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Protecting Workers in Micro and Small Enterprises: Can Trade Unions Make a Difference?

A Case Study of the Bakery and Confectionery Sub-sector in Kenya

by

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and
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InFocus Programme on Boosting Employment
through Small Enterprise Development
Job Creation and Enterprise Department



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Foreword

This report is the outcome of a pilot research project initiated by the InFocus Programme on Boosting Employment through Small Enterprise Development (IFP/SEED) in order to expand the knowledge base both on the needs of workers in micro and small enterprises (MSEs) and trade union action therein. In general, traditional literature on MSEs in developing countries has paid scant attention to these issues, while focusing mainly on the supply-side constraints (i.e. no or limited access to assets, resources, markets) confronting these enterprises. The overall purpose of this research is to contribute to filling this gap – by shedding light on labour practices and working conditions in MSEs and documenting ways that trade unions are experimenting with to redress decent work deficits in these enterprises. Ultimately, the research is intended to help the labour movement shape strategies and means that are more suitable to meet the challenges stemming from the growing role of MSEs in the economy. This Working Paper is part of the series on “Representation and Organization Building” by IFP/SEED.

It is undeniable that growing employment in MSEs has not been accompanied by subsequent unionization. Reasons include policies and institutional frameworks that inhibit trade union action in MSEs, the volatility of many such enterprises, and the weakness of established negotiating counterparts. The geographical dispersion of small-scale enterprises and the prevalence of blurred and unstable employment relationships are also obstacles hindering unionization in smaller enterprises. Until recently, organizing in the MSE sector did not figure prominently on the policy agenda of most trade unions. But this is starting to change. Increasingly, for many unions around the world, the question is not whether to address this issue, but how.

The present report seeks to enhance understanding of the prevailing working conditions and labour practices in MSEs in Kenya by focusing on the bakery and confectionery sub-sector. It also documents efforts being made by the Bakery, Confectionery, Manufacturing and Allied Workers’ Union (BCMAU) to represent and protect workers in MSEs in the relevant industry sector.

The assessment of working conditions and labour practices is based on data gathered from a pilot survey of formal and informal undertakings in three of the major urban areas of the country. The analysis identifies significant gaps in job security, incomes, health and safety and social protection. These gaps are wider in enterprises operating in the informal economy where workers are excluded from all labour protection, and are largely beyond the union’s outreach. Impending challenges for BCMAU include a more thorough legal and institutional environment conducive to the enhancement of workers’ protection in MSEs, including those in the informal economy, and the development of services that better meet the needs and demands of these workers. Cooperation with like-minded civil society groups can be instrumental in the process.

This report has been written by Gregg J. Bekko, Lead Consultant, Workforce Performance Solutions, Management & Development Consultants based in Nairobi, together with George M. Muchai, National Secretary General of BCMAU. They can be contacted at gbekko@africaonline.co.ke and bakers@form-net.com respectively. Giovanna Rossignotti (IFP/SEED) designed the research framework for this report and guided it to its completion.

Christine Evans-Klock
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Abbreviations and Acronyms

BCMAU	Bakery, Confectionery, Manufacturing and Allied Workers' Union
COTU (K)	Central Organization of Trade Unions, Kenya
ICFTU	International Confederation of Free Trade Unions
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association
ILO	International Labour Organization
MSE	Micro and small enterprise
NGO	Non-governmental organization
NSSF	National Social Security Fund
NHIF	National Hospital Insurance Fund

Executive Summary

Since 1995, the Kenyan economy has experienced a steady slowdown in economic performance. In 2000 a dismal negative growth of 0.3 per cent was recorded. This decline was reflected in all sectors, particularly agricultural and manufacturing, which recorded negative growth of 2.4 and 1.5 per cent respectively. The average annual inflation rate for 2000 rose to 6.2 per cent compared to 3.5 per cent in 1999.

The year 2000 also witnessed a significant slowdown in employment creation as a result of economic recession, the increased level of privatization and the laying-off of public sector workers. Employment in the formal sector stood at 1.619 million persons in 1996 with annual growth decelerating from 1.1 per cent in 1998 to a marginal 0.5 per cent in 1999. Simultaneously, the informal sector continued to absorb a large proportion of the surplus labour force with employment rising from an estimated 3.8 million in 1999 to 4.2 million in 2000, reflecting a growth of 11 per cent.

In addition to high levels of unemployment, Kenya continued to face increasing levels of poverty. The proportion of Kenyans in rural and urban areas living below the poverty line reached 56 per cent in 1999 (16.2 million people) compared to 40.2 per cent (10.5 million people) in 1994.

In this context, the small-scale and *Jua Kali* (informal sector) enterprises have come to be seen as a powerful leverage on employment creation and poverty reduction. To date, there are about 1.3 million micro and small enterprises (MSEs) in Kenya employing some 2.36 million people, including part-time and casual workers. The Nairobi and Mombasa stratum, which accounts for about 10 per cent of the population, also accounts for about 16 per cent of the total number of MSEs and 17 per cent of their total employment. Almost 66 per cent of the MSEs are located in the rural areas, where over 80 per cent of the total population lives. While MSE density is higher in urban areas, the aggregate or relative number is higher in the rural areas.

Over the years, the role and potential of the small enterprise sector in the Kenyan economy have repeatedly been evaluated and addressed, including in government policy documents. However, few studies have focused on labour-related issues in the sector. The present report analyses working conditions and labour practices in MSEs within the bakery and confectionery sub-sector, which is part of the food-manufacturing industry. It also documents ongoing efforts by the Bakery, Confectionery, Manufacturing and Allied Workers' Union (BCMAU) to represent and protect workers in the related MSE sector.

The analysis of sectoral distribution of MSEs in Kenya indicates that there are some 35,653 enterprises in the food and beverage-manufacturing sector employing a total of 80,795 workers. Workers employed in the food and retail trade comprise 63.9 per cent of the total workforce engaged in informal sector enterprises. Due to lack of data, however, it is difficult to estimate the exact number of informal enterprises or the total number of workers engaged in the bakery and confectionery sub-sector.

Based on the analysis of data gathered from a pilot survey of four formal and nine informal enterprises (employing a total of 113 workers) located in three major urban areas of the country (Eldoret, Mombasa, Nairobi), this report indicates that the opportunity for growth among the surveyed MSEs is relatively weak. Such a growth entails the enterprise capacity to access a reliable source of credit, in order to buy adequate bakery and confectionery equipment as well as technical know-how. All entrepreneurs interviewed stated that their greatest problem is lack of sufficient security to obtain the finance that would enable them to expand their operations and also their number of workers.

According to the survey results, male workers dominate the workforce in both formal and informal enterprises. The reasons given for not employing women include traditional cultural norms and inherent discriminatory practices that hinder women's participation in the labour market. Other reasons stem from the heavy physical tasks performed in enterprises surveyed (mixing large volumes of dough, loading and offloading baking ovens, being exposed to excessive heat) that make the majority of these jobs unsuitable for women workers. According to one employer, he did not employ women because this required the provision of separate changing facilities and toilets. In addition, most women are restricted to sales jobs, also as a result of a "marketing" strategy aimed to attract and retain male customers, and the widespread perception that women are more trustworthy than men in cash-related responsibilities.

The report shows that working conditions and labour practices in formal surveyed enterprises, irrespective of their workforce size, are generally more decent than in informal undertakings. The former are all within the union outreach and, as such, workers are usually the subject of collective bargaining agreements between the employer and the relevant trade union. Employment in these enterprises is relative stable, wages are higher than the statutory minimum, workers have 21 days of annual leave with full pay, and women are granted one month of maternity leave with full pay. Conversely, most of these benefits are unavailable to informal sector workers, who are excluded because they are employed on contracts other than as permanent full-time employees. As such, employers are not legally required to provide benefits. Moreover, existing social insurance funds do not manage to capture informal sector workers. Labour inspection and administration authorities, contending with resource constraints and corruption, rarely enforce labour law in the informal sector. Access to justice is impaired at the process level and, in practice, difficult for workers because of their lack of knowledge and fear of repercussion.

The Bakery, Confectionery, Manufacturing and Allied Workers' Union (BCMAU) has been in the forefront of protecting the rights of workers employed in MSEs. Since its establishment in 1976, the union has been involved in lobbying the Government to review labour laws in Kenya in order to enhance protection and improve job quality for all workers. More recently, the union has submitted proposals to secure donor assistance to develop workers' education programmes in areas such as HIV/AIDS, child labour and sexual harassment.

Nonetheless, the union's endeavours to target MSE workers are hampered by considerable obstacles. For example, in accordance with the rights stipulated in Kenyan labour legislation, all employees working for companies with at least seven employees have the right to form or join unions of their choice. In practice, anti-trade union practices in small-sized companies are rampant. Most employers are manifestly opposed to union activities and workers are reluctant to

become union members because they are either unaware of the potential benefits of unionization or because they fear reprisals. Moreover, under the Trade Disputes Act (Cap. 234) Revised 1989, the union needs to have a simple majority of employees in the relevant undertaking, defined as half the number of the total workforce plus one, in order to qualify for recognition and subsequent negotiation of collective agreements. In principle, this means that trade unions have the mandate to organize workers in both formal and informal enterprises. However, unions are constrained by a section of the Trade Disputes Act (Section 46 (1)), which requires trade unions to serve notice on enterprises employing not less than 10 union members, requesting their employers to deduct and remit union dues as per the prescribed schedule. In practice, this provision curtails unionization in MSEs in the informal sector, as the latter generally employ less than 10 workers.

In addition to legislative barriers, poor access to justice also makes unionization in MSEs a hard task, particularly in the informal sector. In theory, Kenyan labour legislation stipulates that all workers have the right to pursue their legal interests in court but this is less achievable in practice. On the one hand, the Industrial Court (the acme of the dispute settlement system in Kenya) is only available to employees through registered trade unions. The Industrial Court is not a court to which individuals may resort to in the event of an employment-related dispute, making it very difficult for workers employed in the informal sector to seek redress for infringement of their rights. On the other hand, the Industrial Court has no jurisdiction in compensation for injuries or diseases sustained in the course of employment.

Faced with human resource and financial constraints (partly the result of a weakening process the union has undergone in recent years), BCMAU has forged a strategic alliance with a human-rights NGO based in Nairobi, Kituo Cha Sheria, in order to enable workers in the informal sector to obtain redress from civil courts in the event of occupational hazards. This is usually achieved through the union field officers who receive workers' complaints concerning violations of labour and land rights and refer the affected workers to Kituo Cha Sheria. The latter provides workers with free legal aid.

The cooperation between BCMAU and Kituo Cha Sheria is not a representative example of the typical trade union-NGO relationship in Kenya. On the contrary, the recent trend of many civil society groups to take up labour-related issues has raised grave concerns among the Kenyan trade union movement. While unions blame NGOs for undermining their official role in the representation and protection of workers, the emergence and activities of these civil society groups are also the consequence of union inability to respond effectively to ongoing transformations in the labour market and to cater to the interests of a changing workforce.

The near future raises several critical challenges to the Kenyan labour movement. If BCMAU is to retain its capacity to protect workers, some concrete actions will need to be taken to improve the legal and institutional framework for labour representation in MSEs, including those in the informal sector, and to develop services that effectively meet the needs of MSE workers. The experience of many other countries proves that building strategic alliances with key partners, including NGOs, is often instrumental in achieving this goal. BCMAU may decide to pursue its current efforts further in this direction.

1. Case study background and context

1.1 Introduction

One of the most crucial challenges facing Kenya today is poverty reduction. While the primary responsibility for meeting this challenge lies with Government, national stakeholders – including the private sector, non-governmental and community-based organizations – all have an indispensable role to play in this process (Republic of Kenya, 2000a).

Domestic policies and interventions aimed at attacking the causes and manifestations of poverty through job creation, both in the short and long term, are of specific concern to the trade union movement. However, the capacity of unions to contribute to policy processes is contingent upon their recognized authority to voice the concerns of workers. This, in turn, necessitates union ability to mobilize their members and provide them with labour representation and protection – an ability that has been seriously undermined over the past decade.

The steady slowdown in economic performance and employment creation has challenged the efficient functioning of national labour market institutions and the labour relations built around them. In Kenya, union membership has witnessed a significant decline due to contractions in the labour market and massive lays-off in the public sector, but also to union inability to address effectively the new realities arising in the labour market. Things have started to improve, however. Recently, the Kenyan labour movement has come to recognize that organizing in MSEs,¹ including those in the informal sector, is no longer an option – it is the key component of a wider strategy to counter the continuing decline in union membership and bargaining power. New experiences are at stake in this respect and are generally carried out by unions at the industry level (Fashoyin, 2001).

The present report focuses on one such experience. It encompasses two major dimensions. First, the report examines prevailing working conditions and terms of employment in MSEs operating in the bakery and confectionery sub-sector in Kenya. Second, it documents ongoing efforts by the Bakery, Confectionery, Manufacturing and Allied Workers' Union (BCMAU), to cater to and meet the needs of the workforce in this sub-sector. Although still embryonic in nature, these efforts bear witness to the renewed approaches trade unions are taking to expand their action to categories of workers beyond their traditional outreach.

This report is divided into five parts. Part 1 gives an overview of the case study background, by depicting recent economic trends and employment patterns in the national context. It also presents the objectives of the research and its methodological underpinnings. Part 2 looks at the features of the MSE sector and portrays key characteristics of MSEs in the bakery and confectionery sub-sector. Part 3 provides a comparative analysis of the terms and conditions of employment and labour practices in formal and informal enterprises. The role of BCMAU in representing and protecting workers in MSEs is described in Part 4. Finally, Part 5 draws some conclusions on the study findings. It also identifies the main challenges that BCMAU should address in the near future to extend its outreach and effectiveness in the MSE sector.

¹ Throughout this report, micro and small enterprises are referred to as MSEs.

The report was prepared primarily by using data gathered from a pilot survey of 13 enterprises - nine of which operate in the informal sector - located in three of the major urban areas (Eldoret, Mombasa and Nairobi). The enterprises surveyed are engaged in the manufacture of a wide range of products such as bread, pastries, cakes, confectionery, snacks and farinaceous foodstuffs. Secondary sources were also used for the purposes of comparing the findings with those of published research.

1.2 Economic trends and employment patterns

Since 1995, the Kenyan economy has been characterized by a gradual slowdown in economic activities. In 2000, economic growth declined for the fifth consecutive year, recording a dismal negative growth of 0.3 per cent. The continued decline in the performance of the economy is discouraging investment and is attributed to several factors, including the prolonged drought, power and water rationing, budgetary cuts, dilapidated infrastructure, high interest rates, reduced donor funding, declining production capacity, inefficient provision of public services and increased level of insecurity. The average annual inflation rate for 2000 rose to 6.2 per cent compared to 3.5 per cent in 1999 (Republic of Kenya, 2001a).

According to the provisional results of the 1999 Population and Housing Census (Republic of Kenya, 2000b), Kenya's population was estimated at 28.7 million (14.2 million men and 14.5 million women). These figures represent an inter-census population growth rate of 2.9 per cent (from 1989-99) as compared to 3.4 per cent (from 1979-89). Overall, the growth rate has declined due to a decrease in fertility rates. The urban population has doubled from 16 per cent in 1980 to 32 per cent in 1999 as a result of increased rural urban migration as well as population growth. The size of the labour force has also increased from 8.6 million in 1989 to 13.2 million in 1999, with an average annual growth rate of 5 per cent. During the same period the share of women in the total labour force declined slightly from 47.9 to 46.7 per cent. The share of the rural labour force remained quite stable at 81.5 per cent in 1989 and 81 per cent in 1999.

Employment creation in 2000 slowed down significantly partly due to the current economic recession and a steady decline in wage employment in the public sector. Employment in the formal sector stood at 1.619 million persons in 1996 with the annual growth decelerating from 1.1 per cent in 1998 to a marginal 0.5 per cent (1.674) in 1999. However, the number of paid female employees increased by 1 per cent from 487,100 in 1998 to 491,900 in 1999, much faster than the overall 0.5 per cent expansion in wage employment in the formal sector. The female participation in total wage employment increased from 29.3 per cent in 1988 to 29.4 per cent in 1999. This is attributed to demographic changes, which show that the female population has gradually increased and in the 1999 national census stood at 50.6 per cent of the total population. The majority of the women employed in the formal sector were working in community, social and personal services in 1999. Female participation in industries traditionally dominated by men remained low. Of the total 1.674 million workers in the formal sector, 1.378 million were full-time workers of whom 397,500 were women, according to Economic Survey data, 2000.

However, there has been a significant decline in public sector employment since 1996, from 700,900 to 673,900 in 2000 or a decline of 3.9 per cent, according to Economic Survey data for 2001. This decline was felt in all economic activities and is mainly attributed to the ongoing

public sector reform programmes, which include a freeze on employment, retrenchment and natural attrition in order to reduce workers in the public service.

The poor performance of the domestic economy adversely affected employment creation in all sectors. In 2000, the economy generated 415,000 jobs, with the formal sector creating only 3,300 jobs or 0.8 per cent of additional jobs. In contrast, the informal sector created 412,000 jobs, with employment rising from 3.8 million in 1999 to 4.2 million in 2000, reflecting a growth of 11 per cent. As Table 1.1 shows, the sustained expansion is largely attributed to the shift of surplus labour from the formal sector to the informal sector as workers in the public service continue to be retrenched.

Table 1.1: Employment in Kenya, according to sector, 1996-1999 (000's)

Sector	1997	1998	1999	2000
Modern* establishment: Private sector	946.8	968.0	990.3	1,002.9
Modern establishment: Public sector	700.6	696.6	683.3	673.9
Informal sector	3,051.0	3,418.3	3,803.9	4,216.2
Total	4,698.4	5,083.2	5,477.5	5,893.0

Note:* In the Kenyan context "modern" refers to formal sector.

Source: Central Bureau of Statistics 2001, Ministry of Finance and Planning, Kenya.

In addition to high unemployment, Kenya continues to face increasing poverty. The proportion of Kenyans, both in rural and urban areas, living below the poverty line in 1999 was 56 per cent (16.2 million people) compared to 40.2 per cent (10.5 million people) in 1994. In rural areas, 53.1 per cent (11.4 million people) are poor; in urban areas 50.1 per cent (2 million people). Poverty in urban areas has increased significantly – by 20.3 per cent. Once a rural phenomenon, poverty is now also prevalent in urban areas. The core poor segment represented 34.9 per cent of the total population of 28.7 million (Republic of Kenya, 2000b).

Table 1.2 shows poverty levels by gender and household size out of the total poor households (5.5 million) in Kenya. In both rural and urban areas, male-headed households constitute 75 per cent; female-headed households 25 per cent. In terms of the poverty gap, the proportion of female-headed households was significantly higher than male-headed households in both rural and urban areas. In terms of access to resources (consumption expenditure, land rights, access to credit or appropriate technology), female-headed households are worse off than male-headed households. A full utilization of women's productive potential is pivotal to breaking the cycle of poverty, if women are to share equitably in the benefits of development and in the products of their own labour.

Table 1.2: Proportion of poor households in Kenya, according to sex of household head, 1997

	Headcount %	% of total poor population	Contribution to national poverty
Overall Rural	52.93	100.00	100.00
Male-household head	52.53	75.01	74.46
Female-household head	54.11	24.99	25.54
Overall Urban	49.20	100.00	100.00
Male-household head	45.92	80.79	75.41
Female-household head	62.99	19.21	24.59

Source: Central Bureau of Statistics 2000, Ministry of Finance and Planning, Kenya.

Kenya's ranking on the global Human Development Index (HDI) has dropped progressively from 113 in 1991 to 125 in 1994 and to 134 in 1997. This implies that the overall human development status of Kenya is declining not only in absolute terms, but also in relation to other nations. The Gender-related Development Index (GDI) of 1995 ranked Kenya at 112 worldwide. Thus, irrespective of the poverty measures used, poverty in Kenya is on the increase (Republic of Kenya, 2000b).

The most critical economic challenge now facing Kenya is the enhancement of economic growth and the reduction of poverty. While MSEs have come to be seen as a powerful engine for job creation in this context, the outcome is contingent upon a number of conditions, including the ability of many such enterprises to exit informality and provide workers with decent working conditions.

1.3 Objectives and research methodology

1.3.1 Objectives

The main purpose of this report is twofold: to gain insights into the working conditions and practices prevailing in MSEs in Kenya, and to identify the most effective elements for trade union focus and action.

Specific objectives of the study are to:

- (i) Analyse the major problems confronting workers employed in MSEs;
- (ii) Assess how and to what extent union action in these enterprises has led to improvements for workers in terms of working conditions and labour practices;
- (iii) Examine policy and institutional factors that hamper worker representation and trade union action in MSEs; and
- (iv) Identify elements for expanding union outreach and effectiveness in the MSE sector.

1.3.2 Methodology

Research agenda and team

The research agenda for this study was identified by the Infocus Programme of the ILO on Boosting Employment through Small Enterprise Development (IFP/SEED) jointly with the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and its affiliate in Kenya, the Bakery, Confectionery, Manufacturing and Allied Workers' Union (BCMAU). Gregg J. Bekko, Lead Consultant, Workforce Performance Solutions, Management Consultants in Nairobi, carried out the fieldwork and, together with George M. Muchai, National Secretary General of BCMAU, prepared this report.

Research focus

The study seeks to enhance understanding of the prevailing conditions of employment and labour practices in MSEs by focusing on the bakery and confectionery sub-sector that falls under the food-manufacturing sector. A sample of MSEs, formal and informal, has been identified for detailed study in order to compare the characteristics of the workforce, including terms and conditions of employment within the sector. Other issues examined are workforce concerns and needs, and the level and scope of social protection provided by employers and the Government.

The formal enterprises selected have recognition agreements with the union and their workers are unionized, whereas the informal enterprises surveyed fall beyond the union outreach. Thus, selecting formal and informal enterprises for comparative analysis is aimed also (but not exclusively) at acquiring a better understanding of whether – and to what extent – trade union action in MSEs has been instrumental in securing improved employment for these workers. This understanding is critical for determining how current trade union strategies should be adapted to better meet the need of workers in informal MSEs. Thus, this study specifically takes into account the efforts being made by the BCMAU in Kenya to promote quality employment in MSEs in the bakery and confectionery sub-sector.

Sources of information

Data are mainly based on primary and secondary sources. The study draws mainly on a field survey carried out in 2001. Documents and information were obtained from BCMAU. Additional information and data were obtained from discussions with representatives of the Labour Department and of civil society organizations. Secondary sources were also used to compare the field findings with those of published research. The data were analyzed using both qualitative and quantitative methods to disaggregate data in gender terms, in order to identify male and female workforce participation.

Survey sample

The survey sample includes a total of 13 MSEs (employing a total of 113 workers) located in Eldoret, Nairobi and Mombasa. These sample sites are the three largest urban areas in Kenya and were chosen because the majority of MSEs in the bakery and confectionery sub-sector are located in urban areas (where the consumers of its products are also located). The sample 13

enterprises, as mentioned earlier, represent the formal (4) and informal (9) sector. This allows a comparative analysis of employment and working conditions, as formal enterprises (designated as the control group) have recognition agreements with the union and are therefore provided with employment protection. All four formal enterprises surveyed are unionized and all nine informal enterprises are not. These nine informal enterprises were located by the union.

The main characteristics of the sample enterprises are:

- **Size:** Of the 13 enterprises surveyed, five are micro enterprises, categorized in this report as employing up to 5 workers; the remaining are small enterprises (6 to 20 workers).²
- **Formal/Informal:** Of the sample, 4 are formal enterprises, 9 operate in the informal sector.
- **Branch of activity:** The study sample includes enterprises that are engaged in the manufacture of a wide range of products such as bread, pastries, cakes, confectionery, snacks and farinaceous foodstuffs.
- **Market:** All surveyed enterprises manufacture products for the domestic market. Seven enterprises produce products that are sold and consumed by customers within the same premises. The six remaining enterprises produce for re-sale to other enterprises that in turn sell directly to customers.

Survey instruments and process

The researcher responsible for the field work visited these 13 enterprises accompanied by trade union representatives. Interviews were conducted with owners or management representatives of the enterprises using a checklist (see Annex 1) of ten questions to elicit information regarding workforce size and terms and conditions of employment. All entrepreneurs interviewed were male. The interviews took place at the workplace and were recorded.

It should be noted that only two employers (both in the formal sector) allowed the researcher to interview workers' representatives, who were invited to provide clarification on the number of employees and their occupational categories. However, the workers' representatives appeared constrained in the presence of the employers and were not free to discuss the terms and conditions of employment, informing the researcher that they had already referred outstanding issues to their trade union officials. Efforts to meet privately with workers' representatives were thwarted by management who did not give time-off. On both occasions the owners/management

² A standard definition of MSEs is not yet universally adopted. In accordance with ILO Recommendation No. 189 on Job Creation in Small and Medium-Sized Enterprises (1998), the ILO generally applies nationally agreed definitions in country-level activities. These definitions can vary from country to country, which makes comparative analysis hard. For analytical purposes, the present study complies with the following working definition of MSE, which is based on IFP/SEED's practical operational experience: i) "micro enterprise" shall refer to enterprises employing from 2 to 5 workers; ii) "small enterprises" shall refer to enterprises employing from 6 to 20 workers. Such enterprises can be in the formal or informal sector.

representative were reluctant to discuss outstanding disputes, which had been forwarded to the Ministry of Labour for investigation and conciliation.

Scope and limitations of the research

Few studies have been carried out in Kenya, enumerating and describing employment and working conditions in the MSE sector (Oketch et al. 1991; Musinga, 1994; Daniels et al., 1995). However, these studies mainly describe the impact of small-credit access on creating employment in MSEs in Kenya. The present research adopts a worker-centred approach. Also, an effort was made to mainstream a gender approach into the data collection and analytical process.

Fieldwork proved difficult at times. For the reasons indicated earlier, information was mainly obtained from interviews with entrepreneurs but the close involvement of trade union representatives partly helped to redress the balance.

Finally, MSEs³ in Kenya are defined as activities in the informal economy employing up to 10 persons and enterprises in the formal sector employing up to 50 persons (Republic of Kenya, 1992). Since the IFP/SEED enterprise definition was used in this research, only enterprises employing up to 20 workers are considered in this study.

Part 2 gives the definition and key features of the MSE sector, including an overview of the bakery and confectionery sub-sector and the main characteristics of MSE and their owners.

³ Referred to as “small and micro-enterprises” in Sessional Paper 2/1992.

2. Overview of MSEs in the bakery and confectionery sub-sector

2.1 Definition and key features of the MSE sector

In Kenya, approximately 1.3 million MSEs are employing some 2.36 million people including part-time and casual workers. According to Sessional Paper No. 2 of 1992 on Small Enterprise and *Jua Kali* (informal sector) Development in Kenya, the term “small and micro-enterprise” comprises “informal sector activities employing up to 10 persons and enterprises in the formal sector employing up to 50 persons”. Table 2.1 shows the total number of MSEs in Kenya. The Nairobi and Mombasa stratum, which accounts for about 10 per cent of the population, also accounts for about 16 per cent of the total number of MSEs and 17 per cent of their total employment. Almost 66 per cent of these MSEs are located in rural areas (where over 80 per cent of the total population live). While MSE density is higher in urban areas, the aggregate or relative number is higher in rural areas.

Table 2.1: Total number of MSEs and employment patterns

Stratum	% of national population	MSEs		Workers		Mean
		No.	%	No.	%	
Nairobi & Mombasa	9.7	204,280	15.8	394,838	16.9	2.0
Other major towns	6.2	157,533	12.2	279,133	11.8	1.8
Rural towns	2.1	81,320	6.3	135,349	5.6	1.6
Rural areas	82.0	845,879	65.6	1,551,930	65.7	1.8
Total	100.0	1,289,012	100.0	2,361,250	100.0	1.8

Source: National MSE baseline survey 1999 (Central Bureau of Statistics, Kenya).

Table 2.2 shows the distribution of men and women in MSE employment in Kenya among the four strata. In Nairobi and Mombasa, about 54 per cent of the total MSE employment are men. The national average of men working in MSEs is about 53 per cent. However, in the rural towns women comprise almost 60 per cent, which is the highest percentage in all strata.

Table 2.2: Distribution of workers in MSE employment, according to sex, 1999

Stratum	% Male workers	% Female workers
Nairobi & Mombasa	53.8	46.2
Other major towns	52.3	47.7
Rural towns	44.2	55.8
Rural areas	53.6	47.0
Total	52.6	47.4

Source: National MSE baseline survey 1999 (Central Bureau of Statistics, Kenya).

2.2 The bakery and confectionery sub-sector

2.2.1 The sub-sector at a glance

Sectoral and geographical distribution of MSEs

The content analysis of the sectoral distribution of MSEs in Kenya indicates that some 35,653 enterprises in the food and beverage manufacturing sector employ a total of 80,795 workers (K-Rep et al., 1999). As Table 2.3 shows, 71 per cent of MSEs are located in rural areas and only 29 per cent in urban areas.⁴ However, these figures do not provide any indication as to the composition of the various sub-sectors falling under the food and beverage manufacturing sector.

Table 2.3: Grouping of urban and rural MSEs

ISIC grouping	No. of MSEs	Total Workers	% Urban	% Rural
Food and beverage manufacture	35,653	80,795	28.9	71.1
Total	1,289,012	2,361,250	34.3	65.7

Source: National MSE baseline survey 1999 (Central Bureau of Statistics, Kenya).

Employment

Due to lack of data, it is difficult to estimate the exact number of informal enterprises as well as the total number of workers engaged in the bakery and confectionery sub-sector, including the analysis of gender disaggregation.

A survey on the distribution of informal sector employment by industry conducted by the Central Bureau of Statistics (1997-2000) indicates that hotels, restaurants and distributive trade industries accounted for the majority of the informal sector workforce, contributing 63.9 per cent of the total informal workforce. The large number of persons engaged in this sector is mainly in bakery, confectionery, kiosks, cafés, and other trades such as hawking, peddling of food or other items, as well as selling second-hand articles. The increase in the number of persons engaged in this sector may be attributed to the liberalized market and ease of entry that is associated with the food and allied trades industry. The manufacturing industry absorbed the second largest share of 25.9 per cent in informal sector employment in 2000. Table 2.4 provides a breakdown of persons engaged in the informal sector between 1997 and 2000, according to activity.

⁴ Sectoral distribution is based on the International Standard of Industrial Classification (ISIC grouping).

Table 2.4: Informal sector - Number of persons engaged, according to activity, 1997-2000 (000's)

Activity	1997	1998	1999	2000
Manufacturing	803.1	897.6	992.1	1,075.1
Construction	40.7	51.2	58.9	62.3
Food, wholesale and retail trade	1,893.0	2,121.1	2,366.5	2,652.4
Transport and communications	46.8	52.8	58.8	66.4
Community, social and personal services	203.3	230.8	262.5	294.7
Total	2,987.0	3,353.6	3,738.8	4,150.9

Source: Central Bureau of Statistics 2000, Ministry of Finance and Planning, Kenya.

2.2.2 Main characteristics of MSEs and their owners

Enterprises surveyed

As already indicated, the survey covered 13 enterprises located in three main urban areas. Table 2.5 provides a breakdown of the surveyed enterprises, according to a number of variables.

Table 2.5: Overview of MSE sample surveyed, 2001

Urban area	Products	Market	Sector	Workers
Nairobi:				
1. Basron Enterprises	Cakes	Re-sale	Informal	4
2. Fresh Sweet Bakers	Cakes and pastries	Direct sale	Informal	4
3. Cofresh Agrapha Ltd.	Crisps, peas & g-nuts	Re-sale	Formal	10
4. Bakers Den	Bread and pastries	Direct sale	Informal	9
5. Standard Confectioners Ltd.	Indian confectionery	Direct sale	Formal	11
6. Mecca Quality Bakers Ltd.	Bread and cakes	Direct sale	Informal	6
7. La Boulangerie Française	Bread and pastries	Direct sale	Formal	15
Mombasa:				
1. Jaydev Confectioners	Indian confectionery	Direct sale	Informal	5
2. Mombasa Sweetmart	Indian confectionery	Direct sale	Formal	3
3. Burani Bakers	Bread and pastries	Re-sale	Informal	9
Eldoret:				
1. Bakers Yard	Bread and cakes	Re-sale	Informal	13
2. Y Bakers	Bread and cakes	Re-sale	Informal	5
3. Vishnu Bakers	Bread and cakes	Re-sale	Informal	19
Total			13	113

Source: Study survey, 2001.

Production capacity

The informal bakery and confectionery sub-sector manufactures perishable products such as bread, cakes, cookies, crisps, doughnuts, pastries, popcorns, sweets and dry snacks with a very short shelf-life (less than one week). The mode of production relies on customized ovens that are manufactured locally by other MSEs involved in metal work and generally using local technology, which is not highly sophisticated. Most of the ovens are of standard size with a 32-loaf capacity and are fired by electricity, charcoal or firewood, depending on capital outlay.

The survey confirmed that production in informal enterprises is undertaken under very difficult conditions: both the equipment and baking accessories are improvised using local technology, which tends to limit the flow and frequency of production as well as product quality. Due to lack of precision equipment, informal enterprises do not have quality and quantity control standards for size, weight and other variables. This contrasts sharply with conditions in the formal sector where precision equipment and accessories are imported from overseas dealers. Production is more consistent and regular, and products are of much higher quality.

Marketing

Lagging production conditions compel these informal enterprises to play a highly active role in selling their finished products by securing advance sale orders, in order to avoid losses. Thus, they can only manufacture products for sale within their immediate locality and cannot produce for export. It was observed that informal enterprises did not market their products but relied on direct selling from the production point, as well as informal distribution using bicycle riders and handcart vendors to deliver products to roadside cafés and kiosks. In contrast, formal sector enterprises manufactured products with a long shelf-life (biscuits, breakfast cereals, chewing gum, pasta products and sweet confectionery). In addition, formal sector enterprises used advertising and personal selling strategies.

Opportunities for growth

As already indicated, of the 13 MSEs surveyed, 4 (30.8 per cent) are formal businesses and 9 (69.2 per cent) are informal. The amount of capital investment used by both formal and informal businesses is relatively high considering the annual Gross National Product (GNP) per capita income in Kenya of US \$ 330 (KES 25,740) (World Bank, 1999). However, fixed assets in the form of equipment make up the largest component of capital stock. Table 2.6 shows the estimated cost of bakery and confectionery equipment that would be considered essential for start-up or expansion of this type of enterprise, according to the entrepreneurs surveyed.

Table 2.6: Estimated cost of bakery and confectionery equipment, 2001 (KES)*

Equipment	Cost
Mixer/Blender	10,000
Fermentation Prover (medium)	40,000
Electric/Gas Oven (medium)	80,000
Other accessories	20,000
Total	150,000

Note: * Conversion rate US\$1 = KES 78.00

Source: Study survey, 2001.

The second expense is the renting of business premises. The prevailing annual rent for business premises in both Nairobi and Mombasa is KES 360 per square foot. On average, this type of enterprise requires a minimum of 1,000 square feet or a cost of KES 360,000 per annum. To minimize rental costs, many entrepreneurs set up their production operations at their homes.

In the enterprises surveyed, financing start-up or expansion came from entrepreneurs' savings, family contributions or micro credit. The proportion receiving funding from commercial

sources is very small. This is due to lack of tangible security (title deeds or stock shares). However, it was observed that formal enterprises had the capacity to secure commercial loans against demonstrated security mostly in terms of installed equipment, title deeds and stock shares. Table 2.7 illustrates that almost 56 per cent of the informal sector enterprises surveyed started with an investment of between KES 50,000 to 150,000, while the remaining 44 per cent started with between KES 151,000 and 500,000. Unfortunately the entrepreneurs did not reveal the sources of their funding. The estimates were made on the basis of installed equipment, which were observed during the study visits.

Table 2.7: Estimated capital investment of informal MSEs surveyed, 2001 (KES)*

Urban areas	Status	Cost of equipment
Nairobi:		
1. Basron Enterprises	Informal	50,000
2. Fresh Sweet Bakers	Informal	75,000
3. Bakers Den	Informal	150,000
4. Mecca Quality Bakers Ltd.	Informal	450,000
Mombasa:		
1. Jaydev Confectioners	Informal	130,000
2. Burani Bakers	Informal	500,000
Eldoret:		
1. Bakers Yard	Informal	350,000
2. Y Bakers	Informal	150,000
3. Vishnu Bakers	Informal	500,000

Note: * US\$1 = KES 78.00

Source: Study survey, 2001.

Opportunities for growth are limited to those informal enterprises that have a reliable source of capital to buy adequate equipment and technical know-how. Entrepreneurs who have free access to finance tend to have better opportunities for growth than those who borrow and have to repay the loan from business income. Two of the formal enterprises surveyed had secured financing through higher purchase of equipment, while the other two had secured commercial loans against title deeds and stock shares.

Employment potential

The survey revealed that the 9 informal bakery and confectionery enterprises employ an average of 8 persons; the 4 formal sector enterprises an average of 9.75 persons. Employment potential in both is directly linked to the capacity of the equipment installed as well as to sales turnover.

Both formal and informal enterprises surveyed operate a one-day shift for an average of 12 hours per day, which tends to limit the number of people who can be employed during a given period. Added to this are cost constraints (operating overheads and loan repayments). In the enterprises surveyed, a significant contribution to employment growth could only be achieved with considerable and direct technical and financial assistance.

Education levels and management skills

All entrepreneurs surveyed, both formal and informal, have completed secondary education (12 years) and have acquired relevant on-the-job experience (an average of 2 years) working in similar enterprises. One notable phenomenon is the presence of a high educational level in both the formal and informal MSE sectors, including university graduates and diploma holders, as Box 2.1 shows.

Box 2.1: MSEs in Kenya absorb high- and low-skilled entrepreneurs

Informal enterprises

The present survey revealed that 3 entrepreneurs in informal MSEs held a diploma in baking technology. For example, one respondent was trained through the South African apprenticeship scheme and is currently employed full-time as bakery and confectionery supervisor in a leading establishment in Nairobi.

Formal enterprises

Similarly, the survey established that 2 respondents in formal MSEs held a diploma in business management and 2 had university degrees, each with an average of 5 years relevant experience in bakery management. One formal sector entrepreneur held a university degree in food technology with specialization in baking and confectionery obtained from the United Kingdom. This respondent had previously worked as a lecturer and also as a bakery manager for 5 years.

It is no longer the case that the informal economy in the Kenya is absorbing only the low-skilled labour force; increasingly it is also becoming an acceptable “career path” for educated people in the absence of suitable alternatives in the formal sector.

Source: Study survey, 2001.

Part 3 examines workforce patterns, terms and conditions of work and labour practices in formal and informal MSEs in the bakery and confectionery sub-sector.

3. Working conditions and labour practices in MSEs in the bakery and confectionery sub-sector

3.1 Workforce patterns

Demographics

As already indicated, the survey data was obtained from a total of 13 enterprises in both formal and informal sectors employing a total of 113 workers. Of these, 88 (78 per cent) are male workers and 25 (22 per cent) female workers. There were 9 informal enterprises employing 74 workers comprising 59 (79.7 per cent) male workers and 15 (20.3 per cent) female workers, respectively. Table 3.1 shows the distribution of total workers according to sector and gender. Male workers dominate the workforce in both the formal and informal sectors. Three enterprises engage no women workers. Reasons given include traditional cultural norms (that hinder women from working outside their home environment); women's lower physical strength (required for mixing large volumes of dough and loading/ offloading the baking oven) and lower tolerance to excessive (oven-generated) heat. According to one employer, he did not employ women because this required the provision of separate toilets and changing facilities.

Table 3.1: Distribution of workers, according to sector and gender, 2001

Urban areas	Sector	Male	Female	Total
Nairobi:				
1. Basron Enterprises	Informal	2	2	4
2. Fresh Sweet Bakers	Informal	2	2	4
3. Cofresh Agrapha Ltd.	Formal	2	8	10
4. Bakers Den	Informal	5	4	9
5. Standard Confectioners Ltd.	Formal	10	1	11
6. Mecca Quality Bakers Ltd.	Informal	6	-	6
7. La Boulangerie Francaise Ltd.	Formal	14	1	15
Mombasa:				
1. Jaydev Confectioners	Informal	3	2	5
2. Mombasa Sweetmart	Formal	3	-	3
3. Burani Bakers	Informal	8	1	9
Eldoret:				
1. Bakers Yard	Informal	10	3	13
2. Y Bakers	Informal	5	-	5
3. Vishnu Bakers	Informal	18	1	19
Total	13	88	25	113

Source: Study survey, 2001.

Occupational categories, skill levels, wages and gender differentials

The survey revealed that there are a total of 6 different occupational job categories in the bakery and confectionery sub-sector:

- oven operator;
- dough mixer;
- van driver;

- salesperson;
- sealing/divider/moulder; and
- wrapper/packer/cleaner.

Table 3.2 shows the marked contrast in the types of job performed by men and women. For example, no employer engaged women to work as oven operator, dough mixer or van driver (the higher-skilled and higher-paying jobs), which were allocated to men because of their physical strength and availability or willingness to work bakery hours. Women are employed for the lower-skilled, lower-paying jobs such as divider/moulder and wrapper/packer/cleaner. Significantly, a very high proportion of women were employed as salespersons. The reason given for this trend is that women attract and retain more customers. In addition, the job of salesperson has cash responsibility and women are perceived as more honest and trustworthy than men in this respect.

Table 3.2: Distribution of MSE workforce, according to sex, wage and job title, in formal and informal sector, 2001 (KES)*

Job titles	Av. formal sector wage per month	Av. informal sector wage per month	Male	Female	Total
Oven operator	8,580	6,600	29	-	29
Dough mixer	6,045	5,500	26	-	26
Van driver	5,845	5,500	6	-	6
Salesperson	5,845	5,500	1	10	11
Sealing/divider/moulder	4,275	3,600	18	3	21
Wrapper/packer/cleaner	4,275	2,290	8	12	20
Total:			88	25	113

Note: US\$1 = KES 78.00

Source: Study survey, 2001.

Informal sector wages are lower than those in the formal sector. The statutory minimum monthly wage for the lowest paid worker is KES 3,781 in Nairobi and Mombasa, KES 3,489 in Eldoret.⁵ Any employer paying less than the statutory minimum is violating the law and is liable for prosecution. This provision is only enforced in formal enterprises, although labour inspectors are also supposed to enforce it in all sectors of the economy. The union contends that labour inspectors turn a blind eye to labour disputes occurring in the informal sector, arguing that they are informal in status and should be left alone, because of the high unemployment problem in Kenya. Local administrative officers are also mandated to enforce law and order and to settle disputes at the local level, the lowest administrative units in the country. As allegations of corruption and bribery have been made against officers, most workers in the informal sector prefer taking their cases to civil society organizations, which continue to record significant achievements in protecting the labour rights of informal workers.

3.2 Terms and conditions of employment

Terms and conditions of employment specifying the relationship of parties to an employment contract are governed by four separate labour legislation acts:

⁵ Subsidiary Legislation on the Regulation of Wages and Conditions of Employment Act (Cap. 229), May 2001.

- The Employment Act (Revised 1984) and the
- Regulations of Wages and Conditions of Employment Act (Revised 1980) are requirements of the law governing minimum wages and benefits such as housing, leave, health and safety, the employment of women and juveniles as well as termination of employment.
- The Factories Act (Revised 1972) deals with the health, safety and welfare of an employee who works in a factory within the meaning contained in the Act.
- The Workmen's Compensation Act (Revised 1970) provides ways in which employers may compensate employees for work-related injury.

Each of these aspects of terms and conditions of employment applies to “employees”⁶ in the formal sector, and is usually the subject of collective bargaining agreement between the employer and the relevant trade union. In such cases, the union plays a protective role in ensuring that workers’ rights are upheld.

In contrast, workers employed in the informal sector rely on labour inspectors to enforce the law and provide them with protection arising out of any infringement of their terms and conditions of employment. However, as mentioned in Section 3.1, labour inspectors rarely enforce labour laws in the informal sector.

3.2.1 Types of employment contract

Four types of employment contract exist in Kenya:

Permanent and pensionable

Workers are considered permanently employed when they have the option to work until age 50 for women and age 55 for men, which is the statutory retirement age. However, due to massive retrenchment, there is no longer any guarantee of permanent employment.

Temporary/seasonal

The temporary/seasonal worker is employed for a fixed short-term period and is not entitled to employment benefits.

Casual

The casual worker is employed for no more than 24 hours at a time, is paid at the end of each day and has no entitlement to any benefits.

Piece-rate

The piece-rate worker is employed on the amount of the work done rather than the time taken to complete it; the time does not affect the rate of payment.

⁶ In accordance with the definition provided for in the Employment Act, employee means any individual employed for wages or salary and includes an apprentice and an indentured learner.

Many employers, both in the formal and informal sectors, resort to employing workers on a casual contract basis because it is cheaper and they are not required to provide any of the benefits to which permanent employees are entitled, such as housing, leave, medical and service benefits. As this labour is less expensive for employers, it can be said to provide a limited employment security for the casual worker.

All 4 formal MSEs covered by the survey provide temporary “letters of employment contract” varying from 6 months to 1 year. Some contracts are very vague and state only the monthly salary. The 9 informal MSEs surveyed provide no letters of employment contract. Apparently this is the trend countrywide and most of the entrepreneurs interviewed considered that informal jobs do not require formal contracts. In most cases their workers are either close relatives or family friends, with strong family ties to the entrepreneur.

3.2.2 *Statutory minimum wage*

Workers covered in the bakery and confectionery sub-sector are paid monthly, fortnightly, weekly, or at piecework rate. Monthly payment is the most preferred mode of payment in Kenya, and this usually includes a mid-month advance. The minimum monthly wage for formal sector workers employed in the bakery and confectionery sub-sector varies from KES 3,489 to KES 5,825 inclusive of housing allowance and depending on the type of job performed. The minimum wage for the lowest paid job (cleaner) is KES 3,781 in Nairobi and Mombasa and KES 3,489 in Eldoret.

Invariably more women are in the lower echelons of the wage structure, occupying less-skilled jobs that pay less. This vertical segregation accentuates the wage differentials between male and female workers in both formal and informal sectors.

Of note is the significant difference in terms of basic minimum wage earnings between skilled personnel employed in the formal and informal enterprises surveyed. In general, the formal sector enterprises with registered collective agreements (CBA) pay relatively higher wages than formal sector enterprises without recognition agreements. More importantly, those formal sector enterprises without recognition agreements are obligated to pay only the statutory minimum. In contrast, workers employed in the informal sector are usually paid wages below the statutory minimum.

Table 3.3 shows the statutory minimum monthly wages inclusive of housing allowance against the average monthly wage paid in both the formal and informal sectors. The survey reveals that formal enterprises pay higher wages than the statutory minimum in all occupational categories. The higher-skilled occupational categories (oven operator, dough mixer, van driver and salesperson) in the informal sector are paid wages above the statutory minimum. However, the semi-skilled job of divider/moulder and the unskilled jobs of wrapper/packer and cleaner are paid less than the statutory minimum wage in all geographical locations. This is a violation of the law and such employers are liable to prosecution. As mentioned earlier, the prevailing practice by labour inspectors has been to turn a blind eye to such violations in informal sector enterprises.

Table 3.3: Comparison of monthly wages, according to job title, 2001 (KES)*

Job Titles	Nairobi & Mombasa (Statutory minimum)	Eldoret (Statutory minimum)	Average Formal sector	Average Informal sector
Oven operator	5,825	5,325	8,580	6,600
Dough mixer	5,104	4,710	6,045	5,500
Van driver	5,104	4,710	5,845	5,500
Salesperson	5,104	4,710	5,845	5,500
Divider/moulder	5,104	4,710	4,275	3,600
Wrapper/packer	4,285	3,988	4,275	2,290
Cleaner	3,781	3,489	4,275	2,290

Note: * Conversion rate US\$1 = KES 78.00.

Source: Kenya Subsidiary Legislation on the Regulation of Wages and Conditions of Employment Act (Cap. 229), May 2001.

3.2.3 Housing allowance

In both urban and rural areas, no specific guidelines in law define the quality of housing for workers. According to the Regulations of Wages and Conditions of Employment Act (Revised 1980), any person engaged in any undertaking and not provided with free housing accommodation shall be entitled in addition to the statutory minimum wage, to a housing allowance at one and half times the amount the employer is allowed to deduct from the wages of a housed employee. While many formal enterprises pay housing allowances on the basis of the statutory minimum wage, some pay according to the gross salary earned. In practice, the higher the value of the job, the higher the rate of housing allowance payable relative to the statutory wage. The rates for workers in the formal sector are contained in collective agreements and range from 10 to 25 per cent of the statutory minimum. However, there are instances where married women are denied housing allowance because their husbands are also employed.

Survey results confirm that workers employed in the informal bakery and confectionery sub-sector are not provided with housing allowance. Even when housing allowance is paid, it is never based on actual market rent and is almost always insufficient to afford decent accommodation. Workers in the informal sector are invariably compelled to live in urban slums – the “informal settlements” that are characterized by unsanitary conditions, overcrowding, substandard buildings, unsafe or inadequate water supplies, poor drainage and deficient sewage and waste disposal. Few workers have kitchen facilities; most cook their meals with charcoal and kerosene in the same room used for living and sleeping. In contrast, workers employed in the formal sector are paid wages inclusive of 15 per cent housing allowance. However, this amount is inadequate, and these workers can only afford housing in urban slums.

3.2.4 Hours of work, overtime and weekly rest day

The Regulation of Wages and Conditions of Employment Act provides also for a normal working week of not more than 52 hours over six days per week, exclusive of meal-breaks. The Act also provides that for time worked in excess of the normal number of hours per week, overtime should be paid at one and half times the normal hourly rates. For time worked on the employee’s normal rest day or public holiday, pay is at twice the normal hourly rate (double-time). This applies to both full time and temporary workers.

The Employment Act further provides for every employee to be granted at least one rest day in every period of seven days.

The Regulations of Wages (Baking, Flour Confectionery and Biscuit Making Trades) Order (Revised, 1980) provides for a normal working week of 48 hours of work spread over six days or shifts with 15 minutes break for meals.

The survey results reveal that all workers in the informal sector work more than 12 hours per day without rest and are not paid overtime or given a day-off in lieu of working on either a Sunday or public holiday. It is interesting to note that all 9 informal businesses work 7 days a week including Sunday and public holidays. Only 2 (15.3 per cent) of the formal enterprises surveyed work an average of 12 hours per day, 7 days a week including Sundays and public holidays. In such formal enterprises workers are either paid overtime or double-time to compensate for time worked in excess of the normal number of hours per week or for working on rest days or public holidays.

3.2.5 Annual leave

In addition to any weekly rest days, sick leave and public holidays, workers are entitled to a minimum of 21 working days annual leave with full pay after every 12 consecutive months of service. Workers employed in the formal sector on a full time basis as part of the regular workforce enjoy annual leave benefits with full pay. BCMAU has negotiated annual leave at the rate of 30 consecutive days after each completed year of service in all collective agreements.

The survey found that workers in the informal sector are not granted annual leave of any kind. Any worker wishing to be away, even after the qualifying period, does so at the discretion of the employer and usually without pay. In formal enterprises surveyed, workers are given 21 days of annual leave with full pay.

3.2.6 Sick leave and medical benefits

According to the Employment Act, an employee is entitled to 7 days paid sick leave and thereafter to 7 days half-pay in each year of service, subject to submission of a report from a qualified medical practitioner. In addition, employees are entitled to proper medicines during illness (provided the illness is not due to self-neglect). Nevertheless, the survey shows that some employers in the formal sector provide comprehensive medical benefits to married male employees and their female spouses but tend to discriminate against married female employees by denying male spouses access to medical benefits.

BCMAU has negotiated sick leave at the rate of 60 days fully paid and a further 60 days unpaid after each completed year of service in their various collective agreements. In this regard, most enterprises provide a medical insurance coverage while others administer their own medical scheme. The survey results indicate that workers in both the formal and informal sectors are not granted paid sick leave, nor are they provided with free medical attention, except for the occasional first-aid treatment. Moreover, workers who are absent from work for more than a

week due to illness are more likely to be replaced as an expedient measure without any form of compensation.

3.2.7 *Maternity leave*

The period granted for maternity leave under the Employment Act is two months with full pay. A woman who takes two months leave must forfeit her annual leave for the year. Moreover, childbirth is not deemed an illness and the employer is not required to meet medical costs incurred as a result of maternity.

BCMAU has always included maternity leave as an item for collective bargaining and will continue to do so in the future. The union's proposals to the Task Force⁷ set up to review labour laws in Kenya provide for a period of 14 weeks maternity leave with full pay in line with ILO Maternity Protection Convention, 2000 (No. 183).

The survey has found that women employed in the informal sector are not granted paid maternity leave. This compels them to work until delivery and to resume work immediately after in order not to lose their jobs. However, women employed in the formal enterprises are granted one month of maternity leave with full pay.

In both the formal and informal sectors, male workers are not entitled to paternity leave, as there is no statutory provision. Any compassionate leave that may be requested is at the discretion of the employer and is considered either as annual leave or as unpaid leave. The union's proposals to the Task Force responsible for the labour law reform provide for a period of 4 weeks paternity leave with full pay to be granted to a male employee whose wife has given birth.

3.2.8 *Occupational health and safety*

The Factories Act prohibits overcrowding at the workplace. Employers should ensure cleanliness, adequate air ventilation, lighting, sanitary conveniences and drainage of production floors and should protect employees from any hazardous substances, machinery, equipment or part. Workers inexperienced with production equipment should be properly trained and supervised to avoid work-related injury or illness. Protective clothing and appliances should also be provided for production workers. In the formal sector, trade union representatives and labour inspectors normally enforce the provisions of this Act.

Survey results conclude that production conditions in both the formal and informal sectors are unsafe in many respects. For example, many workers engaged in the production process regularly come into contact with hazardous chemicals, fumes and gases; floors and pathways which are slippery, inadequate drainage and sanitation facilities, poor ventilation and lighting.

In addition, MSE workers in the informal sector are not provided with protective clothing. In the event of work-related injury, illness or death, these workers are not given any form of

⁷ This Task Force was set up in May 2001. The review process had a hitch and was delayed for a couple of month in 2002. However, the Task Force resumed its work in September 2002 and should complete it by August 2003. The Task Force has a tripartite composition, including employers', workers' and government representatives.

compensation. For example, two informal enterprises visited in the course of this report were using charcoal-fired ovens for production. It was observed that oven operators were exposed to health risks such as excessive emissions of smoke and heat and were not provided with protective clothing. It should be noted that since the Industrial Court has no jurisdiction on compensation for work-related injury or illness and the majority of workers have problems with access to justice increasingly unions are working with civil society organizations to obtain redress from regular civil courts in the event of occupational hazards (see also 4.2.2).

The researcher also visited the Directorate of Occupational Health and Safety, a department under the Ministry of Labour, whose responsibility is to prevent occupational accidents and illnesses by workplace monitoring, inspection and awareness. Its mandate covers workplaces with at least one person, which technically includes both formal and informal enterprises. However, lack of financial and human capital is constraining the Directorate in establishing preventive awareness programmes on workplace health and safety measures. In principle, employer and employee must comply with the provisions of the law. In practice, the Directorate mainly inspects formal enterprises, particularly medium and large manufacturing plants. The Directorate is supposed to prosecute non-compliance in violation of the Factories Act (Cap. 514) but prosecution is ineffectual because of the inadequate number of occupational health and safety services and concomitant poverty levels.

This explains why none of the enterprises visited (formal and informal) had a comprehensive health and safety programme. All formal enterprises had first-aid kits and firefighting equipment located at strategic positions within the production plant. Two of the informal enterprises had firefighting equipment and none had first-aid kits.

3.2.9 *The National Social Security Fund (NSSF)*

The NSSF is set up under the National Social Security Act (Revised 1978) for the purpose of receiving mandatory standard contributions from both employers and employees. These joint contributions are intended to benefit employees retired from regular employment. The Fund is a national scheme, which applies to any employer in the formal sector but does not cover employers in the informal sector. This means that vast numbers of workers have no such provision.

Formal sector workers surveyed are registered under the NSSF Act. Their employers make regular contributions, thus enabling these workers to benefit from the scheme. Informal sector workers do not receive this benefit because informal enterprises are not registered to make contributions to the Fund. The NSSF is perceived as an inconvenient extra cost by the informal entrepreneur, who avoids it by non-registration. The Government needs to extend the scope of the Fund to cover full-time workers employed in the informal sector. However, reforms in this area will have to pay particular attention to the difficulties facing MSEs or they will continue to constitute a bar to formal registration of businesses.

3.2.10 *The National Hospital Insurance Fund (NHIF)*

The NHIF is established under the National Hospital Insurance Act (Revised 1977) and every person aged 18 years and over is qualified to be a contributor to the Fund. Every employer is required by law to deduct from pay the standard contribution for all eligible workers. The purpose of the Fund is to pay for part of the medical expenses incurred by the worker, spouse and children in case of hospitalization.

Formal sector workers surveyed are beneficiaries of the Fund through employer registration. Although employers in the informal sector are eligible for membership, they are reluctant to become contributors owing to the added financial overheads involved. This has resulted in non-compliance by informal sector employers who are evading the legal requirement to provide their workers with health insurance. The Government needs to extend the scope of the Fund to cover both full-time and part-time workers employed in the informal sector.

3.3 **Fundamental principles and rights at work**

Fundamental principles and rights at work (freedom of association and collective bargaining, freedom from discrimination, from forced labour and child labour), which are enshrined in the core international labour standards, are often abused in MSEs, particularly in the informal sector, with Kenya not proving the exception.

As Table 3.4 shows, Kenya has ratified seven ILO core Conventions,⁸ three of them in 2001.

Table 3.4: Fundamental labour rights - ILO Conventions ratified by Kenya

Forced Labour		Freedom of Association		Discrimination		Child Labour	
C. 29	C. 105	C. 87	C. 98	C. 100	C. 111	C. 138	C. 182
13/01/1964	13/01/1964	x	13/01/1964	07/05/2001	07/05/2001	09/04/1979	07/05/2001

Note: Cross indicates Convention not ratified.

Source: ILO (2002).

⁸ Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).

Section 80(1) of the Constitution of Kenya⁹ provides the legal foundation for the exercise of the right to freedom of association and the right to form or join trade unions. This right is further embedded in the Trade Union Act (1952) that regulates the formation and management of trade unions and employers' associations. However, evidence exists that trade union rights in Kenya are violated or restricted (ICFTU, 2000).

A major priority for the labour movement in the foreseeable future will be to continue to lobby the Government to promote and ratify the main international standard in this area, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It should be noted that this Convention, as with most relevant ILO Conventions, has been adopted with the understanding that it would be applicable to all "workers", with no distinction whatsoever between the formal and informal sectors. However, as observed earlier in this report, the Kenyan labour legislation refers to "employees". Current labour law reform in the country provides for an opportunity to ensure that the basic rights reflected in ILO core labour standards apply to all workers in Kenya.

Part 4 investigates workers' protection and the approach to formal enterprises that BCMAU is taking. The challenge to organize workers in the informal sector is examined and the obstacles to trade union action in MSEs are identified.

⁹ At the time of this research, a comprehensive review of the Constitution of Kenya (1963) was underway. A Constitutional Review Commission was established in 2000 to that effect. The objects of the review process are to guarantee peace, national unity and integrity, establish a free and democratic system of government, provide for the separation of power and check and balances of the three organs of the state (the executive, legislature and judiciary), promote people's participation in elections and devolution of power, respect ethnic and regional diversity, and ensuring provision of basic needs of all Kenyans. It is important to note that this is the first time the people of Kenya have been given an opportunity to take part in the comprehensive review of the Constitution. For more information see also www.kenyaconstitution.org.

4. Workers' protection: The role of the Bakery, Confectionery, Manufacturing and Allied Workers' Union (BCMAU)

4.1 Sectoral scope and membership

BCMAU (Kenya) was registered on 6 December 1977 to represent the collective interests of workers engaged in bakeries, pastries, biscuits, cakes, confectionery, sweets and other food manufacturing and related industries. The sector is made up of the following sub-sectors:

- **Bakery sub-sector:** baking or preparation of bread, biscuits, pastries and cakes;
- **Milling sub-sector:** manufacture of flour;
- **Confectionery sub-sector:** manufacture of sweets, chewing gum and other sugar confectionery products;
- **Ice cream sub-sector:** manufacture of ice cream and related products;
- **Snack-making sub-sector:** manufacture of dry snacks e.g. crisps, dried peas, etc.; and
- **Other foods sub-sector:** manufacture of cooked cereals and farinaceous foods.

The union is organized on a national basis with headquarters in Nairobi and branches in the major urban areas. To date, BCMAU has signed 380 Recognition Agreements with individual employers who now recognize the union as the sole representative body in matters related to collective bargaining on wages and terms and conditions of employment affecting workers engaged in the above sub-sectors. Table 4.1 shows the current membership base, comprising a total of 22,800 workers (17,000 men or 74.5 per cent and 5,810 women or 25.5 per cent).

Table 4.1: BCMAU branches and membership base in 2001

Branch	Membership
Nairobi Headquarters (covering Central, Eastern and North Eastern Provinces)	14,200
Nakuru (covering South Rift Valley Province)	2,400
Eldoret (covering North Rift Valley Province)	2,110
Kisumu (covering Nyanza and Western Province)	1,600
Mombasa (covering Coast Province)	2,500
Total	22,810

Source: Branches and Membership Records of the Bakery, Confectionery, Manufacturing and Allied Workers' Union (Kenya), 2001.

4.2 Structure

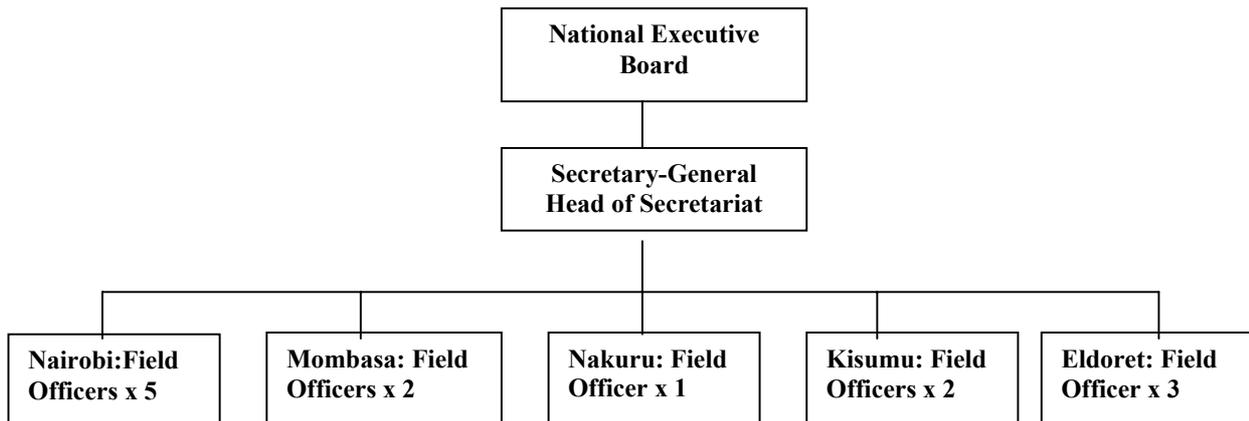
The National Executive Board of the union is the Governing Body and comprises the following persons:

- [1] National Chairperson
- [2] National Vice Chairperson
- [3] Secretary General
- [4] Deputy Secretary General
- [5] Assistant Secretary General

- [6] National Treasurer
- [7] Assistant National Treasurer.

As shown in Figure 4.1, the BCMAU is structured within a network of five branches including the Secretariat, which is based in Nairobi.

Figure 4.1: BMCAU organizational chart



The union employs a total of 13 field officers located in branch offices in five of the major urban areas in Kenya. This number is not adequate to cover the increasing number of formal and informal MSEs across the country, particularly in urban centres. Field officers are responsible for:

- i) Monitoring developments in the bakery and confectionery sub-sector by regularly checking the registration of new enterprises with the Registrar of Companies. This would normally reveal a list of formal enterprises but not the informal ones. Field officers also visit supermarkets, cafés and kiosks to identify new products in the market originating from new enterprises.
- ii) Visiting workers in the bakery and confectionery sub-sector, holding focused discussions regarding their terms and conditions of work, and also encouraging them to provide information on new enterprises and new members eligible for recruitment.
- iii) Registering new members and collecting union joining fees.

4.3 The BCMAU approach to formal MSEs

Under the Trade Disputes Act (Cap. 234), the union must have a simple majority of employees in the relevant enterprise, defined as half the number of the total workforce plus one, in order to qualify for recognition and subsequent negotiations of the collective agreement on terms and conditions of employment. This gives the union a mandate to organize workers in both the formal and informal sectors. However, in the past the union has targeted the formal sector, drawing 90 per cent of its membership mainly from registered formal enterprises operating within commercial and industrial zones, which are under strong obligation to comply with existing

labour laws. Admittedly, it is easier to track and monitor the existence of such enterprises through the Registrar of Companies than to detect and locate informal enterprises, which are far less visible.

Employee protection and representation

Over the years, BCMAU has been in the forefront of protecting the rights of workers in MSEs, even in enterprises with no formal recognition agreement. This has sometimes led to the employer being required by the court to sign a recognition agreement with the union.¹⁰

The recognition agreement formally establishes the relationship between the trade union and the employer relating to recognition and negotiating procedure. It sets out matters on which the employer concedes the right of negotiation to the trade union, and affords full recognition to the union as the sole labour organization representing the interests of that particular employer or group of employers, on rates of pay and overtime, hours of work, method of wage payment, paid leave, termination of employment, collection of union dues, retirement benefits, sickness benefits, principles of promotion, principles of redundancy and other generally accepted terms and conditions of employment. Some recognition agreements go even further and list items that are non-negotiable. Such items include welfare amenities, non-contributory pension schemes and exclusion of certain categories from unionization and creation of new posts, which management claim as entirely their own prerogative. Table 4.2 summarizes trade disputes handled by the union in 2001 on behalf of workers employed in the MSE sector. All data are extracted from records in formal sector enterprises. This analysis demonstrates the efforts made by the union to protect and represent workers in the bakery and confectionery sub-sector.

Table 4.2: Trade disputes involving employers in enterprises without formal recognition, 2001

Worker	Sex	Employer	No. of workers	Date of Dispute	Dispute	Results
M. Shaturu	M	Noor	12	04.08.97	Termination	Payment made
G. Masinde	M	Nyali	15	30.10.97	Termination	Dispute reported
A. Vidija	M	Fam-Havs	6	06.04.00	Termination	Dispute reported
S. Mitheu	M	Festive	19	10.11.00	Termination	Payment made
J. Kanyingi	F	Bread Pan	6	18.12.00	Termination	Payment made
S. Mitheu	M	Crusty's	17	15.05.01	Termination	Payment made

Source: Dispute Records of the Bakery, Confectionery Manufacturing and Allied Workers' Union, 2001.

Lobbying and advocacy

Since its establishment, BCMAU has been involved in lobbying the Government to review all labour laws in Kenya, in order to bring MSE workers into the economic and social

¹⁰ The recognition agreement is defined under the Trade Disputes Act (Cap. 234) Revised 1980 as an agreement that provides for the recognition of the trade union as the body entitled to represent the interests of those of its members who are or have been employed by an employer.

mainstream. In particular, the union has called for the reform of labour laws that impede the full participation of women in the economy.

In November 2001, the union submitted a memorandum through the Central Organization of Trade Unions, Kenya (COTU (K)) to the Task Force appointed by Government to review the Kenya labour laws. The union's proposal was in line with the fundamental principles and rights embedded in ILO core Conventions, which are aimed at enabling all people to claim their fair share of the wealth they have generated and to fully achieve their human potential. In particular, the union has emphasized the need to enhance protection of informal sector workers. In this respect, the union has spearheaded the reform of anachronistic labour laws that hinder employee representation. There is evidence to show that many employers circumvent the signing of formal recognition agreements with trade unions in order to exploit informal workers who lack official representation. In addition, the union has always petitioned for the effective enforcement of labour laws by the Government, which is a major hindrance in the protection of the rights of informal workers.

The union is also involved in educating MSE workers on their rights at work. This strategy relies on the action of the union field officers, who are responsible for organizing awareness-raising discussions with workers. The union has also been instrumental in connecting workers in MSEs to human rights NGOs, for legal protection in matters falling outside the Industrial Court, particularly as regards compensation for work-related injury, illness or death (see also 4.2.2).

BCMAU has discussed proposals to fund its education and awareness programmes covering such areas as HIV/AIDS and the workplace, child labour as well as sexual harassment with the National Aids Control Council and USAID. Unfortunately, funding has been a major constraint limiting union activities, including its efforts to lobby the Government to repel obsolete and discriminatory labour laws. Notwithstanding such constraints, the union devotes a great deal of attention and resources to strengthen the capacity of its field officers to reach out to and organize employees in both formal and informal MSEs.

4.4 The organizing challenge: Workers in the informal sector

4.4.1 Obstacles to trade union action in MSEs

Employer hostility to unionization

Although BCMAU has been organizing in formal MSEs, the task is made no easier by the growing hostility of formal enterprises to unionization. When the union secures a simple majority of membership and is qualified to draw a recognition agreement, employers find "reasons" to fire employees who have become union members. This defeats the unionization process by reducing the numerical requirement. In most cases unionization is a protracted affair and can continue for more than 10 years before a recognition agreement is signed.

Here it should be noted that employers are not obligated to provide trade union officials with access to potential membership and facilities to discuss with workers the benefits of unionization. As a result, trade unions conduct covert recruitment exercises without the

knowledge of the employer. Employers in turn go to great lengths to coerce workers to withdraw their union membership. Those who refuse are usually fired and replaced with more amenable employees. BCMAU has evidence to support this, in form letters from workers who have revoked their membership. One example is a letter drafted by a formal enterprise employer that employees were required to write out and sign in their own handwriting – or be fired.

The situation is worse in informal enterprises, where unionization efforts are met with considerable hurdles. For example, some entrepreneurs are suspicious of “strangers”: union representatives are frequently mistaken for law enforcement officers intent on making owners pay a multiplicity of taxes and fines. All the informal enterprises surveyed operated without official registration partly due to bureaucratic inconveniences and partly to registration costs. In Kenya most existing laws and regulation have high costs of compliance for the budding entrepreneur. The impact of regulations include administrative and enforcement costs, direct costs on businesses, indirect costs arising from market distortions, opportunity costs, various licence fees and compliance costs. Non-compliance by formal enterprises incurs direct costs (convictions, social stigma due to harassment and confiscation of property). Incidents of harassment by law enforcement officers have been increasing because of the lagging rate of industrialization, particularly the failure of some of the mushrooming production plants to comply with some regulations. As a result, incidents of bribery and corruption to avoid penalties continue to be reported. Entrepreneurs have learned to avoid and evade regulations and most consequently become very hostile when confronted by union representatives.

Invisibility of informal sector enterprises

Another obstacle to the union organizing drive in MSEs is that more often than not it is very difficult to visit informal enterprises. Many operate in residential locations and tend to be “invisible”. Out of the 9 informal enterprises surveyed, 3 were operating from residential premises where part of the family home is converted for production purposes. This working environment lacked proper ventilation (to remove airborne contaminants such as smoke and gases, to reduce excessive heat and to ensure that the workplace is clean, tidy and safe). It must be recognized that informal enterprises are subject to economic, managerial and other technical variables, which can impact negatively on their survival. The union’s strategy has been to monitor informal enterprises, some of which are operated by its members. BMCAU has been tracking such enterprises as they become more successful and move their production facilities from residential to commercial zones.

A restrictive legal framework

As noted earlier, Section 5 (2) of the Trade Disputes Act (Cap. 234) allows trade unions to initiate recognition agreements with any enterprise after having obtained a simple majority of employees – defined as half the number of the total workforce plus one. Thus, while trade unions have the mandate to organize workers in both the formal and informal sectors, they are restricted by Section 46 (1) of the same Act (Cap.234), which requires a trade union to serve notice on any employer who employs not less than 10 union members, prescribing the employer to deduct and remit union dues as per the prescribed schedule. This provision effectively curtails the unionization of enterprises in the informal sector (defined as having up to 10 workers) and, also,

impacts negatively on the financial capacity of trade unions, which relies solely on membership in order to operate.

Moreover, in accordance with Kenyan labour legislation all workers have the right to pursue their legal interests in court. This right is available to any employee dissatisfied with an employer's decision. But the exercise of this right is inhibited by the requirements necessary prior to going to court. The law requires that any formal trade dispute must be reported to the Minister for Labour who, in turn, refers the matter to an investigator or conciliator (appointed by the Minister) before the dispute can be pursued in court.

Other specific barriers seriously impede workers in the exercise of their right to pursue court action. For example, the Industrial Court Procedure Rules make the court available only to employees represented by a trade union. The court cannot accept or take into account any trade dispute reported by an individual worker or a group of workers, except when this is channeled through a duly registered trade union. The parties to a dispute before the court are meant to be trade unions representing unionizable employees and employers. Since individuals may not resort to the Industrial Court in the event of an employment-related dispute, it is extremely difficult for informal sector workers to obtain redress for any infringement of their rights.

It is important to note that the Industrial Court is the only court empowered by law to order an employer to reinstate a worker, should it determine the worker has been wrongfully dismissed. In addition to (or instead of) making an order of reinstatement, the Industrial Court can award compensation to the worker, provided such compensation does not exceed the actual pecuniary loss suffered by the worker as a consequence of wrongful dismissal (or, in any other case, 12 months wages).

4.4.2 *Building alliances with civil society groups*

Non-governmental organizations (NGOs) have been in existence for more than 300 years. Their origin can be traced to social welfare voluntary groups with charitable goals whose purpose was to provide food, shelter, healthcare, education or religious advice to victims of poverty, disaster or calamities. The role of NGOs was seen as supplementing workers' programmes and this laid the foundation for cooperation between the trade unions and civil society.

Over the past decade, a great number of human rights NGOs have emerged in Kenya. These specifically advocate the promotion of human rights as a precondition to economic development and target lack of human rights, rather than poverty, as the main problem facing workers. Their strategy advocates human empowerment as a means of enabling women and men to demand social justice and equal access to resources. Human rights NGOs also contend that a strong civil society can lobby for legal reforms, which would in turn improve the working conditions of workers in the informal sector. Box 4.1 outlines the platforms of some of the most active human rights NGOs currently operating in Kenya.

Box 4.1: Selected human rights NGOs currently operating in Kenya

Federation of Women Lawyers (FIDA) has distinguished itself as a proactive NGO, which has achieved a successful record in represented women employed in both formal and informal sectors against workplace discrimination, wrongful dismissal, termination of employment, withholding of pay and sexual harassment.

The Kenya Human Rights Commission is in the forefront of monitoring human rights abuses. It has established a network of monitors throughout the country who report violations of human rights, including labour and health and occupational safety. Recently, the Commission successfully represented low-income workers residing in illegal settlements against a multinational firm that was polluting their environment and exposing workers to occupational health and safety risks.

Kituo Cha Sheria (Legal Advice Centre), has redefined its mission and vision statement to include the protection of workers in matters of labour rights, in recognition of the nexus existing between urban low-income workers residing in illegal urban settlements devoid of safe water, lighting, sanitation and security. They are defending formal and informal workers in courts of law against evictions, wrongful dismissal, termination of employment, withholding of pay as well as work-related injuries or illness.

The Public Law Institute provides legal representation to socially, economically or politically disadvantaged individuals and groups. It champions the greater good of society through the use of law in circumstances where such interests are un-represented, under-represented, weak or unorganized. To this end they have lobbied for the reform of consumer laws to protect low-income workers. They have also lodged several case courts against monopolistic organizations such as the Kenya Power and Lighting and the Kenya Telecommunications against unilateral tariff increases. In addition, the Public Law Institute has successfully represented trade unions that have been denied registration. In all cases, the Institute has worked very closely with trade unions to further the rights of workers.

The increase in the number of human rights NGOs has similarly broadened the scope and variety of organizations monitoring human rights violations in Kenya. It has also accelerated the cause of workers' rights, particularly informal sector workers, who are denied legal representation in the Industrial Court. One result is a high level of workers' awareness of their rights, which enables these workers to resist unlawful orders aimed at violating their labour, health and land rights.

This successful upsurge of civil society organizations increasingly sensitive to and active on behalf of Kenyan workers is owed in part to the failure of labour market institutions to effectively address the needs of workers, particularly those in the informal sector.

As noted earlier in this report, human, technical and financial constraints hamper BCMAU's activities in MSEs. Furthermore, legislative barriers, poor labour administration and access to justice compound the problem. All these factors illustrate the vicious circle of low levels of organization and representation in MSEs. To overcome these constraints, BCMAU is increasingly working with human rights NGOs to protect the rights of workers in cases of work-related injury, illness or death. The union has also forged close working relationships with these organizations for defending workers in the informal sector.

Since the Industrial Court has no jurisdiction on compensation for work-related injury or illness, BCMAU has established links with Kituo Cha Sheria to enable informal workers to obtain redress from civil courts in the event of occupational hazards. This is achieved through the

union field officers, who receive workers' complaints regarding violations of labour or land rights and usually refer the affected workers to Kituo Cha Sheria, where they receive free legal aid. This NGO has a team of legal officers to investigate each case and gather evidence prior to lodging cases in the appropriate courts of law for compensation. Kituo Cha Sheria has a branch in Mombasa and many workers both in the formal and informal sectors are now aware of this facility.

Table 4.3 shows that 37 per cent of the cases handled by Kituo Cha Sheria in 1999 were on behalf of informal sector workers.

Table 4.3: Disputes reported to Kituo Cha Sheria by a cross-section of workers from both formal and informal sector MSEs, 1999

Month	Printing	Construction	Finance	Manufacturing	Security	Hospitality	Transport	Informal	Total
April	3	4	1	3	4	-	-	13	28
May	1	9	1	6	4	2	-	16	39
August	2	6	-	10	14	5	4	37	78
October	1	3	-	14	6	4	1	9	38
November	3	8	2	14	6	6	2	14	55
December	-	3	-	1	4	2	-	3	13
Total	10	33	4	48	38	19	7	92	251

Source: Summary of records of labour cases reported to Kituo Cha Sheria, 1999.

Several trade unions have taken issue with the involvement of some human rights organizations in the protection of workers' rights without the concurrent involvement of the relevant registered trade union. They contend that some actions taken by human rights organizations are undermining the official union role in the organization and protection of workers. In particular, they blame some NGOs for being responsible for the decline in union membership. They also complain of a lack of communication and cooperation, as demonstrated by some NGOs vis-à-vis unions on the occasion of some successful legal cases concerning workers' rights.

In many respects the relationship between trade unions (at least some of them) and human rights NGOs in Kenya remains cool. However, the experience of BCMAU and Kituo Cha Sheria is an exemplary case of how collaboration between the labour movement and NGOs can lead to positive outcomes not only for the direct beneficiaries – workers – but also for the union and for society at large. Indeed, the experience of many other countries worldwide shows that constructive cooperation between the labour movement and civil society groups is critical to streamline efforts, mobilize resources, and enhance impact. This is undeniably a domain of intervention to which Kenyan unions, and BCMAU in particular, should devote additional efforts – if they intend to remain relevant to workers, especially to those in MSEs and in the informal sector.

Part 5 concludes this report, summing up the present situation for the BCMAU, the challenges it is facing and how it can build on its ongoing experience to bolster its strengths and raise its membership.

5. Conclusions

Small-scale and *Jua Kali* (informal sector) enterprises have long been depicted as a viable and dynamic means of achieving rapid employment creation, poverty alleviation and balanced development growth in Kenya. Over the years, governments and policy makers have emphasized the role that the informal sector plays in an otherwise stagnant economic landscape and saturated labour market. This vision was rooted in the conviction that the sector had inherent promise to generate quality products for local and export markets and to promote job and income opportunities for those who could find no suitable alternatives in the mainstream economy. Significant attempts have been made to unlock the sector's potential by implementing policies and programmes conducive to an enabling environment. Most of these efforts have been directed at streamlining legal and regulatory frameworks governing the registration, administration and functioning of small-scale enterprises. Labour-related and social concerns have not attracted the same attention.

The past decade has demonstrated the shortcomings of this approach. Kenya's economic performance has been weakening since the early 1990s, unemployment is increasing and poverty is becoming ever more invasive. While the causes behind the country's inability to achieve sustained employment and economic growth are multiple (including governance problems, slow pace of structural reforms, increasing insecurity, inappropriate regulatory frameworks and the HIV/AIDS pandemic), it is nonetheless evident that the policy approach taken to promote small-scale and informal enterprises is not yielding the expected results. Many of the myths built around the potential of these enterprises have been dispelled by new realities.

The findings of the present study, anecdotal as they are, reveal serious decent work deficits in MSEs within the bakery and confectionery sub-sector – deficits that widen in informal sector enterprises. Workers in informal undertakings have precarious forms of employment and are not provided with written contracts. Their bargaining power is weak as they generally are linked to the entrepreneur by family ties. Due to their ambiguous employment status, they are unable to enjoy or exercise their rights at work. In addition, wages for unskilled and semi-skilled workers are below the statutory minimum. Invariably, women workers are in the lowest echelons of the wage structure, occupying less-skilled and least paid jobs. These wage disparities contribute to perpetrating inequality in society, and poverty cycles among women.

The study also reveals that workers in informal undertakings are generally exposed to long working hours (more than 12 hours each day without rest) and are not paid overtime or given a day off in lieu of working on rest days or public holidays. Similarly, these workers are not covered by the national social security system. The lack of social protection coverage is even more problematic: many workers operate in unsafe or hazardous working environments and are exposed to serious occupational health and safety risks. Finally, access to court justice is impaired at the process level and is compounded by workers' lack of knowledge and their fears of repercussion.

Working conditions and labour practices improve in formal enterprises surveyed. Workers therein are organized by BCMAU and as such are provided with representation vis-à-vis employers. Terms and conditions of employment are governed by collective bargaining

agreements negotiated by the union with the employer. Also, employment in these enterprises is relatively stable, wages are generally higher than the statutory minimum, workers have 21 days of annual leave with full pay, and women are granted one month of maternity leave with full pay.

However, even workers in formal undertakings are not granted paid sick leave and are not provided with free medical treatment, except for occasional first-aid – despite the substantial sick leave entitlements negotiated by BCMAU in various collective agreements (60 days full paid and a further 60 days unpaid after each completed year of service). Moreover, workers who are absent from work for more than a week are likely to be replaced without any form of compensation. Finally, working conditions in formal enterprises were also found to be unsafe or hazardous in many respects, although the situation is considerably worse in the informal sector.

This report also highlights several shortcomings in how labour law is enforced and compliance is monitored. On the one hand, labour inspection and administration are already contending with increasing financial, human and technical constraints – enforcement of labour law in the MSE sector is not their priority. On the other hand, growing unemployment and increasing poverty may explain why labour enforcement authorities are not policing violations of workers' rights in small-scale enterprises. The Directorate of Occupational Health and Safety (located in the Ministry of Labour) is constrained by its lack of resources and staff. Although its mandate is to prevent occupational accidents and diseases by workplace monitoring, inspection and awareness-raising, in practice the Directorate can only afford to visit medium and large plants in the formal sector.

The anecdotal evidence presented in this report confirms a direct relationship between the degree of formalization of an enterprise and the terms and conditions of its workers: the more formal the enterprise, the higher its level of worker protection. More importantly, the report shows that all formal MSEs where workers are enjoying better labour protection fall under the union's outreach. Interestingly, while one of these formal enterprises is the smallest in terms of workforce employed (3 workers), the largest enterprise (19 workers) operates in the informal sector. This finding challenges the long-held view that the workforce size of an enterprise is the main influence on union ability to organize in MSEs.

The magnitude of the economic and social problems now facing Kenya necessitates renewed efforts to shape enabling policy and legal environments for the creation of sustainable, decent jobs. If trade unions are to play a proactive role in this process, they will need to update their traditional ways of dealing with small-scale and informal enterprises. Undeniably, such changes may affect union structures, *modus operandi*, organizing strategies and resources but may be inevitable. If unions aim to retain their capacity to represent and protect workers throughout Kenya, this goal will not be achieved unless the needs of an increasingly diverse and dispersed workforce are addressed. Indeed, at the heart of the unionizing drive in traditionally non-organized sectors, and in small-scale and informal enterprises in particular, is the ability of trade unions to deliver tangible benefits and some form of labour protection to these workers (ILO, 2000).

Experience in other countries¹¹ shows that in order to unionize non-organized segments of the economy, a multi-pronged approach is necessary, focusing on recruitment-related issues and on the legal and institutional basis necessary for organizing.

The Labour Law Review Process, currently under way, provides an opportunity to expand labour protection to vulnerable workers, particularly those in informal work. BCMAU, through the national confederation COTU, will pursue its efforts to make sure that union proposals will be reflected in the final draft. Also the Kenyan labour movement will continue to lobby Government to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) as a basis for enabling Kenya's workers to exercise their representational rights.

The implementation and protection of workers' rights will require improvements in the current system of labour inspection and court justice. At the institutional level, BCMAU jointly with COTU and its affiliates will need to work closely with Government and local authorities to enhance efficiency in labour administration and to secure administrative respect for workers' rights and enforcement of contractual obligations in small-scale enterprises. Efforts will have to be made to include informal sector workers in collective agreements.

It is clear that enabling legal and institutional frameworks are not sufficient in themselves to redress decent work deficits in the MSE sector. This will be achieved only if workers have voice and visibility – to enable them to articulate their demands and act collectively, which in turn stems from their capacity to organize. Certainly, BCMAU has a major role to play here but it will need to shape a comprehensive strategy targeting MSE workers. It will also need to devote the resources necessary to make its organizing drive successful.

Building on ongoing experience and work, BCMAU will have to consolidate its educational activities to familiarize workers in MSEs with their rights at work. It will have to provide and deliver services tailored to the specific needs of these workers. As experience in other countries shows, health-related services constitute the first and probably the most practical measure that unions can adopt to meet the immediate needs of workers in small-scale and informal enterprises.¹²

Traditionally, legal advice has constituted the lion's share of services that unions provide to their members. BCMAU has already started to provide assistance to informal workers in this area, namely by working closely with the human rights NGO Kituo Cha Sheria. Over the past decade, however, unions and NGOs in Kenya have been almost competing over labour-related aspects. Some civil society groups have chosen to promote workers' rights in order to represent workers without the legitimacy to do so. This has contributed to further union weakening at the

¹¹ Among the recent literature on this subject, see for example Bennett, M. (2002).

¹² For instance, in Ghana the Industrial and Commercial Workers' Union (ICU), affiliated to the Ghana Trade Union Congress (TUC), has been providing training in health and safety to informal hairdressers and beauticians. Recruitment among these workers has increased and their working conditions have improved. In the Philippines, the Trade Union Congress of the Philippines (TUCP) has created several clinics where its members and their families can visit a doctor free of charge. The personnel in these clinics play an important role in preventing the spread of sexually transmitted diseases. For more information, see ILO (1999a) and ICFTU (2002).

national and enterprise level (Fashoyin, 2001). It has also undermined trust and cooperation among stakeholders in Kenya – particularly between unions and NGOs.

However, the experience of many countries around the globe shows that building alliances between NGOs and trade unions can be instrumental in pursuing the interests of informal sector workers (ILO, 1999b). In Kenya, where unions are constrained by lack of financial, human and technical resources, forging alliances with like-minded organizations is vital to achieve long-lasting results. It is also a powerful means of maximizing impact while streamlining efforts – a domain to which unions will have to devote more targeted attention if they are to counter their declining membership and bargaining power.

Annex 1: Checklist of survey questions

Interviews conducted with MSE owners used the following checklist of questions to elicit information about employment, occupational categories and working conditions in the informal sector.

- (1) Name of respondent (owner/entrepreneur):
- (2) Level of education:
- (3) Name of enterprise:
- (3) Address:
- (4) Installed equipment and cost:
.....
.....
- (5) Type of product/s and production volume:
- (6) Product market: Domestic: Export: Direct sale: Re-sale:
- (7) Status of recognition agreement:
- (8) Status of collective bargaining agreement:
- (9) Number of workers employed, their occupational category and type of contract (whether casual, temporary, seasonal, fixed term or permanent):

Male: Job title, salary, contract	Female: Job title, salary, contract
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- (10) Benefits:
 - (i) Housing/housing allowance:
 - (ii) Hours of work:
 - (iii) Annual leave:
 - (iv) Sick leave, medical & NHIF:
 - (v) Maternity leave:
 - (vi) Working conditions & protective wear:
 - (vii) National Social Security Fund:

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