

# **IMPACT OF KENYAN NEW LABOUR LAWS ON GENDER DISPARITIES IN INDUSTRIAL OCCUPATIONS IN KENYAN ORGANIZATIONS AND THE RESPECTIVE TRADE UNIONS**

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## **Abstract**

*While gender responsive laws and policies have been adapted and enacted, gender differences continue to persist in the various dimensions of industrial occupations both in Kenya and other parts of the world. The objective of this study was to identify the levels of gender representation at the organizational and trade unions level and the impact of the new labour laws on gender disparities of the selected organizations and the related trade unions in Kenya. The study used the descriptive survey research design to obtain data from the selected organizations and the related trade unions. Primary data were obtained from 360 respondents drawn from operational, management and trade unions levels using interviews and questionnaires, while organizations' records were used for secondary data. Data were summarized using percentages, ratios,*

*frequencies and the measures of central tendency. The findings revealed that gender disparities continue to persist in Kenyan organizations, and that many of the gender responsive policies within the new labour laws lack the capacity to create gender balances in organizations. The key recommendations made included the enforcement of the two third rule at all organizational levels.*

*Keywords: Gender Disparities, Industrial Occupations, Gender Discrimination, New Labour Laws*

## **INTRODUCTION**

While several organizations and agencies, both local and international, have devoted substantial efforts in enhancing gender equality at work, including the formulation and enactment of gender policies, affirmative action and gender-based campaigns, studies continue to indicate that gender inequalities are persistent and have led to sexual division of labour and under-utilization of women's economic potential in organizations in Kenya (Marara, 2003).

Kenya has undertaken various legal strategies to encourage gender equality in industrial occupations including the ratification of the various ILO conventions into various legal frameworks and policy initiatives. This has led to the revision of the various Kenyan laws and public policies leading to the enactment of the new labour laws, the revision of the labour relations section of the constitution and introduction of the various organization-based employment policies such as the equal employment policies (Republic of Kenya 2009). Likewise, the Kenyan constitution which is the supreme law of the land has entrenched gender equality and freedom from discrimination as part of the rights and fundamental freedoms. It is indeed a requirement by the constitution that a third of any elected or appointed officers in a constitutional office be of a different gender. The constitution due to its supremacy should guide other policy documents and as such the gender principles in the constitution are now reflected in the labour laws. Despite these efforts, reports continue to indicate the persistence of gender disparities at the various occupational levels both at the organizational and the respective trade unions, (CBS, 2009). The disparities are mainly reflected in form of unequal gender representation at the various levels, unfavourable working conditions for some gender, and unfavourable pay structure. This research aimed at investigating why gender disparities continue to be reported despite the revision and enactment of the gender-based laws and policies.

Laws and policies are implemented through organizational structures and procedures and therefore, disparities may be determined by the manner in which the laws and policies are interpreted and implemented by the organizations. The study further investigated the current

structures and procedures in the selected organizations against the various provisions in the new labour laws and the guidelines by the constitution to determine the extent to which the interpretation and implementation of the laws and the policies through the organization-based procedures and structures may determine gender disparities in these organizations.

In Kenya, according to Marara (2003), the bulk of work done by women tends to take place in the home, or in the informal sector, while men are mainly in the more economically viable sectors of employment. In wage employment, women tend to be concentrated in the sectors of social, personal and educational services while the construction and manufacturing sectors are generally dominated by men, (Mwambu et al., 2000; CBS 2009). Reports by the Central Bureau of Statistics (CBS) indicate that the sectors that suffer the highest levels of gender disparities in wage employment in Kenya today are the building and construction, and manufacturing sectors. According to the Economic survey (2009), the manufacturing sector recorded 216,600 men compared to 47,500 women (17.9% women) in the year 2008.

A report by the World Bank observes that in Kenya and other parts of the world, gender disparities often start early, before women join the labour market and keep women at a disadvantage throughout their lives (World Bank, 2006). In view of this, the study reports that girls are more likely than boys to drop out of school due to family discrimination, education expenses and household duties. Indeed, Kimani (2006) observes that in Kenya, gender disparities are low at junior educational levels but tend to increase with progression to higher educational levels and transition to occupational and trade union levels. More specifically, the Ministry in charge of Education, reports that girls constituted 48.4% of the pupils in primary schools in 2005 with the percentage lowering to 45% at the secondary school level (CBS 2007). At professional levels, reports by the CBS (2008) indicate that the margin increases with women constituting 29% of the wage employment and 10% at the management levels. At the trade union level, women form less than 1% of decision making bodies of all the unions affiliated to ICFTU world-wide (ICFTU 2007). Of the forty registered trade unions in Kenya, none has a female chief executive officer (COTU, 2009). Hence, gender disparities are highest at the trade unions. This is in spite of trade unions being part of the tripartite committee of the ILO mandated with the role of ensuring fair work practices including elimination of gender inequality at work.

Trade unions in Kenya draw their members from the non-managerial (operational) levels of organizations, who are also elected into the management of the union (Labour Institutions Act 2007). While trade unions also recruit directly from the labour markets, the executive levels can only be filled through elections from the operational levels of the represented organizations. Disparities at the operational levels of the organizations are, therefore, likely to influence disparities at both the membership and executive levels of the trade unions. Hence, there are

interconnected patterns of gender disparities across organizations and their trade unions. This study examined the determinants of gender disparities at the operational and the management levels specifically in the East Africa Portland Cement Company, Telkom Kenya and respective trade unions.

### **Statement of the Problem**

Despite the constitutional requirement that no more than two thirds of the same gender shall occupy a constitutional office, and despite the ratification of the ILO gender responsive conventions into the popularly known new labour laws, gender disparities continue to exist even in principal occupations in Kenya. Further, despite sustained efforts and some notable gains in achieving gender equality in Kenya, women representation in wage employment is still proportionately very low forming less than 30 per cent of wage employment in Kenya. The same inequality is evident at operational, management and trade union levels of the service and manufacturing sector organizations which are the backbone of the economy and which hire the largest proportion of wage earners in Kenya. This has led to poor utilization of the available human resources which may lead to the slowdown of economic development, poverty and social ills such as prostitution. Trade unions in Kenya are expected to play a critical role in fighting for workers' rights including gender equality, yet disparities are highest within their structures. None of the trade unions in Kenya today has a female representation in the chief executive office which is against the ILO recommendation that at least one third of the trade union representation be members of the opposite gender hence, the researchers' desire to carry out this study.

### **Objectives of the Study**

The overall objective of this study was to investigate the institutional determinants of gender disparities in the manufacturing, service and related trade unions in Kenya. The specific objectives were to:

1. Investigate gender representation in the operational, management and the trade unions levels of the Telkom Kenya, the EAPCC and the related trade unions.
2. Investigate the impact of the new labour laws on gender disparities at the operational and management levels of the Telkom Kenya, the EAPCC and the related trade unions in Kenya.
3. Propose strategies that may lead to reductions in gender disparities in organizations and trade unions in Kenya.

The main limitations of the study were that some respondents were not free to give their opinion. However, they were assured that the information was to be used for the purpose of the study only. Further, they were asked not to write their names on the questionnaires. Other respondents feared intimidation from the supervisors. Again they were given the assurance that nobody was to be intimidated at all.

## **THEORETICAL FRAMEWORK**

This study is based on the structural-functional theory. This theory examines the contributions that the various parts, structures and systems of a society make towards the social needs of that society and how these structures and systems shape the behaviour of the individuals and groups within them. Structural Marxists argue that the decisions and behaviour of individual and groups are fundamentally constrained by the structures in which they are located and which exert influence over social and economic processes (Alexander and Colomy, 1990; Maryanski & Turner, 1991; Ritzer, 1996(b)). Social structures guide organizational systems, policies and procedures which determine the gender composition of the various occupations in organizations and trade unions. Legal structures guide policies and procedures in organizations and by so doing govern the behaviour of individuals in this organizations. This study examines the role that these legal structures play in guiding organizational structures and individuals' behaviour toward gender equality and eliminations of gender based discrimination.

## **RESEARCH METHODOLOGY**

Descriptive survey research design was used. The study being mainly qualitative, the design allowed rich descriptions of the disparities and the relationships. Stratified random sampling design was used to select a sample size of 360 respondents (10%) drawn from a target population of 3,600 employees, managers, and trade union officials.

Both the Primary and secondary data collection methods were used to obtain the data needed for the analysis. Self administered questionnaires and interviews were used to collect primary data while the secondary data was sourced from the companies' policies, manuals, job descriptions, documents and records.

Data was analyzed mainly using the qualitative data analysis methods supplement with quantitative data analysis methods. Qualitative data from the field was cleaned and thematically organized according to the objectives of the study. Quantitative data was coded, entered into SPSS, cleaned and analyzed using descriptive statistics and presented using charts and tables as per research objectives.

## EMPIRICAL FINDINGS AND DISCUSSION

### Status of Gender Representation at EAPCC, Telkom Kenya and the Respective Trade Unions

The first objective of the study was to investigate gender representation at the operational, management and the trade union levels of the studied organizations. The findings revealed that out of the target population of 5692 employees, 1982 were women giving a 34.8 per cent representation compared to 3710 men who formed 65.2 per cent of all the respondents. Although these data compare quite well with the overall percentage representation of the respondents (sampled population) of the study where men were 63.4 per cent compared to 36.6 per cent of women, a deeper analysis of the population at certain levels of the organizations revealed details of high margins of disparities at these levels, (which may not have been revealed by the primary data. The data on the status of gender representation at the EAPCC, the Telkom Kenya and their respective trade unions were given as per each organization and trade unions.

As shown in Table 1, gender representation across levels of occupations in both the EAPCC, the Telkom and the respective trade unions was not balanced. In the Telkom Kenya, there was a 19 per cent (213) women representation compared to 81 per cent (888) male representation at management level while at the operation level the female representation was at 47 per cent (1669) women compared to 53 per cent (3152) male representation. The management comprised the directors, the company executives, the top management, the middle management and the lower level management.

Table 1: Status of Gender Representation at the Organizations and the Respective Trade Unions

Organization	Management Level		Operational Level		Total	
	Male	Female	Male	Female	Male	Female
<b>EAPCC</b>	83.75%	16.25%	79%	21%	79%	21%
<b>Telkom</b>	77.8%	22.2%	53%	47%	60%	40%
<b>CWU</b>	100%	0%	59%	41%	57.5%	42.5%
<b>CAWU</b>	87%	13%	92%	8%	94%	6%

The margins of gender representation at the EAPCC as shown on Table 1 were much higher than those of the Kenya Telkom. The general gender representation at the management level stood at 20 per cent female compared to 80 per cent male while at the operational level the representation was at 21 per cent women and 79 per cent men.

This data indicated that at the EAPCC which is in the manufacturing industry, women representation was lower than at the Telkom which is within the service industry. It also indicates that like the Telkom Kenya, disparities increase as one goes up the organizational

hierarchy with the higher margins of disparities being experienced at the management levels. These findings are consistent with the findings by Mwambu (2000) that margins of gender disparities are higher at the management levels compared to the operational levels. They are also in agreement with reports by Bilton et al (2002) that gender disparities are higher at the manufacturing sector organizations compared to the service sector organizations.

As shown in Table 1 the margins of gender representation at the trade unions were just as high as those observed at the organizational level with the highest levels being observed at the management levels. In the Telkom Kenya's union, (CWU) as shown on the table 1, there was no female representation in the management level of the Communications Workers Union. At the operational levels female employees were 41 Per cent compared to 59 per cent the male employees respectively. The average overall female representation at the CWU was 42.5 per cent. These findings indicate that the trends of gender representation at the CWU are similar to those of the Telkom Kenya where gender disparities are higher at the senior organizational levels compared to the junior organizational levels.

At the Chemicals and Allied Workers' Union, women representation was below 30 per cent in all levels with an overall average women representation of 6 per cent compared to 94 per cent that of men. Disparities were therefore highest at the trade unions levels which according to Hassim (2003) and Ballington (2004) are because of the political nature of trade unions where officials are selected through an elections process.

### **Labour Policies' Implementation within Organizations and Trade Unions**

This section examined the extent to which the selected organizations and trade unions had implemented gender policies and the extent to which the implementation or failure to implement may has influenced gender disparities in these organizations. The implementation of the policies was examined against the extent to which the various gender-related provisions of laws have been entrenched into the organizational structures including the two thirds rule, the maternity leave, the health and safety protection of women during pregnancy, sexual harassment, the equal pay policy, the disclosure of sex in employment contracts, and the affirmative action. The responsibilities in the implementation process, the communication of the policies and the inspection for the implementation were also examined as important elements of the implementation process.

### **Implementation of the Two-Thirds Rule in the Organizations**

The study aimed at establishing the extent to which the studied organizations have implemented the two-thirds rule as recommendation by the Kenyan constitution and the labour laws.



According to the Kenyan constitution, gender equality and freedom from discrimination are part of the rights and fundamental freedoms. The finding of this study indicated that none of the organizations under study had implemented the two-thirds rule at all the levels of employment (Table 4.4 and 4.5). Sub-section (8) of Article 27 of the constitution provides quantitative guides by specifying that measures should be taken to ensure that no more than two-thirds of members of elective or appointive bodies shall be of the same gender. While this guide generally focuses on public institutions, it is within the spirit of the constitution that the private institutions which serve the public and indeed all institutions in Kenya adhere to this guideline. Both the management and operational levels of employment within the EAPCC and the CAWU (which are manufacturing oriented organizations) fell below the one-third rule. A manager interviewed at EAPCC explained:

The concern really is to fill positions with workers who will perform and the more one is able to meet the work demands the higher the chances of being appointed. We recruit by merit. We allow candidates to compete equally although men end up with most jobs because they can perform some manual jobs better than women.

The Telkom Kenya and the CWU which are within the service industry had achieved the one third rule of gender equality within their operational levels but had failed to do so within the management and the executive levels. The two-thirds rule therefore had not been implemented at the different levels of the organizational hierarchy. From the findings of this study, while some of the organizations including the Telkom Kenya and the CWU had achieved the two-thirds rule at the operational levels, none had done so at the management level. Gender disparities remained high at the top management, the Board of Directors' and executive positions of all organizations and trade unions that were studied with a women representation of zero per cent at the executive level of the CAWU and zero per cent at the Board of Directors level of the EAPCC Board of Directors level of the Telkom Kenya and the executive level of the CAWU had a representation of only one female each out of a membership of nine and eight members respectively.

These findings indicate that while the two-thirds rule is important in ensuring the general gender representation in organizations and while that it has been observed by the organizations studied at the operational levels, the rule can only reduce inequality if the implementation is done for all organizational hierarchical levels and not just the operational level. The implementation of this rule at all levels is therefore an important determinant of gender disparities in the studied organization.



### **The Equal Pay Policy in the Organizations**

On equality of payment, the Employment Act (2010) states that an employer shall pay his employees equal remuneration for work of equal value. All of the workers interviewed reported that compensation was based on job classifications and people on the same job classification were paid the same regardless of their gender and this factor was not considered to cause gender disparities. The pay structures presented to this study were not based on the gender of the employees but on work related characteristics including academic achievements, physical efforts, mental expeditions, loyalty to the organization, work experience, and generally on the level of the value of the employee's contribution to the success of the organization.

All employees in the same job group for all the organizations studied were compensated the same regardless of gender although as observed in other sections of this study, the criterion for promotion to the various job groups were not acceptable to all the respondents. Likewise, characteristics such as ability to work longer hours and ability to work out of office may have favoured one gender against another creating pay differential due to the allowances which accompany these characteristics. These findings indicate that the policy of 'equal pay for equal job' has been employed in all the organizations and is not a determinant to gender inequality in the studied organizations.

### **Implementation of Sexual Harassment Policy in the Organizations**

All the organizations studied had a policy within their employees' code of conduct which stated among other things that no employee shall sexually harass another. Sexual harassment may discourage victims from continued employment. None of the employees interviewed indicated having been sexually harassed or having received positions after conceding to sexual requests in the past five years.

To determine whether sexual harassment can lead to gender disparities, the respondents were asked whether sexual harassment would lead to their decision on discontinued employment and as seen in Table 2, majority of the female respondents felt that sexual harassment would discourage continued employment hence causing gender disparities in organizations.

These findings indicate that sexual harassment may discourage more women than men from continued employment. While all employees will be affected by sexual harassment, more women than men will consider it as a factor on decisions about continuity of employment. This indicates that sexual harassment may affect gender balance in the studied organizations.

Table 2: Effects of Sexual Harassment on Continued Employment

		<b>Sexual Harassment Would Affect My Continued Employment</b>				
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
		<b>(Strongly Disagree)</b>	<b>(Disagree)</b>	<b>(Neutral)</b>	<b>(Agree)</b>	<b>(Strongly Agree)</b>
TELKOM	Male		20%	30%	50%	
	Female			10%	60%	30%
EAPCC	Male		20%	36%	44%	
	Female			15%	45%	40%
CWU	Male		22%	40%	38%	
	Female				50%	50%
CAWU	Male		35%	25%	40%	
	Female			10%	45%	45%

Proper implementation of sexual harassment policy may discourage sexual harassment. At the Telkom Kenya and the EAPCC, sexual harassment was handled under the formal grievances processes where the aggrieved worker reports the offence to the immediate supervisor for resolution. Where the immediate supervisor is not able to provide a solution, the case is referred to the departmental head and the senior management progressively. It is only after this system has been exhausted that the case may be referred to the trade unions and if still not resolved, to the court system. This in essence means that all employees' grievances including sexual harassment are handled by officials who are senior to the aggrieved employee and who may be the culprit or perpetrators of the offences. This procedure is in agreement with the Employment Act (2010) which provides that the employer has the responsibility of investigating and punishing the sexual harassment offenders. This raises the possibility that such a grievance may not be handled satisfactorily.

Generally in all the organizations, the workers records were confidential including those involving disciplinary matters. This was in line with the requirement of the Employment Act (2010) that the employer should not disclose the name of a complainant of sexual harassment or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation to the offence. While this provision is aimed at protecting the victim from embarrassment, it also protects the culprit and fails to act as a caution to possible future potential offenders. Likewise, while the organization may strive to maintain the confidentiality of the offence, on the instances that the matter is referred to the court system, the confidentiality may no longer be maintained since the court system in Kenya is open and all cases are accessible to the members of not just the organization but to the members of the general public.

This may discourage an aggrieved member from referring the case to the court system leaving him/her at the hands of the employer who, as already mentioned may be the perpetrator of the offence.

There were no work procedure rules for any of the job descriptions and procedure manuals studied that restricted body contact between men and women as a way of avoiding instances likely to be interpreted as “behaviour of a sexual nature” as provided for in the Employment Act. An interview with the management revealed that there was also a clear lack of understanding of what the term ‘behaviour of sexual nature’ may refer to especially for jobs that required close body contacts especially given the various religious interpretations such as the Islam where a handshake between people of different gender may be interpreted as sexual seduction. It was also not clear the extent to which the ‘indecent’ dressing can be interpreted as sexual harassment. This may discourage employers from recruiting workers of a different gender where the nature of the work involves physical contact between the workers which may be construed to refer to behaviour of sexual nature.

As observed, in absence of a clear sexual harassment procedure in all the organizations studied, the general disciplinary procedure is followed which as is currently in the Employment Act gives the employer the liberty to issue disciplinary measures he/she deems appropriate against the person who subjects any employee to sexual harassment. However, the employees felt that if the employer was the culprit then justice may not be served. The laws as well as the organizational procedures are not clear on the procedure to be undertaken where the offender is the employer or is the supervisor to the victim. It also does not specify the nature of the punishment. It also does not specify strategies for avoidance of victimization where the employer or the employee’s supervisor is the offender. Generally, while the studied organizations could not present sexual harassment cases for review in this study due to confidentiality of the victims, it was clear from the reviews of the disciplinary procedures of the organization vis-à-vis the employment act that sexual harassment procedures were not clear and that they may not have been followed to the satisfaction of the victims.

### **Effects of the Extended Maternity Leave**

The concern by the government to ensure maternal healthcare and reduction of mortality rate led to the ratification of the extended maternity leave as proposed by the ILO. While the former employment act (Employment Act Cap 234), required that an expectant mother may proceed on a maternity leave for two months with full pay, provided that she forfeits her annual leave in that year, the current Employment Act (2007) provides that a woman may proceed on a three months maternity leave without forfeiting her annual leave entitlements. The maternity leave

may be extended upon expiry with consent of the employer or it may be followed by other forms of leave including the sick leave. Upon expiry of the maternity leave, the female employee has the right to return to the same job or similar job and not just 'some' job.

All the employees interviewed accepted that the maternity leave policy has been fully implemented in all the organizations. As seen on Table 3, majority of the respondents from the EAPCC and the Telkom Kenya expressed fear that while the employees may not lose their jobs due to the maternity leave, the leave may influence employment decision by employers on recruitment, training and promotion. As observed, the case was different at the trade unions where the respondents felt that the leave may not influence the employees' career opportunities where decisions are made through voting and once made, the position would remain to the end of the voting cycle.

Table 3: Influence of Extended Maternity Leave on Recruitment and Promotion of Women

		<b>Would the Extended Maternity Leave Influence Employment Decision by Management</b>					
		<b>Operational level</b>			<b>Management level</b>		
		Yes	No	Total	Yes	No	Total
TELKOM	Male	90%	10%	100%	75%	25%	100%
	Female	88%	12%	100%	72	18%	100%
EAPPCC	Male	80%	20%	100%	80	20%	100%
	Female	85%	15%	100%	75	15%	100%
CAWU	Male	14%	86%	100%	0%	100%	100%
	Female	20%	80%	100%	10%	90%	100%
CWU	Male	25%	75%	100%	4%	96%	100%
	Female	20%	80%	100%	10%	90%	100%

The extended nature of the maternity leave will negatively affect women compared to men and may influence the employers' decision in hiring, recruitment, and selection of women especially in perceived sensitive positions in the EAPCC and the Telkom Kenya. A manager at the EAPCC observed: while a lady (female employee) on maternity leave may be replaced by a casual contract employee, a maternity leave followed by any other leave may force the employer to confirm the casual worker due to the requirement by the employment Act that a casual contract exceeding three months must be converted into a permanent contract.

This observation means that the extended maternity leave increases the operating costs of the organization which may influence the employers' decision in hiring, training and promotion. Likewise, while the employee would receive a similar job on an event that the position has been filled by the time she resumes, an employee returning to a job different from the previously occupied and which she is less familiar with is limited in the opportunities for

career growth in the new job. While this policy has been implemented in the studied organizations, the findings revealed that it is an important determinant of gender equality.

### Protection of Women Workers during Pregnancy and after Childbirth

The working conditions during pregnancy and after childbirth may affect the health of the expectant mother and the baby respectively and influence the decision on continued employment of the mother. While the protection of various employees including employees with physical disabilities is well-stipulated in the occupational health and safety act, the protective legislation of women workers during pregnancy and after childbirth does not exist. The Occupational Safety and Health Act 2007 for instance, does not provide any additional protection for pregnant employees in respect to pollution, ergonomics, physical facilities and hazardous working environments. Likewise, none of the studied organizations had provisions for the protection of the mothers during pregnancy and after childbirth in regard to provision of equipment or ergonomics especially in jobs that require climbing up the poles, excessive body movement, lifting heavy objects, and standing for lengthy periods of time. Asked if there were elements of their jobs they needed changed during expectance, majority of the operational workers responded in the affirmative while majority of the female management respondents felt that there was nothing they needed to be changed.

Table 4: Female Respondents' Opinions on whether there are Elements of their Job they would want Changed during Pregnancy

	Operational level			Management level		
	Yes	No	Total	Yes	No	Total
TELKOM	80%	20%	100%	42%	58%	100%
EAPPCC	95%	5%	100%	35%	65%	100%
CWU	35%	65%	100%	30%	70%	100%
CAWU	40%	60%	100%	28%	72%	100%

The biggest percentage of respondents who indicated that they would have wanted some elements of their jobs changed during pregnancy came from the operational level of the EAPCC mainly because the EAPCC is a manufacturing company where most of the operational jobs were manual. Some of the common areas where the respondents needed changed included less working hours, temporary transfers, less manual work, transfers to more favorable jobs and secondment. They reported that in the past in circumstances where one was not able to perform her duties due to pregnancies, she would be temporarily transferred to more favorable jobs, or be exempted from certain responsibilities such as those that involved excessive travelling or she

could request for a sick leave awaiting the official maternity leave. However, none of the female respondents reported having been discriminated due to a pregnancy.

Concerning the childcare, none of the organizations studied had a childcare centre facility or other facilities which may ease the care for the new born children and increase women participation in the labour force. There were also no breastfeeding breaks but the mother could take advantage of the lunch break to breastfeed the young ones if she lived near the organization. In addition, the Telkom Kenya allowed the mother to leave work early (3 pm) to attend to the young ones below the age of six months. The lack of breastfeeding breaks and the unavailability of care-centre facilities in organizations make the working environment uncomfortable for the mother, compromise the health of the baby and may promote gender inequality.

### Implementation of Affirmative Action in Recruitment and Promotion

Affirmative action is the step taken by the management of an organization to increase the representation of women in areas of employment from which they have been historically excluded. An interview carried out with the management of the organizations studied revealed that while the Telkom Kenya and the CWU had implemented the affirmative action this was only at the operational level. None of the organizations had implemented affirmative action at the management levels.

As seen on Table 5, majority of the members of the management of all the organizations studied were neutral about whether affirmative action was considered an important element in the recruitment and promotion process or not.

Table 5: Implementation of the affirmative action

Name of Organization	Affirmative action is considered during recruitment and promotion processes				
	1 - Strongly disagree	2 - Disagree	3 - Neutral	4 - Agree	5 - Strongly agree
TELKOM		20%	40%	40%	
EAPCC		20%	35%	45%	
CWU		53%	45%	12%	
CAWU		45%	40%	15%	

More members of management at the EAPCC and the Telkom Kenya than at the trade unions felt that affirmative action was an important consideration during recruitment and promotion. Likewise, more members of the management at the trade union disagreed that affirmative action was implemented during recruitment and procedures. This is because recruitment at the trade

union is based on elections of officials with no provision for nominations. It is clear from tables that affirmative action had not achieved equality in gender representation at any of the reviewed organizations leading to the high gender disparities at all levels.

According to the Employment Acts it is not discrimination to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace. Sub-section (6) of the Constitution of Kenya also states that measures may be taken, including programs and policies designed to redress any disadvantages suffered by individuals or groups because of past discriminations. The Affirmative Action created opportunity for women to be employed at different levels by taking measures with regard to promotion of equality or the elimination of discrimination in the workplace or to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job. The organization studied had an equal employment opportunity policy but did not have a written affirmative action policy. Both the recruitment and the promotion processes were based on perceived meritocracy while the training and development was based on the training needs and skill gaps. Failure to implement the affirmative action was, therefore, an important determinant of gender disparities in the studied organizations.

### **Workers Awareness of the Labour Laws and Policies in the Organization**

The first step in the implementation of the labour laws and policies is the sensitization and creation of awareness of the existence of these laws to both the management and operational workers. This study sought to examine the employees' awareness of the existence of the various gender-based policies and laws as an important aspect of the implementation of the laws and policies. To establish this, respondents were asked to indicate whether they were aware of the specific gender -based laws and policies including policies on recruitment and selection, promotion, training and development, appraisal and performance, employee remuneration and the ILO convention, the new labour laws and the constitution. While the employees seemed aware of the existence of most of the laws and policies, they lacked the in-depth information about these laws and policies and especially as they relate to gender equality. It emerged from the interviews with the employees from all the studied organizations that while the employees were given work guidelines, rules and regulations on joining the organization, communication on these policies including workshops, open forums and organizational publications did not exist in any of the studied organizations. The management staff had better in-depth information of the national, international and organizational policies on employment than the operational workers. The workers were more familiar with the organizational and national policies on labour than with the international laws such as the ILO conventions.



Between the organizational and the national policies, the workers were more familiar with the national policies than with the organizational ones. The most familiar policies to both the workers and the management were the new labour laws and the recruitment policies while the least familiar were the ILO conventions. While the new labour laws were the most popular, most of the respondents were familiar with only some limited elements of the labour laws with the extended maternity leave and the two-thirds recruitment guideline being the most popular. Why the maternity leave and recruitment policy were familiar was because the policies were identical to the national labour laws which were more publicized than the organizational and the international policies.

Requested to explain the method used to communicate the policies, the all the organizations mentioned that none of the policies has been communicated using the regular communication channels such as the memos, the notice boards and the magazines but the documents were made available should the workers request for them. All the organizations reported that none had conducted training, workshop or a seminar on employment policies in the previous five years. The finding implies that the policies are within the legal frameworks but, dissemination is poor in both the manufacturing and telecommunication sectors affecting both their implementation and institutionalization.

### **Enforcement and Monitoring of Policy Implementation in Organizations**

An important step in enforcing and monitoring the implementation of labour laws and policies is the inspection by the authorized agencies. Labour inspection is the process by which labour inspectors from the labour inspectorate division of the Ministry of Labour visits the organizations and inspects both labour documents and work processes to ensure that organizations comply with the statutory labour standards. Labour inspection is an important procedure for ensuring not just gender representation at the workplace but also the general good working environment as relates to matter such as fair treatment of worker, health and safety among other factors. Labour inspection was cited as an important factor in gender equality. The study examined gender inspection at 2 points of delivery; that by the ministry for labour and by the trade unions.

According to the labour institutions act Cap 2007, the Ministry of Labour through the labour officers, has the mandate to conduct regular inspections. However, the management and the workers of the organizations under review reported that they had never been visited by a labour inspector at their place of work in the past ten years. Section 30, of the labour institutions act provides for the appointment of a labour officer who has the power to enter any premises or place where 'persons are, or may be, employed' and for the purpose of monitoring or enforcing compliance with any labour law, require the production of employment records examine, either

alone or in the presence of any other person, whom the labour officer has reasonable cause to believe to be or to have been an employee to whom a wages order applies. In part, it provides that the officer may at all reasonable times, enter, inspect and examine any land or building, other structure, book, documents and records and institute proceedings in respect of any contravention of any provision of any labour law (including contravention of gender related discrimination laws).

The government is the watchdog of the citizens and has the mandate of ensuring fair work practices, observation of the labour laws and fair labour practices including fair gender representation. Lack of labour inspection by the government through the Ministry of Labour is a key determinant of gender disparities as it may influence both organizational policies and practices.

Gender composition at the trade unions is influenced by the members through the voting process and the ministry of labour cannot dictate to the members whom to vote for. The only body that can influence the voting procedure is Parliament by amending the Labour Institutions Act.

As with the Ministry of Labour, trade unions have the mandate to ensure fair working conditions for their members including elimination of discrimination of all kinds. The primary role of labour unions is to fight for better rights, wages and benefits for workers. Trade union role has been to protect jobs and real earnings, secure better conditions of work and life, fight against exploitation and arbitrariness to ensure fairness and equity in employment contexts. While the unions reported that they had the mandate to inspect the workplaces and have actually done so, the workers and management respondents reported that gender issues have never been a focus of any such inspections. The trade union executives interviewed reported that inspections at the work place were only done on demand and focused on specific areas of employee's complaints. This would mainly happen when the workers had complained of poor working conditions which needed investigation. However, according to the ten interviewed executives, none of the inspections was on gender equality. Critical to this too was the observation that the trade unions were never represented in any of the companies in the recruitment/selection process either through the national officials or through the shop stewards.

## **CONCLUSION**

The study concluded that, gender disparities continue to exist in manufacturing, industrial and trade union sectors. The disparities tend to favour men over women at all organizational levels. The disparities are higher at the management levels compared to the operational levels of the organizational hierarchies. They also tend to be higher at the trade unions level compared to the

organizational level. Disparities at the manufacturing organization are also higher than at the Service organization. Disparities will also be caused by poor implementation of the two-thirds rule of gender representation, and failure by both the trade unions and the ministry in charge of labour to inspect work place on issues relating to gender equality and failure by the trade unions to focus their campaigns on gender issues.

## RECOMMENDATIONS

It is evident from this study that gender disparities continue to persist at the operational, management and trade union levels of organizations in Kenya. The disparities can only reduce if tight measures are taken including the formulation of gender responsive policies at organizational level, implementation of gender responsive practices, proper implementation of the new labour laws and implementation of gender responsive working conditions in organizations. Specifically the study proposes the following strategies which may lead to reductions in gender disparities in organizations and the respective trade unions in Kenya.

1. From the findings it is clear that while the organizations were keen to observe the two-thirds rule at the overall organizational level, gender representation at the various levels of the organizational hierarchy especially at the top management level fall below the requirements of this rule. The two-thirds gender representation rule should be implemented at all the levels of organizational hierarchy including the various operational, management and trade unions' levels.
2. It is evident from the analysis of the organizational policies and practices that while all the organizations have provisions for the physically disabled workers, no such provisions are in place for the expectant mothers. Likewise, in the occupational health and safety Act 2007 there are no specific occupational health and safety guidelines for expectant mothers. The organizations should have organizational policies, procedures and facilities for expectant mothers who encourage equal participation of the mothers including ergonomics, deployments and use of technology.
3. While the employment Act seeks to keep the sexual harassment information confidential, by so doing it also protects the confidentiality of the perpetrators of the offense. Organizations should have policies which allow the exposure of the sexual harassment culprit without necessarily exposing the victim.

Further, the mandate to investigate sexual harassment should not rest on the employer as is the requirement by the Employment Act because the employer himself is a likely culprit of sexual harassment. Organizations should instead form independent disciplinary and investigation committees which comprise of both the management and workers

representatives from both gender incase the victims feel more comfortable with one gender and not the other one.

4. From the findings it is clear that most of the workers are not familiar with the existing labour laws on gender discrimination and representation. Most of the laws are in existence but for them to be effectively reinforced, it is essential that both the management and the employees are conversant with the laws. Once the laws have been gazetted, it should be a requirement that copies are distributed to industrial organizations and that forums should be created for workers to discuss these laws and the implication to the industrial relations. The organization should ensure that the workers have access to both the labour laws and the organization's labour policies. Forums too may be created through the organizational communities of practice and facilitated by the available media technology such as the social media technology to discuss the content of these documents.
5. The findings revealed that organizations under study are not regularly inspected by the labour inspectorate division of the ministry of labour. There should be regular labour inspections by both the government, through the labour inspectorate division of the ministry of labour, and the trade unions. The inspections should be made mandatory during the process of recruitment, training needs assessment and promotion. The labour inspectorate division of the ministry of labour should be empowered through more budgetary allocation, decentralization and recruitment of more and better trained labour inspectors.

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