9 Construction workers in Kenya

Straddling with formal and informal social protection models

Winnie Mitullah

Introduction

The construction industry in Kenya is multi-layered with most workers working under sub-contractors, contractors, and clients, who are also mostly informal and not registered with authorities. This makes it difficult to monitor and enforce labour laws, regulations, and standards in the sector. The workers have neither an employer who can share the cost burden that Social protection measures entail nor do they have rights as required by government policies, regulations, and standards. Most workers are hired on a short-term basis ranging from daily, a few days, weekly, and monthly with very few having steady employment with one employer for more than six months. This makes them not qualify for any worker benefits since they are considered casual workers. In a few cases, employers cater for some aspects of their social protection but without full commitment, leaving workers straddling between formal and informal social protection models.

Chapter 4 (Bill of Rights) of the Constitution of Kenya (ROK, 2010) guarantees all Kenyans' social, economic, and cultural rights. It calls upon the state to provide appropriate social security to persons unable to support themselves and their dependents which is closely linked to other rights including the right to health, human dignity, reasonable working conditions, and access to justice. The Kenya Vision 2030 complements the Constitution with its three key pillars of economic, social, and political aspects (ROK, 2007). The objective of the social pillar is investing in the people of Kenya in order to improve the quality of life for all. A goal guided by the National Social Protection (NSP) policy, which identifies three aspects of social protection which are geared towards improving human capability, that is, social assistance (e.g. cash transfer programmes), and social security consisting of pensions and health insurance. These three social protection measures fall under what in the Devereux and Sabates-Wheeler (2004) framework is called preventive and protective measures. In addition, this framework also includes promotive and transformative measures as discussed in Chapter 1 of this edited volume.

Social protection is a safety net mechanism which is crucial in building the human, financial, natural, and physical assets of poor people enabling them to grow out of poverty (Shepherd, Marcus & Barrientos, 2004). The informal

construction sector has many poor workers who are not entitled to most labour rights provided by Kenya laws and regulations such as the Kenya Occupational Safety and Health Act (OSHA) of 2007 and the Work Injury Benefit Act (WIBA) of 2007. The latter provides for compensation to employees for work-related injuries and diseases contracted in the course of employment. Under WIBA, every employer is expected to compensate employees for any death or injury while on duty and cater for medical expenses and funeral costs. WIBA only insures permanent workers; yet, over 80 percent of construction workers are informal and are therefore not entitled to insurance.

Labour regulations, including Occupational Health and Safety (OHS) rules governing construction workers, have increasingly been flouted in many parts of the world, as formal enterprises employ casual labour or outsource their labour in order to avoid the costs associated with employment (Mitullah & Wachira, 2003; Wells, 2007). The Indian Code of Social Security, 2020 provides a 2-percent construction levy collected by Local Authorities and credited to the Building and other Construction Workers Welfare Fund (COSS, 2020). This is aimed at cushioning any construction worker who works continually for three months so long as they are registered with the Construction Workers Welfare Board provided by the Code. By levying a fee on construction industry, social protection schemes can be designed to reach specific occupational groups in the informal sector. While these are good proposals, realizing them is a challenge considering that many workers are informally employed by informal labour contractors and have weak agency and organizational power, as discussed in this chapter. The Indian Code acknowledges this and provides for portability across states, those who work continually for three months, and social protection after leaving work so long as one has been in employment for three years.

The chapter explores how construction workers are organized, how worker associations contribute to labour agency and social protection, and the role played by formal institutions and institutional structures in strengthening or undermining workers organizing. First, the chapter outlines the characteristics of construction workers and examines the associational landscape using selected associations. An analysis of how the power resource approach (PRA; Schmalz, Ludwig & Webster, 2018) applies to the sector and how preventive, promotive, and transformative services are offered by workers' associations follows. These subsections set the ground for a discussion on access to associations highlighting entry requirements, comparison of association member status, access to social protection, and finally, a conclusion.

The chapter is informed by data drawn from a larger study of informal economy worker organizations and social protection covering Kenya and Tanzania (see Chapter 1 of this edited volume for details). In this chapter, the cities of Nairobi and Kisumu in Kenya are used as case studies. A combination of quantitative and qualitative research methods was used to gather information from construction workers and their associations. A partly random survey of 221 construction workers in the two sites was carried out between June and December 2018. This included workers sampled using geographical location

Table 9.1 Key worker characteristics

	<i>All</i>		<i>Nairobi</i>		<i>Kisumu</i>	
	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>
Member*	0.33	0.47	0.33	0.47	0.33	0.47
Formal social insurance enrolment (health/pension)	0.30	0.46	0.33	0.47	0.26	0.44
Health Insurance coverage	0.35	0.48	0.37	0.48	0.34	0.48
Gender (male = 1)	0.90	0.29	0.91	0.29	0.90	0.30
Age	35.77	9.42	35.89	10.20	35.63	8.39
Married	0.79	0.41	0.78	0.42	0.80	0.41
Local born	0.22	0.42	0.11	0.31	0.37	0.48
Mean daily earnings (current USD)**	10.81	8.70	11.70	8.27	9.70	9.13
Assets (house and/or land)	0.29	0.46	0.31	0.46	0.28	0.45
Primary incomplete	0.07	0.26	0.07	0.25	0.08	0.28
Primary complete	0.39	0.49	0.41	0.49	0.37	0.48
Secondary and above	0.54	0.50	0.53	0.50	0.55	0.50
Professional training course	0.35	0.48	0.34	0.48	0.36	0.48
Training on job	0.48	0.50	0.48	0.50	0.48	0.50
Self-taught	0.17	0.38	0.18	0.38	0.16	0.37
Wage-worker	0.95	0.23	0.93	0.25	0.96	0.20
Own-account	0.03	0.16	0.03	0.18	0.02	0.14
Micro-business	0.03	0.16	0.03	0.18	0.02	0.14
Observations	221		123		98	

Source: Author's elaboration based on the project survey data.

Notes: * Based on the random sample consisting of 170 workers. ** The median wage is USD 9.4 cent overall, USD 9.9 for Nairobi and USD 8.7 for Kisumu.

(75 percent) and membership in associations (25 percent). In Nairobi, a geographical (random) sample of 94 workers and 29 from associations yielded a total sample of 123 workers (55.7 percent). In Kisumu, a geographical (random) sample of 76 and association membership of 22 provided a total sample of 98 (44.3 percent) workers (Table 9.1). In order to achieve the geographical sample, constituencies and wards in each of the two cities were mapped to identify the ongoing construction work in commercial buildings. In addition, Focus Group Discussions (FGDs) and Key Informant Interviews (KII) were used to gather information.

Characteristics of construction workers

The summary of key worker statistics (Table 9.1) reveals that the construction sector is dominated by married (79 percent), male (90 percent), and wage workers (95 percent) with a mean age of 36 years. The majority of workers had completed secondary education, had different forms of training which included a high percentage of training on the job (48 percent), professional training (28 percent), and self-taught (17 percent). The sector is not strong in associational life based on random sample showing 33 percent compared to trade and transport sector which had 47 percent and 57 percent, respectively.

Around a third (30 percent) are enrolled in formal social insurance (SI), which could be the National Hospital Insurance Fund (NHIF) or the National Social Security Fund (NSSF) or both, with the majority (18 percent) referring to the former. The median wage is USD 9.4¹ which is lower than the mean due to income disparities among construction workers with a few heavy earners at the top pulling up the mean. The income of those who are members of associations is higher (Table 9.2) which partly demonstrates that membership to associations is beneficial. Associations assist members to find jobs, cushion members during difficult times such as bereavement, and also give loans, some of which are used for boosting income. These issues were largely similar in Kisumu and Nairobi except for SI enrolment which is higher in Nairobi and local born which is higher in Kisumu, while wage is lower. Most Kisumu workers are born within the region and are likely to have additional social cushioning from their communities, a provision which is not available to Nairobi construction workers who come from across Kenya.

Working in the construction sector has challenges and threats, which are largely related to informality manifested in the lack of legal contracts. Survey responses on whether workers prefer contracts specifying pay and benefits yielded mixed responses, with many noting that availability of contracts would protect them from non-payment of dues, while a few others prefer being their own bosses with daily payment. Overall, the majority want job security and assurance of benefits, while others prefer working without a contract for flexibility. These findings were further corroborated in FGDs with some workers noting that, if given a chance, they would advance their work, earn more income, and buy assets.

Associational landscape

This sub-section provides an overview of construction workers' associations including a brief on selected associations highlighting the different forms of associations, how associations are organized, and the services provided to members. This is followed by reflections on how the PRA applies to the construction sector.

Overview of associations

Construction associations provide several benefits to members of which opportunity to save and receive loans (39 percent) and work-related (50 percent), including information on employment opportunities (31 percent) (Table 9.2), are the main attractions for joining associations. They play a central role in providing opportunity to save and receive loans, linking members to employment opportunities and contacts for jobs as elaborated by a key informant from the Labour Link association (Box 9.1).

Other benefits of being a member of a worker association such as safety at workplace, stable income, and protection against harassment are secondary. The

Box 9.1 Associations as a link to employment

We can be contracted by clients as far as Nairobi. I always try to convince the client that I am a painter. We do not strain ourselves looking for clients. Within the Labour Link Network, we have worked for big hotels such as Acacia, United Mall, and Sunset. When our clients have work, I am the one who does it ... we have bought tools, we do not hire tools anymore. We sit down and agree what percentage of the money we receive from contracts done will go to buying tools – we are like a family, we support one another. Once we get a contract, we get our people, and if they are not enough, we hire others in the places where we have gotten the job (KII, Kisumu).

findings reveal that associations are very good at supporting members in getting jobs but generally weak in aspects such as ensuring secure contracts, access to health and pension, and higher incomes. As seen earlier, based on the random sample, only 33 percent of construction workers belong to associations, which are largely work-related associations.

An examination of workers who are association members revealed that 53, 40, and 7 percent, respectively, belonged to work-related associations, SACCOs, and other associations (Table 9.2). Thirty-six percent were registered in SI schemes showing a higher incidence of SI among members of associations

Table 9.2 Key worker characteristics, association members

	<i>All</i>		<i>Nairobi</i>		<i>Kisumu</i>	
	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>	<i>Mean</i>	<i>SD</i>
Formal social insurance enrolment (health/pension)	0.36	0.48	0.37	0.49	0.34	0.48
Health insurance coverage	0.39	0.49	0.40	0.49	0.38	0.49
<i>Association type</i>						
Sacco/vicoba/chama	0.40	0.49	0.38	0.49	0.43	0.50
Work-related association	0.53	0.50	0.55	0.50	0.51	0.51
Other association	0.07	0.25	0.07	0.25	0.06	0.25
<i>Benefit type</i>						
Work-related	0.50	0.50	0.63	0.49	0.32	0.47
Social cushioning	0.10	0.31	0.00	0.00	0.23	0.43
Voice and representation	0.01	0.10	0.02	0.13	0.00	0.00
Loans	0.39	0.49	0.35	0.48	0.45	0.50
Barriers	0.64	0.48	0.60	0.49	0.70	0.46
Fee	0.73	0.45	0.58	0.50	0.91	0.28
Observations	107		60		47	

Source: Author's elaboration based on the project survey data.

compared with the full sample of construction workers. The association members had a health insurance coverage of (39 percent), with a standard deviation of 0.49. Voice and representation which falls under transformative social protection was hardly visible in the survey and hardly mentioned in FGDs and KII discussions.

Highlights of selected associations

Associations in the construction sector take different forms which include registered associations, loose² unregistered networks, cooperative societies, and companies. These associations have rules for entry including subscription requirement and support construction workers in looking for employment opportunities and welfare needs as discussed below.

Labour Link, established in 2012, is a loose group based in Kisumu. It is composed of five core leaders, each with specific construction sector skill sets who rally individuals with similar skill sets to form work cohorts. Formation of these cohorts enables the group to easily interact, call each other when there is work, and compete for jobs. The group has 20 members who take piecework assignments moving from one assignment to another, and in cases of more jobs, they invite others. The five leaders come from one village, but those operating under their clusters do not necessarily come from their respective villages.

The network has assisted members to buy tools and develop their skills, as noted by one of the group leaders, “we can do paper walling in a professional manner and we get called for jobs in big commercial projects”. They listed several well-known commercial buildings in Kisumu, in which they have been employed to handle different aspects such as painting and fittings. Whenever they get a contract, they agree on the percentage to be deducted and invested in buying tools for the group.

Despite the activeness of the group, it is not registered, and there is no membership fee. There was an attempt to register the group, but it did not work, largely because of loan repayment defaulters. The group was running a SACCO with members taking loans and not paying back. The poor experience with loan repayment resulted in the decision of the group to remain informal and only assist each other in social needs and in getting jobs.

Migosi Friendly Workers Group in Kisumu, established in 1994, has an investment arm called Migosi Builders, established in 2008. In both FGDs and in KII with the chairman, it was noted that the association is very useful in assisting members to get jobs, certification, and negotiation with employers. The friendly group has 140 members, while the builders have 42 members, 4 are women. The workers’ group which is largely composed of masons and three certified electricians is registered with the Department for Social Services. The membership has kept increasing since it is difficult to get a job in the construction sector when one is not in a group. The group is well organized with clear procedures of rotational recruitment and governance, although the incumbent leaders had been re-elected four times.

The group enrolls new members including standard eight primary school drop-outs. They join as helpers and progress to become masons. Members pay a registration of KES 200, and once registered, members pay weekly share contributions of KES 500, while those in the investment arm register with KES 2000 and pay monthly fees of KES 800. Membership is open to any construction worker referred by a member. A copy of national identification card, physical contact, and name of area chief is mandatory. It was emphasized by an official of the association that these requirements are necessary as a point of reference since not all individuals have a good reputation. The association provides a contact point for professional construction workers, upcoming workers, and young school leavers willing to work in the industry. The association also gives workers opportunity to operate, assists members to acquire certification, in negotiation, including intervening when disagreement occurs or contracts are breached by clients. In cases where negotiation has failed, one is free to go to the government authorities.

The association applies group dynamics to access rights. An example was given in which group members teamed up to demand payment for unpaid dues of workers, to quote a respondent, “one day, I found a gang baying for the client’s blood with *pangas* (machetes) because some team members had not been paid”. A probe into payment modes and challenges revealed that, in some cases, contractors are not paid by their clients, in particular, government who takes long to pay. In such cases, associations intervene through the leadership, which encourage members of the group to report to the leadership whenever there are conflicts, including non-payment of dues, instead of taking punitive measures on the contractors and clients.

Chama Cha Mafundi is a semi-structured non-registered loose network of 68 members established in 2003 whose contact (waiting point) designated location is on a street in Nairobi – Moi Avenue within the Central Business District (CBD). At the time of research, only 20 members were active. The group reports to the open space every day, and clients come and procure their labour. The network has a constitution specifying rules and regulations for members. Each member deposits KES 200 (USD 2) to the association whenever they secure a job. Group members know each other well, and each person is obliged to be honest and contribute to the group kitty which is mainly used for welfare. Members are free to borrow from the kitty in case of serious needs.

Membership fee is KES 1,000 (USD 10), and new members must be introduced, and if they do not have the amount, the one introducing them can pay on their behalf. Membership is open to all in the construction sector. The association puts emphasis on integrity and does not entertain dishonesty in construction sites or off-site. An official of the association noted that this is stipulated in the constitution which guides members on their daily operations. Members engage in building, renovation, and repair work and are willing to take jobs anywhere within and outside the city of Nairobi.

There are many benefits of being a member, with welfare being the major one. They support each other in sickness and undertake fund-raising for school

fees and to pay fines when a member is arrested for what they consider to be unavoidable such as working on unlicensed sites. They also advise members to ensure that clients have a license for construction, especially within the CBD and commercial areas to avoid problems with the city authority. However, the group seemed more relaxed with individual clients as opposed to corporate clients. The group also provides a link to employers and advises members on what to demand from clients, for example, toilet facilities if work lasts more than three weeks.

The association was previously giving loans to members, but the activity collapsed when the group had raised capital amounting to KES 680,000. Some members borrowed but never paid. In 2018, the group decided to stop the savings scheme and share the money among members in line with their shares. The group was considering rallying members once again to get back to saving, but were concerned about some conservative members, especially old guards – largely painters who were the founders of the association. They were noted to lack innovation and not interested in advancing associational activities such as development of SACCOs.

The group members are supportive of each other, occasionally assist members to negotiate with clients. Their meetings every two weeks revolve around issues of relationship with their clients and employers. Welfare is hardly discussed but handled on case-by-case basis, and members are largely ignorant of the importance of associations, to quote, “members want jobs and that is all, and not discussion of associational issues”. This had also contributed to poor attendance of association meetings, which hardly attract half of the membership, and the association has not recorded any significant changes in 14 years of operation. The meeting and recruitment base have been operational for over 30 years and had the potential of developing a strong network of construction workers, but remain fragile and not effective in addressing labour rights issues.

Three active members of Chama Cha Mafundi had established and registered a company with the National Construction Authority (NCA). The three decided to go a notch higher to promote their construction work. The establishment of the company was driven by the challenges of getting jobs as individuals. One of the proprietors had left the association for work with a company, came back, re-joined the group, and established a company. This shows the synergy between informal and formal work and the influence interaction with one sector has on the other. However, this synergy has not directly benefited the association but only a few individuals. This could probably be explained by the laid-back nature of the association and its inability to advance the interests of members. This notwithstanding, entrepreneurial individuals can leverage associational platforms to advance their opportunities as done by these three members.

FundiTech Services Cooperative Society in Nairobi was registered in 2017 with a vision of being a leading workers’ cooperative for professional technical services in Kenya. The cooperative originally began in 2007 as a welfare group under the name Mafundi wa Kenya (MWAKA) association with a main goal of providing work-related information for *fundis* (masons) and technicians. Many approached the association for information but were not willing to join

the group. This triggered the group to think of how to attract membership by undertaking activities that benefit the members. A meeting with USAID advised the group to convert the association into a cooperative, opening the pathway for the group.

The cooperative has a total of 107 members, of which 15 are women, about 30 percent of these members are formally trained while 70 percent are not formally trained. Members have varied skills, including masonry, electrical, welding and fabrication, tile fixing, steel fixing, plumbing, and painting. Discussions with the secretariat of the cooperative revealed that skills are wanting even for those who are formally trained. Membership requirements include being a technician and a certificate holder who is trained with skills and specialization in the building and construction industry. Members should be 18 years and above, not in any other cooperative society carrying the same activity and be able to pay registration fees of KES 3,000 (USD 30) and a minimum share capital after a three-month probation period. Forty members have bought shares, of which three are women. The probation is a learning period which also gives the cooperative society a chance to know the member. Members are ranked as bronze, silver, and gold. These ranks are skill-based and do not depend on share-holding. The cooperative has a secretariat that coordinates all the services provided.

The cooperative has several benefits and obligations to members, a major one being growing a team of qualified construction sector workers, training members, and producing quality work. It is a labour sub-contractor with FundiTech getting contracts and doing supervision and management of labour while members provide labour. The cooperative has designed a formula of compensating members and ensuring quality work, with no *fundi* being paid less than KES 1,000 (USD 10) per day. The association has a 'daily must', specifying amount of work each skill must produce, for example, how much painting or building must be done in a day. Although the cooperative collaborates with other stakeholders majorly for advocacy, they have prioritized institution building, to quote an official of the cooperative, "we are not networking, we have discouraged people from coming to us ... construction is very dynamic, the *fundi* want to hear one word, their money".

The overview of the above construction workers' associations reveals that associations are diverse in structure and with different strengths, although assisting members to find jobs and cushioning members during sickness, bereavement, and other welfare-related issues cuts across all associations. The established and structured associations such as Migosi builders and FundiTech Cooperative perform better in supporting members compared to associations with loose networks such as Labour Link and Chama Cha Mafundi. While the workers tend to have foresight on their ability to work and improve their status, including collectively buying equipment as was noted by a Key Informant from Labour Link (see Box 9.1), they tend to have weak organizations which undermine their agency in voice and representation.

Associations such as Chama Cha Mafundi have operated for many years and remained a loose organization with a collapsed SACCO due to poor commitment

of members. Members compete between themselves and lack trust, largely due to scarcity of employment opportunities, which contributes to members of associations flouting labour fees set by some associations. An interview with Migosi Builders association elaborated this point noting that, “somebody will bid very low to land a job, while some members hide to take such jobs due to desperation”. The mistrust is intensified by failure by many members to pay their association’s subscriptions and loans. Associations such as Labour Link resolved not to pool resources in the form of savings due to lack of repayment of loans. The SACCO of the Chama Cha Mafundi association also collapsed due to non-payment of loans.

Several of the activities being undertaken on behalf of the membership of associations can be understood using a PRA advanced by Wright (2000), Silver (2003) and other authors as discussed in Chapter 1 of this edited volume. The sub-section below assesses the applicability of the PRA on the construction associations.

The power resources of associations

The PRA which includes structural, associational, institutional, and societal power with its coalition and discursive tenets can be used to analyze operations of construction workers, since one third of the workers were members of associations. Authors (Wright, 2000; Silver, 2003; Schmalz, Ludwig & Webster, 2018) who use the PRA argue that workers can collectively mobilize different power resources to advance their interests and concerns. Analysis of construction workers’ associations reveals that the workers mainly use associations to search for jobs, negotiate for terms of employment, and to informally intervene when disagreements occur between the workers and employers. This role of associations somehow mirrors what unions do in a formal context using a combination of associational and institutional power.

The findings reveal that a higher number of those who belong to associations are registered in SI schemes (see Table 9.3) and are able to secure their health and pension which are pillars for empowerment. However, the associational power of associations is weakened due to challenges such as members not paying association dues and participating in scheduled meetings. The inability to attend meetings and pay dues can be explained partly by governance challenges and the nature of construction work which involve long hours of work and movement to different sites, including relocating for some period for work outside cities of residence. This undermines associations’ potential to leverage all associational power resources and is partly explained by the non-transparent, informal, and casual nature of the employment relations.

The construction associations are not able to use institutional power, although they are aware of the laws, regulations, and procedures, largely due to lack of formal contracts, time, and resources involved in legal processes, and for fear of losing employment opportunities. Associations such as Migosi Friendly Workers occasionally use associational power to team up and apply disruptive power

(a form of structural workplace bargaining power) – storming work sites to demand payment from clients and contractors. Such storming would not be as necessary if the association had institutional power and operated as registered companies with legal contracts. Findings revealed that the contractors are hesitant to take legal action when the client is the national or county government when payments are not honoured. This is due to fear that the system might not favour them or that they might be blacklisted from getting future contracts/jobs. The fact that contractors also compete for jobs individually also weakens their ability for collective negotiation and redress.

The contractors and sub-contractors who employ workers operate in a quasi-formal manner having formal contracts with clients but hiring workers informally without contracts. Due to the weak structural and institutional power of the workers' associations, they are not able to argue their case and demand their rights from the contractors and subcontractors who employ them informally. In a few cases where workers' associations are collaborating with NGOs and other private firms, there are signs of societal power through coalition building and discursive power beginning to manifest.

Societal power was more visible in Fundi Online Platform which has nurtured relations with a university, a technical training institution, local companies, and an international NGO to realize its goal of being an online platform for workers. The Cooperative Society had also been assisted by USAID to advance its mandate, and a sign of agency and tapping of different sources of power were latent. The cooperative is ensuring compliance with laws and regulations and is able to protect the workers, albeit with financial and membership commitment challenges. The cooperative had prioritized institution building and was, in the meantime, not interested in nurturing too many external networks – which seemed a good strategy for consolidating the cooperative before venturing into the outside world.

There was no evidence of workers' associations nurturing relations with people in positions of power such as elected leaders, government, chamber of commerce, or trade unions to address issues facing them. The only link was through training offered by government agencies such as National Industrial Training Authority (NITA), NCA, National Youth Service (NYS), and private cement and paint firms. Some of the trainings were supported by private companies and facilitated by NCA as revealed in discussions with Kaberia Jua Kali Association which benefited from training by a Qatar-based company. The workers are largely inward-looking with many belonging to loose unregistered horizontal networks which connect them to employment opportunities. Associations such as Labour Link, Chama Cha Mafundi, and others that participated in FGDs belong to this group. Labour Link was investing in buying tools but was very poor in associational life with hardly any meetings taking place.

The few associations organized as cooperatives and companies engage all forms of power except disruptive power. A small company, an outshoot of Chama Cha Mafundi, has managed to register with NCA and to collaborate with formal construction industries and workers. The leader of this company had a short stint in

the formal sector as a member of the group. This is a good demonstration of how institutional power assisted the construction worker to turn into an entrepreneur owning a company and still belonging to an association which had largely remained static. Such power tends to be limited among construction workers, and the question remains why the progressive entrepreneur was not able to influence the association to tap into institutional power such as registration with NCA and interaction with formal construction firms to advance associational power and workers status.

Services offered by construction associations

Construction associations offer mainly two services, informal social protection as well as assisting in search and link to employment opportunities. The social protection services offered to members can be assessed using Devereux and Sabates-Wheeler's (2004) classification of social protection measures grouped into four categories: Preventive, Protective, Promotive, and Transformative, three of which are discussed below.

Preventive

Legal provisions in Kenya require employers to ensure OHS of workers, subscription to the NHIF, and NSSF. However, findings reveal that the majority (70 percent) of construction workers do not subscribe to any SI schemes. The workers largely rely on informal SI strategies accessed through associations, family, relatives, friends, and good Samaritans. Association members collectively support their members in cases of accidents on-site as well as health issues and death in their homes. Some associations limit support for sickness to in-patient with cover limited to a member, their spouse, children, and parents. However, dependent beneficiaries only get about half the cover, while death of a member is treated in a limited manner, which requires additional fund-raising for attending funerals and taking extra responsibilities such as buying a coffin and transporting the body.

Associations also have ad-hoc informal SI support, in which there is no specified amount, but decisions are made by members when a member is confronted by a social issue which the group considers to require support. These range from sickness, death, school fees, weddings to paying local authority and government fines. The study revealed that even loose workers' associations like Chama Cha Mafundi are very good at rallying members to undertake fund-raising for sickness, school fees, and to pay fines.

Labour rights, such as safety at work in the sector, are handled in a multi-layered manner and are not solely the responsibility of the employer. In cases of injury, medical expenses are paid either by the employer and workers, with each scoring 38 percent in the survey. Other cases are handled by the site manager or owner of construction, relatives, and work colleagues. This implies that workers through their associations are largely paying for medical expenses with the support of others. A further probe in FGDs and with KIIs revealed that

Box 9.2 Perception on safety of workers

Safety is more personal ... the worker must ensure his or her safety at work. Many contractors do not care about safety. Sometimes, the client forces contractors to enforce safety. In one incident, I was hanging on the fourth floor, and the client forced the contractor to provide a scaffold before anything could proceed. Safety is not a priority to clients, and workers cannot insist on safety gears, and if they do, they lose the job ... some contractors tell workers who ask for safety gears, 'choose whether you want a job or gears' (KII, Sub-contractor, Kisumu).

workers and associations do not use institutional power to address labour issues, but rely on associational collective power to support members. They view safety and accidents largely as bad luck and workers' personal issues as opposed to an employment problem as observed by a key informant in Kisumu (Box 9.2).

The voice in Box 9.2 reveals powerlessness and inability to address labour contractual issues which should be covered by WIBA. Instead, associations and social networks fill such deficits as noted by a sub-contractor "if they do not report to work, they do not get pay, if you are sick today, you will have no pay, but if you get better you will get back to work" (KII: Sub-contractor, Kisumu). Further discussions in FGDs and KIIs highlighted the support injured members get from associations and the need for members to take care of their safety as noted by the KII sub-contractor, "it is a must to contribute". The KII noted that he was responsible for the workers, and if injured, he ensures that they are taken to hospital. He further observed that the client is not responsible for those who get injured; in most cases, the clients are not present when accidents occur. Overall, the WIBA provisions were minimally applied, although most workers and employers knew the provisions.

Promotive

Construction associations are anchored on providing promotive services such as micro-credit, loans, savings, and training which they sometimes do in collaboration with other partners and agencies. As reflected in Figure 9.1, they put a high premium on savings and receiving loans, which are promotive aspects of social protection. Considering the precarious nature of their work, savings and loans are what cushion them by supplementing their irregular incomes and sustaining their livelihoods.

In the survey sample, the opportunity to save and receive loans (39 percent) and information on employment opportunities (31 percent) were the most important benefits of being member of a worker association, as reflected in Figure 9.1.

Micro-credit leveraged through associations sustains most of the workers, especially during periods when they are not able to get jobs. For example, Chama Cha

Figure 9.1 Most important benefits of being a member of the worker association.

Mafundi requires members to deposit KES 200 (USD 2) whenever they get a job. This amount is saved by the association and may be borrowed by a member when in social need. Some associations share the contributions weekly or monthly and also support members when welfare issues like sickness and death arise.

Training through apprenticeship is an important promotive service. Some individuals from formal construction firms and training institutions get into the industry as workers with skills and knowledge of the sector and become employers by sub-contracting labour, either as contractors or sub-contractors. Those from the unemployed pool get into the industry as novices, often taken care of by associations aligning the novices with experts. They begin as helpers taking any instructions, learning on the job, and if successful, advance into being semi-skilled workers with the potential of working alone and supporting other novices.

The dominant areas of training include building and construction, masonry, plumbing, electrical installation, and carpentry. Discussions with key informants revealed that electrical installation and, to some extent, plumbing are done in formal training institutions, while the other trades are largely learnt on the job and through apprenticeship. In FGDs, in Kisumu and Nairobi, it was noted that some contractors and sub-contractors provide mentoring job training programmes for different skill sets, as elaborated by a contractor, “I have done this for a long time since I started as a contractor ... some even coming from polytechnics. Some are contractors, others are *fundis*”. Further probe revealed that such contractors work very closely with polytechnics and often get students attached to their firms on a regular basis. Several of such students continue to work with contractors after attachment, moving from one contractor or sub-contractor to another until they become independent construction workers, managers, and firm owners.

Associations rely on collaboration with other groups such as KCB, NYS, NITA, for free training, and legal advice. Some of the programmes done in collaboration with partners are advertised, while others go through associations

and contractors to get trainees. The programmes are free and largely flexible which allow construction workers to continue working. Labour Link appreciated how the network had enabled the group to acquire new skills, as noted by a Key Informant and member of Labour Link in Kisumu, "...we have added to our skill set. We can do paper walling in a professional manner".

Transformative

Informal construction workers' associations in their ideal nature should provide agency for the workers through voice and representation. However, the findings reveal that transformative issues of rights, including negotiation for benefits such as health, pension, higher and stable income, protection against harassment, and negotiation of contracts, are not given high priority. The unpredictable work environment makes them largely concentrate on daily income, with low premium on issues of voice and representation that have potential of advancing their interest and transforming their work environment.

Having voice and effective representation requires active members of associations who participate and raise issues of concern such as lack of contracts and poor work environments. These are aspects which are generally not being actively negotiated, as noted by one of the sub-contractors in Nairobi "if you fail to complete the job because your client has not paid you, they will hire others to complete your job". This is partly due to lack of written contracts and lack of registration of workers and firms, which is exploited by contractors and clients who lack integrity. Unfortunately, having formal contracts does not prevent exploitation of workers. For fear of losing contracts, several workers and sub-contractors are not using the legal advice offered by KCB, to quote a sub-contractor in Kisumu, "when we get jobs we do not go for legal advice since clients do not like the legal way". One site manager pointed out that even the Chinese who have big projects do not give contracts. They rely on verbal contracts; "they do not hire labour but sub-contract to get labour" (KII: Site Manager, Kisumu). In this process, the written contract, if any, remains between the individual and the main contractor, while the workers rely on verbal agreement. This challenge is also linked to the Ministry of Labour's inability to enforce labour laws, especially in formal construction sites, and difficult judicial process.

In isolated cases, being in associations has encouraged a few workers to report to the leadership issues relating to non-payment and respect for agreements. Associations such as Migosi Builders undertake this task by negotiating with clients, and if not successful, the cases are referred to government authorities. The chairman of the association noted that most cases are resolved through negotiation by association, to quote, "it is good, because majority of cases are resolved ... It is because of being in a group". This infers that, although the findings show minimal use of transformative power, opportunity exists for use of voice and representation to improve the working environment of construction workers. Many workers do not bother to use such opportunities, and there is need for training and advocacy on the use of associations for leveraging transformative power.

Discussion

The associational life of construction workers is mainly centred on assisting workers to get employment opportunities and cushioning members by providing informal preventive and promotive social protection measures. Transformative social protection which entails engaging structures and institutions of power for changing their situation is marginally applied at case-by-case level; and not at a broader advocacy level directed at general conditions or the lack of enforcement of government rules. This is largely attributed to their weak organizational capacity which limits their ability to pool resources together to address structural, institutional, and societal issues facing the sector. This section discusses access to associations, highlighting entry requirements, comparing association membership status, and assessing access to formal social protection.

Access to associations

Workers' associations are powerful in assisting members to find job opportunities and supporting welfare needs, which makes them attractive to construction workers. This notwithstanding, only 33 percent are members of associations (Table 9.1).

Entry requirements

A large percentage of the associations restrict membership to individuals in the construction sector. Type of work is the dominant entry requirement followed by minor share for geographical location.

Discussion in FGDs and with KIIs in Nairobi and Kisumu confirmed the survey findings that membership is often based on working in the building and construction industry. A few associations like Migosi Builders admit those who do not work in the sector and also have no qualification for the industry but are keen on being nurtured into the sector. The associations also require potential members to be introduced by a member, in addition to availing Identification Card (ID), providing an address and name of their local administrator or chief. These requirements are aimed at providing points of reference for associations and ease traceability in cases of disappearance of workers and ensuring integrity and accountability of members. This is because the work environment is full of client assets which have to be protected and accounted for.

A mandatory membership payment is a requirement which cuts across all associations. In some associations, a requirement for a specified share contribution is embedded in the membership fee, whereas, in high level associations, such as the FundiTech Services Cooperative Society, there are higher requirements. Potential members have to be technicians, and certificate holders trained in specific skills and specializations in the building and construction industry. The cooperative requires potential members not to belong to any other cooperative society carrying out the same activity, members must buy some share capital, and have a three-month probation period. The latter is used to assess a member's character and performance.

Although most associations require members to be 18 years and above, one group, Dunga Builders association, requires members to be mature, with emphasis on marital status as a show of maturity – this was partly problematic to single mothers. A probe on this requirement revealed that it was aimed at protecting the group from those who exit after having a lump-sum payment before a full circle of savings benefits go to all members. It seems the requirements for access are generally simple, except for the service cooperative association which is targeting professionals in the sector. Other associations welcome both qualified and non-qualified workers. The other attributes of ethnic and religious backgrounds and being known to group members are not major requirements, but largely provide connection to associations through introduction.

Comparison of association membership status

Associations provide access to collective goods and are known to be of great importance to informal workers. McCormick, Mitullah, and Kinyanjui (2003), in a study of micro and small-scale enterprises (SMEs) in Kenya, observed that SMEs can collaborate and achieve what they cannot do alone (see also Haan, 1995). Members of associations are significantly more likely to be enrolled in formal SI schemes (Table 9.3) with over one third (36 percent) of association members having SI as compared to 25 percent of non-members.

Table 9.3 Differences in key workers characteristics by association member status

	<i>Member</i>	<i>Not member</i>	<i>Difference</i>	<i>t-Value</i>
Formal social insurance enrolment	0.36	0.25	0.11	1.78*
Health insurance coverage	0.39	0.32	0.08	1.19
Nairobi	0.56	0.55	0.01	0.12
Kisumu	0.44	0.45	-0.01	-0.12
Gender (male = 1)	0.93	0.88	0.06	1.45
Married	0.87	0.71	0.16	2.92***
Local	0.31	0.14	0.17	3.06***
Age	35.79	35.75	0.04	0.03
Mean daily earnings (current USD)	11.58	10.10	1.48	1.26
Assets (house and/or land)	0.28	0.31	-0.03	-0.43
Primary incomplete	0.06	0.09	-0.03	-0.90
Primary complete	0.43	0.35	0.08	1.20
Secondary or above	0.51	0.56	-0.05	-0.70
Training course	0.39	0.31	0.09	1.33
Training on job	0.50	0.46	0.03	0.45
Self-taught	0.11	0.23	-0.12	-2.30**
Wage-worker	0.97	0.92	0.05	1.67*
Own-account	0.02	0.04	-0.02	-0.75
Micro-business	0.01	0.04	-0.03	-1.58
Observations	221			

Source: Author's elaboration based on the survey data.

Note: <0.01***, <0.05**, <0.1*.

Association members are also more likely to be married and locally born. None of the education and training variables differ by association membership status, apart from self-taught workers being more likely not to be in an association. Non-members usually begin as helpers working with those registered with associations, learn the trade, join associations, and scale up to take professional positions in the industry. By contrast, wage workers are more likely to be in associations and are comparatively established.

Access to formal social protection

As also shown in Table 9.4, association membership plays a role in access to formal SI schemes since, out of those that have SI, 58 percent are association members, compared to only 45 percent of those that do not have SI. In addition, the table reveals that those workers more likely to be enrolled in social protection are male, married, have access to loans, have higher mean income and assets, and are more likely to have completed secondary school. Being an own-account worker

Table 9.4 Differences in key workers characteristics by social insurance enrolment

	<i>Social insurance</i>	<i>No social insurance</i>	<i>Difference</i>	<i>t-Value</i>
Association member	0.58	0.45	0.13	1.78*
Sacco/vicoba/chama	0.24	0.17	0.07	1.17
Work related association	0.29	0.25	0.04	0.66
Women/youth/religious	0.05	0.03	0.02	0.76
Work-related	0.24	0.25	-0.01	-0.04
Loans	0.29	0.15	0.14	-2.44**
Voice and representation	0.02	0.00	0.02	-1.54
Social cushioning	0.05	0.05	-0.01	-0.19
Nairobi	0.62	0.53	0.09	1.26
Kisumu	0.38	0.47	-0.09	-1.26
Male	0.97	0.88	0.09	2.15**
Married	0.86	0.75	0.11	1.81*
Local	0.18	0.24	-0.06	-0.93
Age	36.55	35.45	1.10	0.79
Mean daily earnings (current USD)	12.60	10.05	2.54	2.00**
Assets (house and/or land)	0.39	0.25	0.14	2.14**
Primary incomplete	0.05	0.08	-0.04	-1.01
Primary complete	0.30	0.43	-0.12	-1.72*
Secondary or above	0.65	0.49	0.16	2.21**
Training course	0.50	0.28	0.22	3.14
Training on job	0.36	0.53	-0.17	-2.27**
Self-taught	0.14	0.19	-0.05	-0.91
Wage-worker	0.92	0.95	-0.03	-0.92
Own-account	0.05	0.02	0.03	1.09
Micro-business	0.03	0.03	0.00	0.19
Observations	221			

Source: Author's elaboration based on the survey data.

Note: <0.01***, <0.05**, <0.1*.

Figure 9.2 Reasons for not contributing to SI.

or working in cities where one is born does not make a significant difference in terms of social protection enrolment.

Higher mean income indicates that members of associations are comparatively better able to pay for and access formal social protection schemes. Several associations were noted to encourage members to register for NHIF, with some arguing that it relieves the association of the burden of taking care of members when they are sick.

Most of those registered with formal schemes were married with some being registered through a spouse. The survey findings indicate that cost, time, and inability to give the scheme attention are the main obstacles to enrolment with formal SI programmes (Figure 9.2).

A probe through FGDs and KIIs in Kisumu and Nairobi for reasons for not subscribing to formal SI schemes confirmed the survey findings. Most workers consider the KES 500 payments per month expensive, especially when they consider that, in many cases, they are healthy and do not use the service. The bureaucratic processes including restriction of outpatients to one hospital are further drawbacks to construction workers who are constantly moving in search of employment. Thus, the study revealed a remarkable deficit in formal SI among informal construction workers.

A further probe showed that 14 percent of workers who previously subscribed to NHIF stopped due to mixed reasons dominated by too expensive, followed by leaving previous job, school, college or divorce, not having made use of the scheme, lack of stable job and remittances, and procedures too complicated (Figure 9.3).

The SI deficit in the sector is explained by informality and the fragile nature of work, in which there is no specific person or employer to take responsibility for workers. Furthermore, both workers and contractors do not take insurance seriously, as highlighted by a KII Contractor (Box 9.3) and other voices of construction workers drawn from FGDs in Nairobi and Kisumu.

The quote from the constructor reveals that accidents are treated as bad luck. A probe through FGDs and KIIs in Nairobi and Kisumu on the issue indicated that liability should be shared between the contractor and the client, but often, the two do not take full responsibility for workers. In most cases, they take the injured to hospital, make a one-off payment, and leave the employee in the hands

Figure 9.3 Reason for leaving NHIF.

Box 9.3 Contractor's view and other voices of workers on social protection

Contractors take insurance for granted except in isolated cases where they work for government or big jobs, but for small contract that last for two weeks, three weeks, and you will not be with them for long, we do not insure them ... but we pray to God so that a bad incident does not occur ... that is what we pray for ... if accidents happen then God may have planned that you die like that or get hurt like that. Most contracts have been completed without a hitch, including the ones in which workers were insured. There is a job we did in Milimani area in Kisumu, and we secured insurance for all workers and concluded it well without any incidents (KII, Contractor, Kisumu).

I had initially enrolled for NHIF and paid for three years without falling sick. I did not see the need as I felt that the money was not helpful. After some time, I got married and I have not had any case of sickness so I stopped contributing. I joined M-TIBA which has a minimum of KES 100 (USD 10) monthly, and I find it a better option (FGD Participant, Nairobi).

We formed a group to take care of health insurance especially sickness. I have seen my friends being fined for default and I have lost hope in the cover. I now go to mission hospital. As a group, we have emergency fee for accidents occurring on-site. Our Constitution clearly states that the

nuclear family will be covered in case of sickness and death, we are building our own insurance ... we assist members until they get well (FGD Participant, Nairobi).

... I can go for a week without a job. It becomes hard for me to accumulate KES 500 (USD 5) at the end of the month. It is easier for the formal workers because theirs is deducted from monthly salary (FGD, Nairobi).

Notes: The M-tiba is an e-Wallet. If one seeks health services, they are covered only for the contributed amount, and any balance would be paid out of pocket.

of relatives, colleagues, and friends. Some of the contractors and clients also assume that the responsibility of having the right gears and being safe totally lie on the employee, which goes against the WIBA requirements.

The deficit in formal SI schemes is filled by informal insurance provided through associations, relatives, colleagues, and friends, which are bottom-up loose strategies suitable to the workers. Almost all associations had an SI welfare component, ranging from an informally defined contribution to ad-hoc contributions when needs arise. In the former, members contribute a specific amount of money per month with a percentage dedicated for SI. They also run savings and credit schemes which allow members to get back some portion of their shares through revolving saving and credit schemes enabling easy borrowing. This aspect and informal models of SI are very attractive to construction workers.

Both the defined and ad-hoc contributions allow members to save and accumulate money for SI, largely assigned to sickness and death. These models are preferred compared to subscription to formal SI schemes, which are viewed as complex and bureaucratic. Some of the workers were paying more money in their associations, compared to what they would pay for formal SI. The association payments take part of the income which would otherwise pay for formal social protection because the workers trust associations compared to public schemes. There is therefore a need to address the work environment, bureaucratic, and technical procedures that keep informal construction workers from subscribing to formal public SI schemes.

Conclusion

Informal construction workers are weak in associational life and have not managed to fully leverage the various powers latent in existing associations. Most of their operations are horizontal, engaging with membership, and other construction workers outside their associations largely in search of employment opportunities. Although they are interacting with public and private agencies who provide training, this interaction is limited to one-off training without exploiting

other potential powers which such interaction can leverage. This is largely due to weak organizational capacity of associations and the construction workers' work environment which does not leave adequate time for engaging in associational life and tapping other powers for formal social protection.

Most associations in collaboration with family members, relatives, colleagues, and friends take care of construction workers' social protection needs such as sickness, death, and other social livelihood needs. Cases of OHS are handled in a haphazard manner with many workers left on their own once admitted to hospital or given the first treatment after injury on-site. Many workers do not perceive SI as a right in spite of existing institutional measures that have been put in place by the state. Their informality is also exploited by employers, including formal firms that should hire workers under contracts and ensure decent work. This problem is further intensified by poor state governance and enforcement, which include a lack of resources that prevents government labour office inspectors from undertaking inspections on construction sites.

The associations which are supposed to provide agency for claiming SI rights and protecting workers are equally weak and require capacity-building and exposure on how SI, including NHIF and OHS operate. Basic facts on how insurance operates are not well known to the workers and partly contribute to their thinking that one must use the service for the scheme to be meaningful.

Addressing these deficits requires going beyond associational power to using structural, institutional, and societal powers to negotiate the work terrain and related issues. Associations largely concentrate on preventive and promotive social protection measures, focusing largely on welfare issues, savings and credit, and providing information on job opportunities but hardly address work environments in the sector. Cases of accidents on-site are handled by foremen, colleagues, and relatives as opposed to using legal workplace protective measures. The deficits in SI measures are not viewed as the responsibility of clients and contractors, but that of workers.

The work environment, associational weaknesses, and technical bureaucratic issues undermine formal SI programmes targeting construction workers. The majority of workers do not access the schemes due to cost and poor design, including requirement for payment within a specific time, default attracting penalty fees – which workers find punitive – and inability to access contributions in form of savings. These challenges push workers to opt for associational life and its informal models of SI which provide inadequate cover, albeit easily accessible. The associations might be persuaded to divert some of the savings they share in their groups to formal SI which has more comprehensive cover compared to informal models. This should be complemented with other products designed for informal workers such as M-TIBA and Mbao pension schemes, which seem to be more acceptable to the informal workers, and also provide an opportunity to rethink how the informal workers can be brought under the umbrella of public SI schemes.

Overall, most challenges faced by construction workers are shrouded in informality, and yet, the literature points out that the formal and informal sector have

synergy and should be addressed as a continuum as opposed to a silo approach that dismisses one sector and upholds the other. Application of a two-model social protection approach which uses both bottom-up efforts of construction workers and top-down public formal models is likely to advance the situation of informal construction workers. This should entail taking into consideration the nature of construction industry including its unique irregular operations, multi-layered nature, and the lack of legal contracts. The latter seems to be a major problem, exploited by clients and contractors, a challenge that can be addressed through strong associations with the ability to leverage all sources of power for the development of effective social protection measures and overall development of the sector.

Notes

- 1 Unless otherwise noted, the average USD rate from June 2018 to December 2018 (USD 1 for KES 101.2) is used throughout the chapter.
- 2 Loose networks and associations are not formally registered, members do not pay registration fees, and meetings are ad hoc and largely driven by availability of work or connections for work.

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