving end of exploitation, abuse, or other unethical practices that manifest in the absence of clear guidelines and regulations.¹⁰² A prolific example is the Hobson family case where, Machel Hobson, a 47-year-old woman ran a YouTube channel called Fantastic Adventures with five of her seven adopted children. The channel had over 700,800 followers and 242 million views.¹⁰³ In 2019, she was charged with abuse of her children through beating, pepper spraying, molestation and starving. The alleged motivation behind all the horrid abuse was the YouTube channel that she ran. When shooting content for the channel, the mother would employ extremely harsh disciplinary measures when the children would either forget their lines or not participate in a way she wanted them to.¹⁰⁴

¹⁰⁰ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 595.

¹⁰¹ Mooney T, 'Companies Make Millions Off Kid Influencers, and the Law Hasn't Kept Up', *Cbsn Originals*, 2019 -< ([cbsnews.com](https://www.cbsnews.com)) >- On 5th March 2023.

¹⁰² Wong J, 'It's Not Play if You're Making Money: How Instagram and YouTube Disrupted Child Labour Laws' *The Guardian*, 2019, 1, -< [It's not play if you're making money: how Instagram and YouTube disrupted child labour laws | Social media | The Guardian](https://www.theguardian.com/social-media/2019/jan/11/instagram-youtube-child-labour-laws) > on 11th January 2023

¹⁰³ Croft J, 'YouTube Mom Pleads Not Guilty to Abusing Children' CNN, 29th March 2019, -< [YouTube mom pleads not guilty to abusing children | CNN](https://www.cnn.com/2019/03/29/entertainment/youtube-mom-pleads-not-guilty-to-abusing-children/index.html) >- on 11th September 2023

¹⁰⁴ 'YouTube Mom Charged with 30 Counts of Child Abuse' CBS News, 26th March 2019, -< [Machelle Hobson charged: YouTube mom behind Fantastic Adventures channel indicted on 30 counts of child abuse - CBS News](https://www.cbsnews.com/news/youtube-mom-charged-30-counts-child-abuse/) >- on 11th September 2023.

This is just one of the few examples of abuse that children have gone through at the cost of content creation. The abuse at times can manifest itself in seemingly harmless pranks that ultimately end up having real effects on the mental well-being of the child.¹⁰⁵ In the Kenyan case, there are almost no reported cases on abuse of children in the digital platform economy despite having a large number of children working in the space.

The lack of regulation in the industry has led and will lead to potentially dangerous situations for the children who are in the industry.

2.6 CONCLUSION

Chapter two has provided an in-depth exploration of the current legal framework surrounding child labour and children's rights in Kenya. It has examined the international conventions and treaties ratified by Kenya, the integration of these instruments into Kenyan law, the practical application of existing legislation, and identified legal gaps and shortcomings. Furthermore, it has analysed the potential consequences of these gaps on children working in the digital platform economy, emphasizing the need for further legal protections and amendments to ensure the well-being and rights of these children are effectively safeguarded. Chapter 3 continues the discussion by focusing on the theory of work specifically concerning children. This chapter assesses whether the action of content creation done by children under the supervision of their caregivers meets the International and Kenyan legal threshold for work.

¹⁰⁵ Croft J, 'YouTube Mom Pleads Not Guilty to Abusing Children' CNN, 29th March 2019, -< [YouTube mom pleads not guilty to abusing children | CNN](#) >- on 11th September 2023.

CHAPTER 3

CONCEPTUALIZATIONS OF WORK IN COMPARISON TO ACTIVITIES UNDERTAKEN BY CHILDREN IN THE DIGITAL MEDIA SPACE IN KENYA.

3.1 INTRODUCTION

This chapter delves into a pivotal question that reverberates at the intersection of technology, labour, and children's rights: Does the production of content by children on social media platforms in Kenya meet the legal criteria of work as defined by Kenyan laws and international legal instruments? The exploration of this question necessitates a comprehensive analysis that focuses on three key dimensions: first, understanding the definition of work; second, identifying the key aspects inherent to work; and third, assessing whether the activities of children on digital platforms can be categorized as work.

This chapter significantly contributes to addressing the second research question by providing perspective on the need for the recognition of children's activities on digital platforms as genuine forms of work. Such recognition holds paramount importance as it forms the bedrock for the development of legislation that can effectively regulate this burgeoning sector, encompassing aspects such as compensation, working hours, and other essential modalities.

The first section of this chapter delves into an examination of the definition of work in Kenya, scrutinizing the diverse conceptualizations of this term across different global contexts. Furthermore, it provides insight into the interpretations offered by the international legal community. The second part systematically dissects the fundamental criteria necessary for categorizing specific activities as work, distinguishing them from routine, everyday endeavours. The final section of this chapter, provides a comprehensive analysis of all preceding discussions that concludes in an assessment of whether the activities of children in the digital platform sphere meet the criteria to be considered as work, taking into account all aspects in the definition of work. This critical evaluation will provide essential clarity on the status of children's digital activities,

shedding light on whether they indeed fulfil the comprehensive criteria associated with the concept of work.

3.2 DEFINITION OF WORK

Work can be generally and basically defined as an activity, such as a job, that a person uses physical or mental effort to do, usually for money.¹⁰⁶ This definition implies that there are basic tenets to the concept of work. One, that there must be an exertion of effort and second, that there is usually a form of compensation or exchange upon completion of the said work. There have been several conceptions of the term work, its meaning and meaningfulness, but the two themes in which there has been little to no divergence in terms of views, are those of exertion of effort and exchange upon completion.¹⁰⁷

Looking at work through a legal lens, the conceptualization and implications of work in varied in different areas of law. In the Kenyan context for example, work manifests itself in different areas of law like; labour and employment law, intellectual property law, contract law, criminal law, real estate law, family law and succession. Within these different areas, we are able to see different perspectives of work to further understand its significance in the society. In reference to this dissertation, the conceptualizations of work that are applicable are; labour and employment law, intellectual property law, contract law and children's law. These areas of law are relevant to the topic at hand as they directly deal with the subject matter.

3.2.1 Labour and Employment Law

Labour and Employment Law are basically the guidelines where the activities of those employed or performing labour to achieve a certain end are contained.¹⁰⁸ In Kenya, these activities are protected and regulated by several pieces of legislation; The Employment Act and The Labour Relations Act. These two acts bring forward work as, the activities and tasks performed by employees in exchange for compensation.¹⁰⁹ It encompasses a wide range of duties and responsibilities carried out within an employment relationship. Employment contracts and labour

¹⁰⁶ Cambridge Dictionary, 4th ed.

¹⁰⁷ Casey C, *Work, self and society: After industrialism*, 1st ed, Routledge, London, 1995.

¹⁰⁸ Section 2, *Employment Act* (2007); Section 2, *Labour Relations Act* (2007).

¹⁰⁹ Section 7, *Employment Act* (2007); Section 2, *Labour Relations Act* (2007)

laws often define the scope of work, working conditions, and hours.¹¹⁰ The production of content by children can be referred to as a form of gig work, which refers to a type of employment where individuals perform short-term or freelance tasks, often through digital platforms or apps, without long-term commitments to a single employer.

3.2.2 Intellectual Property Law

Intellectual Property law deals with laws to protect and enforce rights of the creators and owners of inventions, writing, music, designs and other works, known as the "intellectual property." There are several areas of intellectual property including copyright, trademarks, patents, and trade secrets.¹¹¹ Intellectual property rights are enshrined in three bodies of legislation in Kenya; The Trademarks Act, The Copyright Act and The Industrial Property Act.¹¹² Work under the Copyright Act is defined as literary, musical, artistic, dramatic work, audio visual work and sound recordings and includes translations, adaptations, new versions, or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character.¹¹³ The Trademarks Act and the Industrial Property Act do not explicitly define work but make reference to it in their provisions. Work in this scenario is basically in reference to activities in which people undertake to produce a unique item, in which they can have monopoly rights over.

3.3.3 Contract Law

Contract law refers to the body of legal knowledge that encompasses the origin, enforcement and enactment of all legal contracts and agreements.¹¹⁴ Contract law in Kenya is regulated by the Law of Contract (Cap 23) where the guidelines along contracts, their performance and implementation are contained.¹¹⁵ In contract law, work refers to the performance of specific tasks or obligations as

¹¹⁰ Section 5, *Employment Act* 2007)

¹¹¹ Jackson J, 'Intellectual Property Law' Vol 2 GeorgeTown University Journal, 2016, 2.

¹¹² Section 2, *Trademark Act* (2007); Section 2, *The Copyright Act* (2012); Section 2, *The Industrial Property Act* (2012).

¹¹³ Section 2, *Trademarks Act* (200).

¹¹⁴ Allen O, 'Basic Principles of English Contract Law' *Advocates for International Development*, 2010, 5 - <[Microsoft Word - english-contract-law.doc \(a4id.org\)](https://www.a4id.org/)>-- on 27th September 2023.

¹¹⁵ Section 3, *Law of Contracts* (2021).

outlined in a contract. Contracts often specify the nature of the work to be performed, the timeline, compensation, and other relevant terms and conditions. Work in this case is therefore based on and hinged on the requirements of a specific contract.

3.3.4 Children's Law

This is law in regard to the protection of children. In Kenya, the main source of these laws is contained in the Children's Act (2022).¹¹⁶ Here, the definition of work takes a different twist as it refers to any economic activity or employment, including tasks that are carried out for pay, compensation, or profit. It can encompass a wide range of activities, such as labour, services, or any work-related tasks, whether they are formal or informal.¹¹⁷

The Children's Act sets an age limit and establish conditions under which children can engage in work, emphasizing the protection of children's rights, their health, safety, education, and overall well-being.¹¹⁸ The Act further specifies restrictions on the types of work that children can be involved in, the maximum number of working hours, and the minimum age at which they can be employed.¹¹⁹

Apart from the definitions of work that have been brought about by Kenyan legislation, work has also been defined by international bodies. One of the primary international bodies addressing labour-related issues is the International Labour Organization (ILO). The ILO has defined work as any activity performed by persons of any sex and age to produce goods or to provide services for use by others or for own use.¹²⁰

3.3 FUNDAMENTAL ASPECTS OF WORK

As mentioned under Section 3.2 the two main aspects of work are the exertion of effort and compensation or exchange of materials upon the completion of the work. These aspects not only define what work is but also shape our understanding of its significance in human society and individual lives.

¹¹⁶ Section 10, *Children's Act* (2022).

¹¹⁷ Section 18, *Children's Act* (2022).

¹¹⁸ Section 2, *Children's Act* (2022).

¹¹⁹ Section 18, *Children's Act* (2022).

¹²⁰ Gammarano R, 'Work and Employment are not Synonyms' ILOSTAT, 2019, 5.

3.3.1 Exertion of Effort

Work, at its core, involves the exertion of physical, mental, or both types of effort to accomplish a task or achieve a goal.¹²¹ This exertion can manifest in various forms, such as physical labour, cognitive activities, creative endeavours, or emotional investments. The exertion of effort in work represents an individual's willingness and ability to contribute their time, energy, skills, and knowledge to produce something of value.¹²²

The exertion of effort reflects the agency of individuals in shaping their environment and improving their circumstances.¹²³ Work is a testament to human capability and a means through which individuals can assert their skills and talents. It allows humans to be masters of their own agency.¹²⁴ Existentialists like Jean-Paul Sartre emphasize the idea of individual responsibility and choice. In the context of work, the exertion of effort reflects an individual's agency and freedom to engage in purposeful actions.¹²⁵ Further, effort-based work encompasses a wide spectrum of activities, from manual labour to intellectual pursuits. This diversity highlights the versatility and adaptability of work to meet various human needs and aspirations.¹²⁶

From a utilitarian perspective, the exertion of effort can be seen as a means to achieve greater overall happiness or utility. Work is viewed as a necessary component of society to produce goods and services that benefit the majority.¹²⁷ Philosophers like Jeremy Bentham and John Stuart Mill would consider the balance between effort and utility in determining the morality of work.¹²⁸

Karl Marx's philosophy centres on the labour theory of value, where the exertion of effort (labour) is the source of value in a capitalist society. Marxists argue that the unequal exchange of labour

¹²¹ Casey C, *Work, self and society: After industrialism*, 1st ed, Routledge, London, 1995.

¹²² Rosso D, 'On the Meaning of Work: A Theoretical Integration and Review' Vol 30 *Research in Organizational Behaviour*, 2010, 94.

¹²³ Bandura A, 'Human agency in social cognitive theory' Vol 44, *American Psychologist*, 1989, 1175–1184.

¹²⁴ Rosso D, 'On the Meaning of Work: A Theoretical Integration and Review' Vol 30 *Research in Organizational Behaviour*, 2010, 102.

¹²⁵ Reynolds J, 'Jean-Paul Sartre' *The Stanford Encyclopaedia of Philosophy*, 2022, 25.

¹²⁶ Amabile T, Hill K, Hennessey B, 'The work preference inventory: Assessing intrinsic and extrinsic motivational orientations' Vol 66 (5), *Journal of Personality and Social Psychology*, 1994, 950–967.

¹²⁷ Mac Rae D, 'Utilitarian Ethics and Social Change' Vol 78 (3), *Ethics*, 1968, 195.

¹²⁸ Mac Rae D, 'Utilitarian Ethics and Social Change' Vol 78 (3), *Ethics*, 1968, 192.

for compensation can lead to exploitation.¹²⁹ This aspect of work relates to issues of class struggle and social justice.

The exertion of effort is fundamental to the nature of work. It represents the physical, mental, and emotional energy individuals invest in their tasks. This aspect highlights the intrinsic value of work, as it often involves the application of skills, creativity, and dedication.¹³⁰ From a philosophical standpoint, it raises questions about the meaning and purpose of work. For some, work is not just a means to an end but a source of fulfilment and self-actualization, echoing existentialist and virtue ethics perspectives.¹³¹

3.3.2 Compensation or Exchange of Materials

Work often involves an exchange or compensation mechanism, where individuals receive something in return for their efforts. This compensation can take the form of monetary payment, goods, services, recognition, or even intangible rewards like job satisfaction or a sense of contribution to society.¹³² Consideration, which is a fundamental principle in contract law, refers to something of value that is exchanged between parties, forming the basis for a valid contract. This can be viewed as another form of compensation in this area of law. The concept of compensation underscores the idea that work serves a purpose beyond mere exertion; it is a means to meet one's needs and aspirations.

This concept is further brought forward in Kenyan law through the Employment Act which provides for the protection of the wages of employees. Section 17 of the Employment Act provides for the right of employees to receive a form of compensation as a form of exchange for the services offered.¹³³

¹²⁹ Reiman J, 'Exploitation, Force, and the Moral Assessment of Capitalism: Thoughts on Roemer and Cohen' Vol 16 (1), *Philosophy and Public Affairs*, 1987, 5.

¹³⁰ Ashforth, B. E., & Kreiner, G. E. (1999). "How can you do it?": Dirty work and the challenge of constructing a positive identity. *Academy of Management Review*, 24(3), 413–434.

¹³¹ Reiman J, 'Exploitation, Force, and the Moral Assessment of Capitalism: Thoughts on Roemer and Cohen' Vol 16 (1), *Philosophy and Public Affairs*, 1987, 10.

¹³² Lazear E, 'Compensation and Incentives in the Workplace' Vol 32 (3), *Journal of Economic Perspectives*, 2018, 199.

¹³³ Section 17, *Employment Act* (2007).

The exchange of materials or compensation in work is at the heart of economic philosophy. It raises questions about fairness, distribution of resources, and the nature of value. Philosophers such as John Rawls have tackled the concept of justice in the context of work and compensation. Rawls' theory of justice as fairness emphasizes the importance of fair distribution, ensuring that even the least advantaged members of society benefit from economic exchanges.¹³⁴

3.3.3 Relevance to the Conceptualization of Work

These two aspects of work are vital and necessary in the conceptualization of work as they provide the cornerstone of what can be considered work. Compensation in the form of wages or income is the bedrock of modern economic systems. Work is a cornerstone of capitalism, where individuals are compensated for their labour, enabling them to participate in economic activities. The exchange of materials or compensation establishes a social contract between individuals, organizations, and society at large.¹³⁵ This contract outlines the reciprocal obligations and expectations related to work.

Compensation serves as a motivational factor. It incentivizes individuals to put in effort, as they anticipate rewards for their work. This aspect of work is central to understanding productivity and employee engagement.¹³⁶

In conclusion, the exertion of effort and compensation or exchange of materials are two inseparable aspects of work. Together, they define the nature and significance of work in human society. Work is not only a means of economic survival but also a vehicle for personal growth, self-expression, and societal progress. These aspects underscore the complexity and multifaceted nature of work as a concept that influences various aspects of our lives, from economics to culture to individual well-being. In summary, the statement about the two main aspects of work, the exertion of effort and compensation or exchange of materials, invites philosophical inquiry into various areas of thought. It touches upon existentialism, utilitarianism, Marxism, economic philosophy, ethics, justice, virtue ethics, and the concept of alienation. These philosophical perspectives help us

¹³⁴ Dick G, 'What Money is and Ought to Be', Vol 6 (2), *Journal of Social Ontology*, 2020, 295.

¹³⁵ Samuels W, Mercurio N. 'The Role of the Compensation Principle in Society' In: Samuels s, W.J., Schmid, A.A. (eds) *Law and Economics*, Springer, Dordrecht, 211-235.

¹³⁶ Lazear E, 'Compensation and Incentives in the Workplace' Vol 32 (3), *Journal of Economic Perspectives*, 2018, 199.

examine the nature of work, its ethical implications, and its role in shaping human existence and society.

3.4 ACTIVITIES OF CHILDREN IN THE DIGITAL MEDIA SPACE

AS WORK

As demonstrated in section 3.3, there is a precise definition of work and specific aspects that need to be qualified in order for an activity to be regarded as work. Therefore, this brings about the question, do the activities of children in the digital media space qualify as forms of work? The qualification of this is important as it will assist in determining in whether children in this space are entitled to all the benefits and protections accorded to people who legally participate in the labour market. This section utilizes both the definition of work and the aspects of work that have been discussed in Section 3.2 and 3.3.

Looking at the relationship between children as content creators in the digital media space, it is proper to apply the definition of work as provided by ILO. According to the ILO, work encompasses any activity performed by persons of any sex and age to produce goods or provide services for use by others or for one's own use.¹³⁷ This definition is inclusive and does not specify an age limit for individuals engaging in work-related activities. Furthermore, Cambridge Dictionary defines work as an activity, such as a job, that a person uses physical or mental effort to do, usually for money.¹³⁸ This definition emphasizes the elements of effort and monetary compensation, which align with the two primary aspects of work previously discussed.

When considering children in the digital media space, it is evident that they are actively engaged in activities that align with the ILO's definition of work. Many children create digital content, such as videos, artwork, and written content, which is intended for consumption by others, often on

¹³⁷ Gammarano R, 'Work and Employment are not Synonyms' ILOSTAT, 2019, 5.

¹³⁸ Cambridge Dictionary, 4th ed.

platforms like YouTube, TikTok, or social media.¹³⁹ These activities involve a significant amount of physical and mental effort, including creativity, skill development, and time investment.¹⁴⁰

Moreover, some children in the digital media space through their caregivers or parents, monetize their content through various means, such as ad revenue, sponsorships, merchandise sales, and crowdfunding.¹⁴¹ This aligns with the Cambridge Dictionary's definition of work, as they are engaged in activities with the expectation of financial compensation. Given the alignment of children's activities in the digital media space with the definitions and aspects of work provided, it provides answers to the pertinent questions about their entitlement to benefits and protections typically accorded to individuals participating in the formal labour market.

The alignment of the definitions and aspects of work and the activities undertaken by children in the digital media space prove that children in the digital media space should be entitled to the same labour protections, such as minimum wage regulations, working hour restrictions, and safety measures, as adults engaged in traditional forms of employment. Additionally, it further proves that there should be specific regulations and safeguards in place to ensure that children in this space are not exploited or subjected to harmful working conditions.

In conclusion, the determination and assertion of this qualification has inquiry, it is imperative to consider the multifaceted dimensions of child labour and digital media to arrive at a comprehensive understanding of this complex issue.

This chapter has been able to bring forward the definition and aspects of work, as outlined by international instruments and local law, provide valuable frameworks for assessing whether the activities of children in the digital media space qualify as forms of work. Through this, the content of this chapter has demonstrated significant implications for the rights, protections, and responsibilities associated with children's participation in this rapidly evolving and influential

¹³⁹ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 500.

¹⁴⁰ Wong J, 'It's Not Play if You're Making Money: How Instagram and YouTube Disrupted Child Labour Laws' *The Guardian*, 2019, 1, -< [It's not play if you're making money': how Instagram and YouTube disrupted child labour laws | Social media | The Guardian](#) > on 11th January 2023.

¹⁴¹ Maheshwari S, 'Online and Making Thousands, at Age 4: Meet the Kidfluencers' *The New York Times*, 2019, 3-< [Online and Making Thousands, at Age 4: Meet the Kidfluencers - The New York Times \(nytimes.com\)](#) > on 11th January 2023.

sector. As the discussion delves deeper in the following chapter, it will be possible to attempt to find viable solutions for the gaps and qualifications that have been made in the preceding chapters by proposing legislation toward the same.

CHAPTER FOUR

PROPOSED LEGISLATIVE REFORMS IN REGARD TO CHILDREN WORKING IN THE DIGITAL MEDIA SPACE IN KENYA

4.1 INTRODUCTION

As demonstrated in the preceding chapters, Chapter 3 and Chapter 4, a fundamental need emerges for Kenya to establish robust legislative changes that regulate the social media landscape concerning the earnings and labour regulations surrounding children. The urgency for such legal frameworks in Kenya is evident, requiring laws to safeguard the welfare of children engaged in the digital platform economy.

In exploring workable and relevant solutions for Kenya, inspiration is drawn from countries that have already implemented laws addressing the intricacies of children's involvement in the digital media space. An example is France, which, on October 19th, 2020, promulgated a law focusing on the commercial use of images of children under 16 years old online.¹⁴² This legislation was specifically designed to create a legal framework for child influencer's activities on online platforms. Notably, it mandates government authorization before a child engages in online video activities with implications of a labour relation.¹⁴³ The law extends its purview to the 'grey zone,' encompassing scenarios where a child may not be in a formal labour relation but dedicates substantial time to video creation or derives significant income from it. Significantly, the legislation ensures the protection of children's income by stipulating that only a portion is paid to

¹⁴² *French Labour Code*, Law No. 2020-1266.

¹⁴³ Boring Nicolas, 'France: Parliament Adopts Law to Protect Child "Influencers" on Social Media' *Library of Congress*, 2020, 2 -< [France: Parliament Adopts Law to Protect Child "Influencers" on Social Media | Library of Congress \(loc.gov\)](#) >- on 12th November 2023.

parents, with the remainder deposited into a dedicated savings account accessible to the child upon reaching adulthood or legal emancipation.¹⁴⁴

Similarly, the state of Illinois in the United States recently enacted a bill amending its child labour laws to address the challenges posed by social media.¹⁴⁵ Under this new law, child influencers are granted the right to legal recourse if their earnings are not appropriately set aside in a trust account, along with the introduction of compensation guidelines.¹⁴⁶

Drawing insights from these international models, Kenya can adopt and customise these laws to suit its unique needs. This chapter delves into the proposed legislative reforms presenting innovative child labour laws and compensation guidelines crafted to provide enhanced protection for children working in the digital platform economy. The ensuing sections will navigate through key facets of the proposed legislative reforms, examining its potential impact and relevance in the Kenyan context.

4.2 PROPOSED LEGISLATIVE REFORMS

In the Kenyan legal landscape, the historical understanding of children as lacking the capacity required for decisions reserved for adults is well-established.¹⁴⁷ From voting rights to property ownership, children's legal standing has traditionally been restricted. Acknowledging this, it becomes urgent for the law to extend its protective purview to address emerging challenges posed by the digital age, specifically in the context of children engaged in labour on digital media platforms.

Given the exponential rise in child influencers and the absence of regulatory safeguards against their potential exploitation, urgent legislative reforms are warranted to safeguard the welfare of children throughout the nation. Recognizing that children may lack the capacity to manage their

¹⁴⁴ Boring Nicolas, 'France: Parliament Adopts Law to Protect Child "Influencers" on Social Media' *Library of Congress*, 2020, 3 -< [France: Parliament Adopts Law to Protect Child "Influencers" on Social Media | Library of Congress \(loc.gov\)](#) >- on 12th November 2023.

¹⁴⁵ Olander O, 'Unpacking Illinois' New Kid Influencer Labour Law' *Politico*, 2023, 2 -< [Unpacking Illinois' new kid influencer labor law - POLITICO](#) >- on 12th November 2023.

¹⁴⁶ Savage C, 'Child Influencers Can Sue if Earnings Aren't Set Aside Under New Illinois Law, AP, 2023, 5 -< [Child influencers can sue if earnings aren't set aside under new Illinois law | AP News](#)>- on 12th November 2023.

¹⁴⁷

financial interests and make decisions regarding the commercial use of their images on social media, a comprehensive legal framework is essential to shield them from exploitation.

Framed within the paramount consideration of the child's best interests, the proposed legislative reform encompasses two main elements. First, the cornerstone of the reform revolves around compensation guidelines and rules tailored to ensure fair remuneration for children contributing to the digital media space. This element forms the bedrock of the rights accorded to children in this domain.

The second element of the proposed legislative reform delves into labour relations, addressing critical aspects such as working conditions, working hours, and the overall work environment for these children. By establishing clear parameters in this realm, the legislation aims to fortify the protective shield around children involved in digital media labour.

Harmonising with existing legal frameworks and drawing insights from scholarly writings, the proposed legislative reform seeks to provide a comprehensive framework that safeguards the rights, well-being, and ethical considerations of children engaging in digital media labour in Kenya. By addressing compensation, labour relations, and ethical concerns, this legislation aspires to create a resilient and protective legal foundation for the evolving landscape of child participation in the digital realm.

4.2.1 Compensation

In the landscape of children's engagement in the digital media space, the issue of compensation stands as an essential pillar, bringing forward the essence of equitable treatment and fair remuneration. Adequate compensation, both in the general context and as delineated by Kenyan law, holds the key to safeguarding the rights and well-being of children involved in these emerging forms of labour. Within the Kenyan legal framework, the Employment Act serves as a guidepost, breaking down the parameters for fair compensation and employment practices.¹⁴⁸

Under the Employment Act of Kenya, adequate compensation is not merely a matter of financial gain but extends to encompass a holistic approach, ensuring the overall well-being of the child worker. Section 17 of the Act underscores the requirement for fair remuneration, emphasising the

¹⁴⁸ Section 17, *Employment Act* (2007).

importance of considering the nature of the work, working hours, and prevailing economic conditions.¹⁴⁹

Against this backdrop, the proposed legislative reforms concerning children in the digital media space strives to fortify and augment the existing legal framework. By specifically addressing compensation guidelines tailored for this unique context, the legislative reform seeks to imbue the rights of child contributors with a robust foundation. Let us now delve into the proposed legislative reform, dissecting its key components that stand poised to reshape the landscape of children's digital media labour in Kenya.

Following this, fair and adequate compensation to the children in this space can be fully achieved by setting up trust accounts that are accessible to them once they turn eighteen years old. This is a concept that is borrowed from the Coogan Law that establishes such trusts.¹⁵⁰ As per the Coogan Law, these trusts can be defined as blocked trust accounts for the child, into which 15% of the minor's acting wages are deposited until the child turns 18 years old set up by the parents or guardians.¹⁵¹

The proposed legislative reform will borrow from this concept whereby parents and guardians of the child influencers would open the blocked trust accounts where the money earned would be deposited. Madyson Edwards in his paper was able to draft proposed legislation modelled from the California Family Code towards the same.¹⁵² Drawing from that, the proposed legislative reforms for Kenya would be in the Employment Act under Section 17 clearly laying out the process for the establishment of a trust account, the percentage of income to be set aside and specifics to do with access of the trust account upon the attainment of an age of majority. This provision would not only be useful to those in the digital media space but also children providing labour in any other industry.

¹⁴⁹ Section 17, *Employment Act (2007)*.

¹⁵⁰ Chapter 4, *California Labour Code (1937)*

¹⁵¹ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 602.

¹⁵² Edwards M, 'Children are Making it Big (For Everyone Else): The Need for Child Labour Laws Protecting Child Influencers' Volume 55, *Texas Tech Law Review*, 2023, 20.

This part of the legislative reform will act as a guide for establishing the trust account, requirements for withdrawals and the handling of the funds in trust. The trustee, in most cases the parents, will be required to open a trust within fourteen business days after the contract is signed by all required parties. This requirement places the responsibility on the person legally responsible for the child because they will likely have knowledge of the contract and will often have access to the banks or other financial institutions.

The establishment of this legislation would not only ensure the long-term financial protection of the child's earnings but also absolve the contracting entity from any form of financial liability.¹⁵³

4.2.2 Labour relations.

In navigating the nuanced realm of work for children in the digital media space, the conditions under which they engage in work demand meticulous attention and a specialised legal framework. Recognizing the unique and delicate nature of children, it becomes imperative to scrutinise and tailor working conditions in a manner that safeguards their well-being, development, and overall welfare.¹⁵⁴ In order to provide a proposed legislative reform that would ensure that all these aspects of child work are covered, this dissertation will draw from the Kenyan Employment Act, the French Labour Code and the Kenyan Children's Act.¹⁵⁵

The Employment Act under Part VII outlines the protections granted to children in regard to employment.¹⁵⁶ The Act acknowledges that children are capable of offering labour for the purpose of repayment or for the gain of a third party.¹⁵⁷ Section 10 of the Employment Act delves into specific provisions regarding the employment of children. It sets the minimum age for employment, outlines the permissible nature of work for children, and mandates that any work undertaken by a child should not jeopardise their health, education, or overall well-being.¹⁵⁸ From this Act of Parliament, the proposed legislative reforms draw certain aspects of it in regard to the

¹⁵³ Edwards M, 'Children are Making it Big (For Everyone Else): The Need for Child Labour Laws Protecting Child Influencers' Volume 55, *Texas Tech Law Review*, 2023, 14.

¹⁵⁴ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 602.

¹⁵⁵ Employment Act (2007); French Labour Code (2016); Children's Act (2022).

¹⁵⁶ Section 52, *Employment Act* (2007).

¹⁵⁷ Section 52, *Employment Act* (2007).

¹⁵⁸ Section 10, *Employment Act* (2007).

terms of employment including, the hours that should be worked for and the conditions of safety that should be adhered to.

Within the French Labour Code, exists a law promulgated in 2020 that regulates the commercial use of children's images of children under 16 years old on online platforms.¹⁵⁹ The law provides for prior government authorization before a child can engage in online video activities considered within a labour relation.¹⁶⁰ It further establishes the grey zone which essentially provides an income and labour threshold for children taking part in the creation of content for it to be considered labour. From this law, the proposed legislative reforms will draw a threshold of the hours that children can significantly work, and the income earned to have it classified as a labour relation.¹⁶¹

The Children's Act in its entirety provides for the protections that should be afforded to all children in Kenya.¹⁶² In regard to labour, the Act makes provisions for different circumstances. Section 18 of the Act provides for the protection of children from all forms of child labour.¹⁶³ Within this section children are granted protection against any form of child labour, domestic servitude, economic exploitation or any work or employment which is hazardous, interferes with the child's education or is likely to be harmful to the child's health or physical, mental, moral or social development.¹⁶⁴ In reference to the proposed legislative reform this section provides the conditions under which children are able to work without the denial of any of their essential rights.

Against this backdrop, the proposed legislative reform concerning children in the digital media space strives to fortify and augment the existing legal framework. The proposed legislative reform will be towards the Children's Act and the Employment Act where it would prescribe the requirement for safe conditions of work, appropriate hours of work, regulatory bodies and the essential right to education.

¹⁵⁹ Article 1 (2), *French Labour Code*, Law No. 2020-1266.

¹⁶⁰ Article 1 (5), *French Labour Code*, Law No. 2020-1266.

¹⁶¹ Article 1, *French Labour Code*, Law No. 2020-1266.

¹⁶² Section 2, *Children's Act* (2022).

¹⁶³ Section 18, *Children's Act* (2022).

¹⁶⁴ Section 18, *Children's Act* (2022).

This part of the proposed legislative reform ensures the regulation of the hours, conditions, and education of child performers. This is important and advantageous as it protects the children from the harms of exploitation like risks of pervasive privacy loss, psychological harm, and excessive hours because the work is constant and mobile. Limiting the hours that parents and companies can work with these children would ensure that they have a semblance of privacy away from social media and requiring certain workplace conditions.¹⁶⁵

While acknowledging the massive and evident advantages of this proposed legislative reform, it is important to address potential challenges in its implementation. One notable obstacle originates from the difficulty of monitoring the conditions to which children are exposed in their homes, given the inherent nature of their work.¹⁶⁶ To overcome this challenge, a viable solution lies as provided by Marin Masterson in establishing a self-regulating mechanism. This mechanism empowers parents and contracting entities to actively log the duration and working conditions under which children are engaged, thereby fostering transparency and accountability within the framework.¹⁶⁷

In conclusion, the need for legislation changes to accommodate the governing of children's engagement in the digital platform economy in Kenya, cannot be overstated. This chapter has systematically outlined the pressing need for laws in Kenya to adjust to regulate the social media space concerning children's earnings and labour regulations. By drawing inspiration from international models, notably France and the state of Illinois in the United States, we have laid the groundwork for innovative legislation tailored to Kenya's unique context.

¹⁶⁵ Edwards M, 'Children are Making it Big (For Everyone Else): The Need for Child Labour Laws Protecting Child Influencers' Volume 55, *Texas Tech Law Review*, 2023, 20.

¹⁶⁶ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 610.

¹⁶⁷ Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) *Pennsylvania Law Review*, 2021, 610.

CHAPTER 5

CONCLUSION

This dissertation has undertaken a comprehensive and nuanced examination of the intricate interplay between child labour and the imperative to safeguard children's rights within the digital platform economy of Kenya. Through a systematic exploration across multiple chapters, the complexities inherent in the challenges faced by children in the digital age have been meticulously unravelled.

Beginning with the establishment of a robust foundational framework and extending to a thorough scrutiny of the existing legal landscape, this dissertation has not merely identified gaps and shortcomings but has underscored the urgent need for their rectification. The theoretical examination of children's work, presented earlier, has furnished essential context, setting the stage for the innovative proposals meticulously detailed in Chapter Four. The envisaged child labour laws and compensation guidelines draw inspiration from global models, with a deliberate intent to tailor them to the specific needs of the Kenyan context. This forward-thinking chapter strives to craft a legal framework that not only shields children from potential harms but also cultivates a digital industry characterised by responsibility and ethical conduct.

In the concluding chapter, a synthesis of the myriad insights and recommendations presented throughout the dissertation is skilfully woven together. This synthesis represents the apex of exhaustive research, providing a holistic overview of the intricate dynamics that characterise children's labour in the digital landscape. The proposals articulated in this dissertation aspire to transcend mere suggestions; they aim to be catalysts for transformative change, offering a well-defined roadmap for a legal framework that not only ensures the immediate well-being of children but also creates an environment conducive to their holistic development.

This study set out to first investigate on the legal framework in place within Kenya in regard to child labour and the protection of child rights, identify the gaps in the area and the impact that they have on the children who work in the digital platform economy. Through the discussion in chapter two, the paper has been able to demonstrate that although there are laws in place, they have failed to protect children who work in the digital platform economy by failing to provide for them. The impacts that this has had on the children on this platform have been demonstrated in the chapter

as well. The second objective of this study was to evaluate whether the production of content by children on social media platforms in Kenya meets the legal criteria of work as defined by Kenyan laws and international legal instruments. This as demonstrated in Chapter three was achieved by clearly outlining the definition of work as perceived by different parties and was contrasted to the activities that are done by those on digital media platforms by analysing the nature and extent of the activity, the compensation or benefits received, and other relevant factors. Chapter three was able to clearly demonstrate that what is done by those on digital platforms as work due to the fact that it meets the qualifications required. The paper further set out to propose legislative reforms in Kenya that would better protect children who work in the digital platform economy. This was successfully done by studying existing labour laws in Kenya and proposing changes to them, drawing from legislation in countries that have successfully applied labour laws for children working in the digital platform economy.

The content of this dissertation has also managed to prove the hypothesis that, if proactive and well-informed measures are taken to establish comprehensive legislation specifically regulating the digital market economy, including the earnings derived from its users, then we can expect enhanced safeguards for children actively engaged in the digital platform economy, reducing their vulnerability to exploitation and ensuring fair compensation. This has been possible by demonstrating the dire and urgent need for legislative reform to this area and showing the consequences of lack of the same.

As we bring the scholarly journey to a close, it becomes increasingly apparent that the discourse surrounding child labour laws and protections must adapt in tandem with the ever-evolving digital landscape. The legislative measures and recommendations advanced in this dissertation are not static solutions; rather, they are dynamic instruments of change, poised to shape a legal landscape that places the welfare of children at its core. This work goes beyond the mere illumination of challenges; it actively contributes to a forward-looking dialogue—one that positions children's rights at the forefront, ensuring their robust protection and envisioning a future where their well-being is unwaveringly safeguarded within the ever-evolving dynamics of the digital platform economy. The journey undertaken in this dissertation is not just an exploration of the present; it is a proactive step towards shaping a more equitable and secure future for the children navigating the complex terrain of the digital era in Kenya.

6.1 RECOMMENDATIONS

This dissertation offers an analysis of child labour within the digital platform economy in Kenya, providing insights into the challenges faced by children and the weaknesses of existing the legal frameworks. The following recommendations are aimed toward different stakeholders to deal with the identified gaps and contribute to the protection of children's rights in the digital space .

6.1.1 Recommendations to Legislators

- a. **Legislative Reforms:** Act upon the proposed legislative changes outlined in Chapter Four, drawing inspiration from successful models in other countries, to create a tailored legal framework for safeguarding children in the digital platform economy.
- b. **Collaboration:** Foster collaboration with international organisations, NGOs, and experts to ensure that the proposed legislative reforms align with global standards and best practices.
- c. **Monitoring and Enforcement:** Strengthen enforcement mechanisms and establish monitoring frameworks to ensure the effective implementation of new child labour laws within the digital sector.

6.1.2 Recommendations to Digital Platforms and Sites:

- a. **Responsible Conduct:** Embrace and promote responsible and ethical conduct within the digital platform economy. Develop and enforce policies that prioritise the well-being of child users and contributors.
- b. **Education and Awareness:** Implement educational programs for users, moderators, and content creators to raise awareness about child labour issues and the potential harms associated with the exploitation of young contributors.
- c. **Fair Compensation:** Establish fair compensation guidelines for children engaged in digital work, considering the nature and extent of their activities, and ensure transparent and equitable payment practices.

6.1.3 Recommendations for Researchers and Academic Community:

- a. **Ongoing Research:** Encourage ongoing research to continually assess the impact of legislative reforms on child labour within the digital platform economy, ensuring that the legal framework remains adaptive to evolving challenges.

- b. Knowledge Dissemination: Disseminate research findings through academic publications, conferences, and other channels to contribute to the global discourse on child labor in the digital age.

BIBLIOGRAPHY

BOOKS

1. Casey C, *Work, self and society: After industrialism*, 1st ed, Routledge, London, 1995.
2. Mureithi M, 'The Internet Journey for Kenya: The Interplay of Disruptive Innovation and Entrepreneurship in Fuelling Rapid Growth' in Ndemo B, (eds) *Digital Kenya*. Palgrave Studies of Entrepreneurship in Africa, Macmillan, London.
3. Onyango P, 'Country-wide case studies: Kenya – A focus on ILO/IPEC and the Time Bound Programme' in Scanlon J, (eds) *Child Labour; A Public Health Perspective*, Oxford University Press, United States, 2010.

CHAPTER IN BOOK

1. Samuels W, Mercurio N. 'The Role of the Compensation Principle in Society' In: Samuels s, W.J., Schmid, A.A. (eds) *Law and Economics*, Springer, Dordrecht, 211-235.

JOURNALS

1. Amabile T, Hill K, Hennessey B, 'The work preference inventory: Assessing intrinsic and extrinsic motivational orientations' Vol 66 (5), *Journal of Personality and Social Psychology*, 1994.
2. Ashforth, B. E., & Kreiner, G. E. (1999). "How can you do it?": Dirty work and the challenge of constructing a positive identity. *Academy of Management Review*, 24(3).
3. Bandura A, 'Human agency in social cognitive theory' Vol 44, *American Psychologist*, 1989.
4. Damon W, 'The Path to Purpose: How Young People Find Their Calling in Life' *Knowing Humanity Journal*, 2(2), 2018.
5. Dick G, 'What Money is and Ought to Be', Vol 6 (2), *Journal of Social Ontology*, 2020, 295.
6. Edwards M, 'Children are Making it Big (For Everyone Else): The Need for Child Labour Laws Protecting Child Influencers' Volume 55, *Texas Tech Law Review*, 2023.
7. Firth J, 'The Online Brain: How the Internet May Be Changing Our Cognition' Volume 2 *World Psychiatry*, 2019.
8. Gligorijević J, 'Children's Privacy: The Role of Parental Control and Consent' Volume 19 (2) *Human Rights Law Review*, 2019.
9. Haste H, 'Constructing the Citizen' Volume 24 (3) *Political Psychology Journal*, 2004.
10. Jackson J, 'Intellectual Property Law' Vol 2 *GeorgeTown University Journal*, 2016.

11. Lazear E, 'Compensation and Incentives in the Workplace' Vol 32 (3), Journal of Economic Perspectives, 2018.
12. Masterson M, 'When Play Becomes Work: Child Labour Laws in the era of "Kidfluencers"' Volume 169 (577) Pennsylvania Law Review, 2021.
13. Mureithi M, 'The Internet Journey for Kenya: The Interplay of Disruptive Innovation and Entrepreneurship in Fuelling Rapid Growth' in Ndemo B, (eds) Digital Kenya. Palgrave Studies of Entrepreneurship in Africa, Macmillan, London.
14. Naylor B, Saunders B.J. 'Whose Rights? Children, Parents and Discipline', Alternative Law Journal, 34 (2), 2009.
15. O'Neill E, 'Influencing the Future: Compensating Children in the Age of Social Media Influencer Marketing' Volume 72 Stanford Law Review, 2019.
16. Onyango P, 'Country-wide case studies: Kenya – A focus on ILO/IPEC and the Time Bound Programme' in Scanlon J, (eds) Child Labour; A Public Health Perspective, Oxford University Press, United States, 2010.
17. Ramirez R, 'What will it Take? In the Wake of the Outrageous "Balloon Boy" Hoax, A Call to Regulate the Long-Ignored Issue of Parental Exploitation of Children' Volume 123 University of Southern California Law Review, 2011.
18. Reynolds J, 'Jean-Paul Sartre' The Stanford Encyclopaedia of Philosophy, 2022.
19. Snyder H 'Literature Review as a Research Methodology: An Overview and Guidelines' Volume 104 (1) Journal of Business Research', 2019.
20. Wall J, 'Ain't I a Person? :Reimagining Human Rights in Response to Children' Volume 30 (2) Journal of the Society of Christian Ethics, 2011

WORKING PAPERS, DISCUSSION PAPERS AND RESEARCH PAPERS

1. B Naylor 'Comparative Legal Approaches to Corporal Punishment: Regulating for Behavioural Change' in Corporal Punishment of Children: Comparative Legal and Social Developments towards Prohibition and Beyond.'Stockholm Studies in Child Law and Children's Rights'; Vol. 4, Denmark, 2018.
2. Chibebe W, 'Let's End Child Labour in Kenya: Now is the Time to Take Urgent Action' UNICEF Kenya, 2021.
3. Garcia A, Kenney M and Zysman J, 'Understanding Work in the Online Platform Economy: A Critical Review' Berkely Roundtable on the International Economy, BRIE Working Paper 2022-2, 2022.
4. Malombe D, Mavunjina M, Mbatatru S, 'Kenya's Regional and International Human Rights Obligations' Kenya Human Rights Commission, 2015.

5. Rosso D, 'On the Meaning of Work: A Theoretical Integration and Review' Vol 30 Research in Organizational Behaviour, 2010.

REPORTS

1. Gagliese J, 'The Rise of the Influencer: Predictions on Ways they'll change the World' Forbes, 2022.
2. Gilgli S, 'A Private Space- Examining the Use and Impact of Digital and Social Media Among Adolescents in Kenya, Youth Policy, 2013.
3. Introduction to the Kenya Law Treaties and Agreements Database -< NCLR Home Page | Treaties Database (kenyalaw.org) >- on 11th January 2023.
4. McCann D, Unacceptable forms of work: A global and comparative study, International Labour Office, 2015.
5. Njoroge R, 'Impacts of Social Media Among the Youth on Behaviour Change: A Case Study of University Students in Selected Universities in Nairobi, Kenya, The University of Nairobi, 2011.
6. U.S Department of Labour, Findings on the Worst Forms of Child Labour- Kenya, 2021.

ARTICLES

1. Arriagada A, 'Content Creators and Platform Evolution in the Social Media Ecology' Sage Journals, 2020, 13 - ["You Need At Least One Picture Daily, if Not, You're Dead": Content Creators and Platform Evolution in the Social Media Ecology - Arturo Arriagada, Francisco Ibáñez, 2020](#) on 5th March 2023.
2. Audrey Schomer, Influencer Marketing: State of the Social Media Influencer Market in 2020, BUS. INSIDER (Dec. 17, 2019, 2:07 PM), <https://www.businessinsider.com/influencer-marketingreport> [<https://perma.cc/V9ZS-HZEF>].
3. Boring Nicolas, 'France: Parliament Adopts Law to Protect Child "Influencers" on Social Media' Library of Congress, 2020, 2 - [France: Parliament Adopts Law to Protect Child "Influencers" on Social Media | Library of Congress](#) on 12th November 2023.
4. Croft J, 'YouTube Mom Pleads Not Guilty to Abusing Children' CNN, 29th March 2019, - [YouTube mom pleads not guilty to abusing children | CNN](#) on 11th September 2023
5. Duggan M, Lenhart A, Lampe C, Ellison N, 'Parents and Social Media' Pew Research Centre, 2015, - [Parents and Social Media | Pew Research Center](#) On 5th March 2023.
6. Hsu, H 'Instagram, Facebook, and the Perils of "Sharenting", The New Yorker' 2019, - [Instagram, Facebook, and the Perils of "Sharenting" | The New Yorker](#) On 5th March 2023.

7. Maheshwari S, 'Online and Making Thousands, at Age 4: Meet the Kidfluencers' The New York Times, 2019, - [Online and Making Thousands, at Age 4: Meet the Kidfluencers - The New York Times \(nytimes.com\)](#) on 11th January 2023.
8. Mooney T, 'Companies Make Millions Off Kid Influencers, and the Law Hasn't Kept Up', Cbsn Originals, 2019 - [\(cbsnews.com\)](#) On 5th March 2023.
9. New Sharing Features on Instagram' Meta, 13th December 2022 - New Sharing Features on Instagram: Notes, Group Profiles and More | Meta (fb.com).
10. Olander O, 'Unpacking Illinois' New Kid Influencer Labour Law' Politico, 2023, 2 - [Unpacking Illinois' new kid influencer labor law - POLITICO](#) on 12th November 2023.
11. Osore K, 'Communications Authority Releases Draft Guidelines to Protect and Keep Children Safe Online' Vellum, - [Communications Authority releases draft guidelines to protect and keep children safe online – Vellum Kenya](#) on 11th September 2023.
12. Perelli A, 'Inside the Ryan's World Business: Interview About YouTube, TV, Toys.' Business Insider, 2020, 2, - [Inside the Ryan's World Business: Interview About YouTube, TV, Toys \(businessinsider.com\)](#) On 22nd August 2023.
13. Rosman K, 'Why Isn't Your Toddler Paying the Mortgage?', New York Times, 2017,- [Why Isn't Your Toddler Paying the Mortgage? - The New York Times](#) On 5th March 2023.
14. Schomer A, 'Influencer Marketing: State of the Social Media Influencer Market in 2022', Business Insider, 2022. 1 - [Influencer Marketing 2022: Industry Stats & Market Research \(insiderintelligence.com\)](#) On 5th March 2023.
15. Shapiro J, 'We Need New Labor Laws for The Digital Age' Gen.Medium, 2018, - We Need New Child Labor Laws for the Digital Age | by Jordan Shapiro | GEN (medium.com) on 5th March 2023.
16. Van Kessel P, Toor S, Smith A, 'A Week in the Life of Popular Youtube Channels' Pew Research Centre, 2019, - [A Week in the Life of Popular YouTube Channels | Pew Research Center](#) On 5th March 2023.
17. Volpe A, 'How Parents of Child Influencers Package Their Kids' Lives for Instagram', The Atlantic, 2019, 2 - [Inside the Lives of Child Instagram Influencers - The Atlantic](#) On 5th March 2023.
18. YouTube Mom Charged with 30 Counts of Child Abuse' CBS News, 26th March 2019, - [Machelle Hobson charged: YouTube mom behind Fantastic Adventures channel indicted on 30 counts of child abuse - CBS News](#) on 11th September 2023.

OTHERS

Cambridge Dictionary, 4th ed.

