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**Social Dialogue in Kenya**

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1. **Introduction**

In Kenya, workers’ right to industrial action to protect their interests is provided for in the constitution, laws and regulations. Also, the communication activity regarding the arrangement and development of work-related matters largely follows the tripartite approach that involves the government, employers and workers. In this tripartism, the government is represented by the Ministry of Labour to give effect to labour-related Acts of parliament and regulations; while the national umbrella organisation for employers is the Federation of Kenya Employers (FKE) and finally the apex body for workers’ unions is the Central Organisation of Trade Unions (COTU). Industrial disputes are resolved through conciliation, arbitration, negotiations and the Industrial Court. The role of NESC in the social dialogue is periphery; it concerns itself with recommendations for strategies, policies and practices to create employment, enhance workers’ productivity, achieve equity, and improve working conditions and employee welfare.

1. **Structure of social dialogue in Kenya**

The structure of Kenya’s social dialogue reflects the interplay between the country’s historical background, its current socio-economic conditions and the effect of global influences. In this regard, the labour laws, negotiations, consultations and exchange of views on work-related issues mirrors Kenya’s market-based capitalist economy where agriculture is the largest sector in terms of output and employment. Whilst the above underlines the importance of private enterprise, a related matter is that the informal sector overshadows the formal sector in production, number of establishments and employment.

Most of the social dialogue follows the British model where strong labour unions campaign for workers’ rights through periodic industry-wide collective bargaining actions that are augmented by picketing, go slows and strikes at enterprise, regional, sector and sometimes national level. The protagonists, who represent employers and the government work hard to ensure that the demands, activities and ensuing awards to workers do not disrupt work and render Kenya unattractive to private capital. Owing to freedom of expression and open media, it is now common practice for parties in industrial disputes to use extensive media coverage to publicise their case and lobby for public support.

1. **The Role of Trade Unions**

Trade unionism in Kenya was first registered in 1934.`Subsequent impetus for their growth was provided by the launch of International Trade Unionism after the end of the Second World War and support by the British Trade Union Congress. In the period to 1963, when Kenya attained her independence, the trade union movement grew in strength but had mixed results because the unions were also involved in the fight for political freedom. The ensuing militancy led to worsening of employer-employee relations and formation of splinter groups that unsuccessfully tried to form a national trade union congress. To resolve these splits the Apex Body of trade unions, Kenya Federation of African Workers Congress, was dissolved by the government in 1965 and replaced by the Central Organization of Trade Unions (COTU). This was in line with Kenya’s Sessional Paper No. 10. on “African Socialism and its Application to Planning in Kenya”, which called for "one central organization for trade unions” to protect the workers and advance the interests of the nation...”.

The freedom of association that is guaranteed by law has enabled COTU to entrench itself as the National Trade Union Center in Kenya and be an affiliate to the International Trade Union Federation. However, despite a membership of 1,500,000 against a working population of about 10 million people, COTU’s premier position was recently challenged in January 2014 by the emergence of a rival splinter group called the Federation of Public Service Unions of Kenya (PUSETU). Further, it is also evident that COTU does not represent the vast majority of workers in the informal sector who are not members of any union.

1. **Employers Associations**

Formed in 1959, the Federation of Kenya Employers (FKE) promotes the interest of employers by seeking to ensure that Kenya’s labour and social policies provide an environment that is favourable to enterprise, sustainability and job creation. Its membership comprises over 4,500 small and large employers both directly and indirectly through associations that cut across all sectors of the economy in both public and private sectors. FKE is a member of the International Labour Organisation, (ILO), and besides advising employers on labour issues it represents them in conciliation panels.

1. **Dispute Resolution**

The Ministry of Labour is the focal government agency that is responsible for operationalizing the tripartite mechanism when dealing with labour and related social issues. The ministry is also responsible for the ratification or denunciation of conventions and recommendations as well as the formulation and implementation of National Labour Legislation and policy through the National Labour Board and the National Tripartite Consultative Council.

The hallmark of Kenya’s social dialogue is voluntary dispute resolution which encourages Alternative Dispute Resolutions (ADR) and thereby avoids over legalising issues. The law allows disputing parties to appoint an arbitrator and gives a chance to the Minister for Labour to appoint a conciliator or set up a conciliation panel to resolve disputes before they escalate. Furthermore, the Employment Act provides that, “whenever any question, difference, or dispute arises as to the rights or liabilities of either an employer or employee, the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Industrial Court”. The law also specifies that a trade dispute must first be subjected to conciliation and can only be referred to the Industrial Court if the ADR process fails.

The Industrial Court was set up under the Ministry of Labour in 1964 to resolve industrial disputes in a manner that weighs social justice against the needs of economic growth. The court facilitates social dialogue by defining and adjudicating the rights and obligations of the tripartite members -governments, employers and employees. However, the entry of other players who are not traditionally associated with tripartism such as Non-Governmental Organisations (NGOs) has forced the Court to expand its role beyond trade unions and employer groups.

In recognition of the importance of social dialogue and demands of the changing times, the mandate and stature of the Industrial Court was strengthened by the Constitution of Kenya 2010 which elevated it to a Superior Court of Record. The court now has “exclusive, original and appellate jurisdiction to hear and determine all disputes referred to it.......relating to employment and labour relations”. Its purpose is to settle employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya. The Court has played a key role in ensuring amicable resolution of industrial disputes in Kenya.

1. **The Role of NESC in Kenya’s social dialogue**

Since the establishment of NESC in 2004 as a top advisory body to the government of Kenya on policies to fast track the socio-economic transformation of the country, the ESC has contributed indirectly to social dialogue in Kenya by focusing mainly on fundamentals such as over-arching strategy and policy. Kenya’s long-term development plan, Vision 2030, which was developed by NESC between 2006 and 2008 lays the foundation for social dialogue. Among the Vision’s key goals are “building a just and cohesive society that enjoys equitable social development in a clean and secure environment”; “creating a globally competitive and adaptive human resource base”; and “raising labour productivity to international levels”. As part of its advisory role to deepen the drivers of transformation in Vision 2030, NESC recently worked with the Ministry of Labour to develop two key policy papers, namely “Employment Strategy and Policy for Kenya 2012” and “National Productivity 2012”.

1. **Conclusion**

The main actors in Kenya’s social dialogue are the tripartite players through their representatives. This process is provided for in the country’s law and business practice. By dint of its mandate, NESC does not participate directly in Kenya’s social dialogue. However, its policy advice and recommendations seek to provide an objective and favourable environment for engagements between employees, employers, government (executive, legislature and judiciary) and new entrants in the social dialogue space such as NGOs and think tanks. The impact of the indirect input of NESC will show as Kenya attains an upper middle income status where all its citizens will enjoy a high quality of life by 2030.