KENYA UNION OF GIG WORKERS (KUGWO)
UNION MEMORANDUM ON THE BUSINESS LAWS (AMENDMENT) AND
RELATED PROPOSALS BY SECTORAL WORKER GROUPS

Date: April 2025
To: Clerk of the National Assembly
From: Kenya Union of Gig Workers (KUGWO)
Subject: Memorandum on Business Laws Amendment Proposals by Data Labellers, Content Moderators, and Ride-Hailing Worker Groups

1. INTRODUCTION

The Kenya Union of Gig Workers (KUGWO) is a registered and representative body of Kenya's fast-growing platform-based workforce. Our membership includes ride-hailing drivers regulated by algorithmic fare and performance systems; delivery riders navigating high-risk urban traffic; virtual assistants and freelancers chasing invoices across platforms; and data labellers and content moderators exposed to exploitative task-based structures and digital trauma.

As Kenya positions itself as a global technology and digital labour hub, our union ensures that the voices of those powering this economy are not only heard but structurally protected. In reviewing the Business Law (Amendment), 2024 and the matrix submissions of the Data Labellers, Content Moderators, and Ride-Hailing Workers, we affirm the urgency of updating legal frameworks to reflect the economic and algorithmic realities confronting gig workers.

This memorandum articulates our full alignment with several proposals, identifies where additional protections are necessary, and offers union-led recommendations rooted in practical experience, case evidence, and policy gaps.

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2. FULL SUPPORT FOR THE FOLLOWING PROPOSED AMENDMENTS

KUGWO fully supports the following provisions proposed by the three sectoral worker groups:

2.1. Expanded Definition of "Employer"

We endorse the inclusion of:

- Algorithmic control as a defining factor of employment;

- Digital labour platforms, ITES providers, franchise operators, labour brokers;

- Exclusion of passive digital marketplaces (e.g., Jiji, OLX) which do not regulate work conditions.

This language recognizes that platforms such as Uber, Sama, Appen, and Bolt exert control not through HR managers but through software that dictates pricing, performance, and even access to work.

2.2. Digital Labour Platform, Platform Worker, and Algorithmic Management Definitions

These definitions, which appear across all three matrices, are central to any reform. Without naming these relationships, enforcement remains impossible. Gig workers often do not know whom to report grievances to precisely because the law does not recognize their work structures.

2.3. Recognition of Dependent Contractors (Section 16A)

We support this legal innovation as it addresses workers who exhibit characteristics of both employees and independent contractors. For instance, Uber drivers own their vehicles but have no power to negotiate fares or refuse tasks. Data Labellers use their laptops but work under strict algorithmic KPIs with no recourse against penalties or suspensions.

2.4. Regulation of Successive Fixed-Term Contracts (Section 37A)

The abuse of short-term renewable contracts in moderation and annotation sectors has reached epidemic levels. Workers face 3–6-month cycles, gaps between contracts to avoid benefit accrual, and unpaid probation periods even for skilled work. This provision introduces fairness, mental stability, and long-term security into precarious roles.

2.5. Offences and Penalties for Worker Misclassification (Section 49A and 90A)

This clause addresses deliberate avoidance of employer responsibilities. Workers classified as 'contractors' often lack tools, have no freedom over schedules, and are penalized by algorithms. Penalizing such misclassifications, especially where systematic, is a step toward dismantling structural injustice in digital labour.

2.6. Joint Employment Provisions (Section 10A)

In content moderation, work is often structured through intermediaries (e.g., Sama or Majorel) but directed entirely by Meta or TikTok. This clause ensures shared accountability and stops the current blame-shifting that leaves workers unprotected. The EU Corporate Sustainability Due Diligence Directive could be a best practice to check on.

2.7. Modernized Definitions of "Employee" and "Information Technology Enabled Services (ITES)"

The current 'control test' is outdated. Modern employees may never meet their manager yet have every condition of work dictated by a backend system. These proposed redefinitions reflect reality and align Kenya with ILO and EU jurisprudence on the future of work.

2.8. Mandatory Skills Transfer and Upskilling (Section 37C)

We strongly support this clause. Data labellers and content moderators train AI systems used by global firms yet have no pathway to becoming machine learning engineers or data specialists. The upskilling requirements will ensure AI development is not extractive but transformative for Kenya. The body should be an updated accreditation body.

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3. UNION-SPECIFIC ADDITIONS AND CLARIFICATIONS

KUGWO proposes the following detailed additions to fill existing legislative gaps or amplify the matrices:

3.1. Mental Health Support for Content Moderators

Include a clause requiring:

- Mandatory access to licensed trauma therapists for moderators;

- Maximum daily exposure hours to graphic content;

- The right to refuse disturbing tasks with no penalties.

This is not abstract. Our members have reviewed child exploitation and terrorist videos under impossible quotas, with no counselling. This provision is urgent.

3.2. Algorithmic Transparency and Right to Appeal

Platforms must be required to:

- Disclose how worker ratings, deactivations, and task allocations are computed;

- Establish an independent digital appeals process for penalties and task exclusions.

Without this, workers are fired by code they don't understand and cannot challenge.

3.3. Legal Protection for Unionization

The law must protect:

- The right of platform workers to organize, unionize, and bargain collectively;

- Freedom from retaliation through deactivation, app blocks, or contract non-renewal.

We have documented riders who were removed from platforms after participating in strike actions. This must stop.

3.4. Portability of Social Protection Across Platforms

Platforms must be legally obligated to:

- Enable unified NSSF, SHIF, and NHIF contribution systems across apps;

- Ensure benefits are not reset when a worker changes from Bolt to Uber, or from Remotasks to Appen.

3.5. Sector-Specific Minimum Earnings Floors

Mandate the Labour CS to:

- Establish minimum earnings (per km for drivers, per task for labellers) based on fair remuneration studies;

- Conduct cost-of-living reviews bi-annually.

This prevents platforms from racing to the bottom through under-pricing.

3.6. Occupational Safety in Digital Work

Safety must include:

- Personal accident and health coverage;

- Digital workplace safety standards (especially for high-volume content review);

- Ergonomic protections for long-hour computer use.

3.7. Dispute Resolution Mechanisms

Establish a **Digital Labour Tribunal** to handle platform worker grievances:

- Fast-track hearings and appeals;

- Digital ombudsperson representation;

- Sanctions for platforms that do not comply with tribunal orders.

3.8. Ethical AI Development Provisions

Platforms benefiting from Kenyan labour must:

- Include upskilled workers in AI knowledge pipelines;

- Disclose AI training uses of local data;

- Recognize workers as contributors, not invisible backend inputs.

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4. CLOSING REMARKS

Kenya stands on the threshold of becoming Africa's digital workforce capital. But this must not come at the cost of worker dignity, safety, and legal protection. KUGWO does not merely endorse the proposals of the data labellers, content moderators, and ride-hailing workers—we elevate, deepen, and contextualize them within a broader labour justice agenda.

We emphasize that Kenya must legislate not just to fix problems of the past—but to **pre-empt the exploitation of the future.**

Signed,

Bellah Ellam, General Secretary
Kenya Union of Gig Workers (KUGWO)