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**AN OVERVIEW OF THE DEVELOPMENT OF TRADE
UNIONISM IN KENYA****Justine Mokeira Magutu, Ph.D.**
University of Nairobi, Kenya**Abstract**

Trade unions play a crucial role in the employment relationship in many organizations globally. The objective of this paper is to give a chronological analysis of the development of trade unionism in Kenya from the colonial period to the present. The rationale is that to fully understand the role and function of trade unions in Kenya today, it is necessary to appreciate their historical development. The paper highlights key landmarks in the trade union development process and discusses how each affected or contributed to the development of trade unionism in the country. It further analyzes the industrial relations system in Kenya since independence with the objective of determining the governments stand on trade unionism. It is clear that the government recognizes the importance of trade unions, a fact that is demonstrated through the constitution, the legislation and the institutional framework that have been put in place. The paper concludes that the emergence and development of trade unionism in Kenya has been greatly impacted by both economic and political factors.

Keywords: Trade Unions, Trade Unionism, Industrial Relations, Kenya

Introduction

The objective of this paper is to give a historical treatise of trade unionism in Kenya. The paper begins by defining what a trade union is, its objectives and the main types of unions. Secondly, it gives an overview of the origin and growth of trade unions generally. Thirdly, it gives a chronological analysis of trade unionism in Kenya during the colonial period. Fourth, the paper analyses the role of trade unions in the industrial relations in Kenya in the post-independence period (1963 to present). It is hoped that such an analysis will enable one to understand the role and function of trade unions in Kenya today.

Trade Union defined

A classical definition of a trade union is the one by Sidney and Beatrice Webb (1902) which states that a trade union is “a continuous association of wage earners for the purpose of maintaining and improving the conditions of their working life.” A trade union is thus an organisation of workers, who seek to protect and

promote their mutual interests mainly by means of collective bargaining with their employers (DeCenzo & Robbins, 1988). This is supported by Armstrong (2008) who has stressed that the fundamental purpose of trade unions is to promote and protect the interests of their members by providing a collective voice to make their wishes known to management.

The main objectives of trade unions are essentially to: provide workers with a collective voice with which to communicate with management on workers' interests and grievances; secure better economic terms for the workers by negotiating for fairer wages in the light of the cost of living; improve the working conditions by securing shorter working hours, better working facilities and other welfare benefits; ensure the workers' job security by resisting retrenchments and any other victimization likely to harm them; provide members benefits in sickness, accidents, unemployment, and during strikes; endeavour to provide and seek facilities for members to obtain training in their work, and undertake education of members and officials; influence policy decisions through workers' participation in management (Davar, 1976; DeCenzo & Robbins, 1988; Nzuve, 1997; Leat, 2001). According to ILO (2005), trade unions have always been about ensuring better well-being for their members and social justice for all.

There are three main types of unions: a craft union whose membership is restricted to those workers who are skilled in one particular trade or craft; an industrial union whose membership is extended to those workers who belong to a certain industry irrespective of their occupation; and a general workers union whose members are drawn from any trade in any industry (Miles & Rensburg, 1997; Megginson, 1985).

Origin and Growth of Trade Unions

The history of the trade union movement is deeply rooted in the processes of industrialization that developed at different paces in countries around the world since the Industrial Revolution began in the United Kingdom (Yonder & Staudohar, 1982; Thomas, 1995). The Industrial Revolution brought together skilled and semi-skilled workers who organized themselves under trade unions in order to regulate their trade by imposing training standards, and improving the quality of their products (Mills, 1994; McConnell & Brue, 1995).

The Industrial Revolution brought about a number of changes in the work environment within which trade unions emerged and grew. Many scholars agree that trade unions came into being once the owners of capital became different from the workers (Williamson 1975; Tyson & York, 1996). Prior to the Industrial Revolution, most workers were self-sufficient, self-employed artisans, craftsmen, or farmers who worked in their own homes and on their own land. These workers were, therefore, simultaneously employers and employees (McConnell & Brue, 1995). There was a close relationship between the managers and the managed. However, with industrialization, the workers didn't control the production processes nor own the materials or the product of their labour. Consequently, the relationship between employer and employees became complex and impersonal (Davar, 1976).

Whereas industrialization facilitated the manufacturing of goods, it had many negative side effects as well (Chatterjee, 1992). For instance, in order to remain competitive, most employers paid their employees meagre wages, made them work excessively long hours, and provided minimal on-the-job amenities. Industrialization forced workers into a position of dependency where their earnings, working conditions and security were largely beyond their control. As a result, the workers realized that individually they had no power to improve their situation and therefore the union represented a way they could collectively improve their life at work (McConnell & Brue, 1995). According to Leap and Crino (1993), early unions were responding to sub-par wages and deplorable working conditions that characterized the industrial life in the 1800s. Burkitt and Bowers (1979) concluded that trade unions arose to redress the imbalance caused by the disparity between the power of employers and powerlessness of individual employees.

Other side effects of the Industrial Revolution that contributed to the emergence of trade unions include the change in the nature of work and the role of the worker. Standardization of jobs and the division of the tasks into relatively simple work processes reduced the importance of personal skills and abilities (Cooper & Bartlett, 1976). Although such specialization enabled the workers produced more efficiently, the operations assigned to individuals were frequently so simple that the jobs were extremely monotonous (Megginson, 1985). Due to division of labour, work became fragmented with each worker contributing just a little bit to the production of an item leaving individual workers with no pride in their jobs.

Why Employees Join Trade Unions

Many theories have been advanced as to why employees join, form, and support trade unions (Sims, 2002). According to Dessler (2008), despite numerous studies on the subject, there is no consensus as to why workers unionize. What is evident from such studies is that economic gain may not be the main factor why workers join unions (Miner & Crane, 1995). Clearly in the early days of labour unions, people chose to join them because working conditions were in many cases deplorable. For instance, workers were often forced to work long hours, there were no minimum wage laws or other controls, and there were no safety standards. As a result, many employees worked 12, 15 or 18 hours a day and sometimes they were forced to work seven days a week. Moreover, they worked totally at the whim of their employer, and if they complained, they were dismissed. Thus people initially chose to join trade unions because of the strength that lay in the numbers associated with them (Sims, 2002).

Workers join trade unions because they want to have a voice in affairs that affect them (Megginson, 1985). According to Miner and Crane (1995), lack of sensitivity to employee's needs and feelings serves as an impetus to seek remedy through union organization. The authors believe that employees will not be so eager to embrace a union if, through human resource activities, policies and procedures, the organization can keep its employees satisfied with their jobs. In other words, if employees feel that management is acting irrationally, illogically, discriminatorily, or prejudicially towards them, they will be inclined to join unions. Workers join unions because they believe that it is only through unity that they can protect themselves against the arbitrary decisions of management. Thus unions are seen as a means of empowering the worker. Whether that power is used to increase wages, to ensure job protection, to improve working conditions, or simply to sit across a bargaining table as equal with the employer, members believe that in a union there is strength (Heinemann III, 1983). Ioannou and Patra (2003) have concluded that an employee's decision to join a union is strongly influenced by three conditions: dissatisfaction with the terms and conditions of employment; lack of power in influencing the employer's decision-making; and the belief in the union's ability to improve the factors causing dissatisfaction.

Another reason why workers may join unions may be due to compulsory membership. This is where employees are required to be a part of an existing union. The rationale is that in their operations unions incur costs, which are offset through collections from their members. Since non-union members equally gain from the benefits obtained from the collective bargaining and negotiations, it is only fair that they pay union dues. For instance, under the union closed shop arrangement all employees hired into positions covered under the collective-bargaining agreement must join the union after a prescribed period of time (Dessler, 2008; DeCenzo & Robbins, 1988).

Trade Unionism in Kenya during the Colonial Period

Several factors contributed to the emergence and development of trade unions in Kenya during the colonial period namely: the formation of a working class; the enactment of trade union ordinances; the influence of the East Africa Trade Union Congress; effects of the emergency period (1952-1958); and the formulation of the Industrial Relations Charter.

The Formation of a Working Class in Kenya

Trade unionism in Kenya began with the emergence of a working class during the first half of the twentieth century as a result of the introduction of industrial capitalism by the British colonial government (Stichter, 1975). Before colonialization, Kenya's economy was based on farming, herding, hunting and barter trade. Since people did not use money, they did not need to work for wages. However, when the British established colonial rule in Kenya in 1895 they introduced a money economy based on the export of agricultural raw materials such as coffee, sisal, tea and light manufacturing industries (Panford, 1994). In order for the colony to produce the required raw materials, the colonial government required an adequate supply of cheap labour (Tarus, 2002). Africans were thus seen as a potential source of cheap labour. However, since the Africans had never worked for wages, compelling them to work as labourers for foreign employers was no easy task (Singh, 1969). Most African communities were self-sufficient and therefore did not need to work for a wage. Furthermore, those who might have been willing to take up paid employment were discouraged by the difficult and unattractive terms and conditions of service that were offered by employers (Waweru, 1975).

In order to make the Africans work for wages, the colonial government systematically passed and enforced all sorts of oppressive legislation such as: imposition of hut and poll tax which was payable only in cash; curtailment of African lands which deprived some Africans their means of production leading to the need to supplement subsistence farming with wage earnings; making it hard for Africans to grow profitable cash crops such as coffee, tea, and sisal by requiring that they first obtain a license; use of chiefs and headmen to forcefully recruit people as labourers; and forceful prevention of labourers from leaving jobs they did not like by controlling their movement through the *kipande* (pass) system (Singh, 1969). As such, Africans were forced into the money economy albeit unwillingly and in the process, a wage-working class emerged (Stichter, 1982; ILO, 1988).

Working for a wage brought together African workers from all parts of the country. As in other parts of the world, when workers were brought together in large numbers they became conscious of their unfavourable position. For instance, the conditions of work for African workers were deplorable with no health care, no sanitation, cramped living quarters, long shifts, poor pay, and sometimes no contact with their families. As a reaction to these poor working conditions workers started organizing. According to Singh (1969), as early as 1900, Africans had been sensitized about their poor working conditions and this was manifested in a number of strikes. For instance, in 1900 there was a Railway workers' strike in which workers reacted against the withdrawal of privileges previously enjoyed by staff. This strike which first started in Mombasa soon spread to other commercial centres along the railway line. In March 1908 African workers at a government farm at Mazaras near Mombasa and those engaged in loading railway engines with wood also went on strike protesting poor working conditions. Later in the same year there was a strike by Railway Indian workers at the Kilindini harbour followed by a Rickshaw-pullers' strike in Nairobi. In May 1912, African boat workers also went on strike. In July 1914, Railway workers went on strike to protest the introduction of poll tax and other grievances with respect to housing rations, medical facilities and low wages (Singh, 1969). However, these early worker organizations were often forcefully and brutally suppressed by the colonial government and termed illegal (Muir & Brown, 1974; Lubembe, 1993; Aluchio, 1998).

By the 1920s, African workers in Kenya were developing a strong interest in improving their conditions of work. This was heightened by the fact that despite fighting side by side with the white soldiers during the First World War (1914-1918), when they came back home the African soldiers were not given any recognition. Thus African workers started using withdrawal of labour as a weapon of negotiation. Incidences of small-scale strikes, go-slows and refusal to work became common and were felt throughout the colony (Stichter, 1975). Examples of such strikes include the one of 1934 by the Kenya and Uganda Railway workers in Mombasa that lasted for three days. This was followed by the strike of the Kenya lading and shipping

company workers in 1936 and by Shell Company workers in 1937. In 1939, a general strike involving nearly all Mombasa workers took place. In Nairobi too, similar strikes were taking place (Singh, 1969).

In 1935, the Labour Trade Union of Kenya (LTUK) was formed with Makhan Singh as the Secretary General. The union was a general workers' union whose membership was open to all workers irrespective of race, religion, caste, creed, colour or tribe. Its main objectives were to organize workers in Kenya, defend their rights and promote their interests (Singh, 1969). The union's main achievement was the implementation of an eight-hour working day. The increased number of unrests during the early 1930s and particularly the successful attempts by the LTUK to organize strikes in Nairobi, made the colonial government take a closer look at labour organisation in Kenya. They realized that African trade unions, which they had previously considered weak and ineffectual in both industrial and political terms, were now a force to reckon with (Allen, 1971). This realization led to the passing of the Trade Unions Ordinance on September 24th, 1937. The government hoped that the passing of the ordinance would contain worker agitation.

The Trade Unions Ordinance of 1937

The Trade Unions Ordinance of 1937 was considered a landmark because it marked the formal acknowledgement of the organized labour movement in Kenya (Okumbe, 2001). Before the passing of the Trade Unions Ordinance, the official policy was that trade unionism was not only undesirable but also inapplicable in the colony and therefore was to be discouraged (Ogolla-Bondi, 1980). The Ordinance made trade unions legal and protected them against criminal actions. It stipulated conditions under which African workers could organize themselves into trade unions. The LTUK, which had changed its name to the Labour Trade Union of East Africa (LTUEA) took advantage of the legislation applied and was granted registration (Singh, 1969).

The Ordinance was, however, inadequate because it did not provide protection against the actions of tort and picketing. According to Singh (1969), the clause relating to picketing was vague and drafted in such a manner that the workers' right of peaceful picketing during strikes was curtailed. The colonial government also continued to closely control trade unions through the Registrar of Trade Unions (Aluchio, 1998). The ordinance gave the Registrar powers over the registration and supervision of all the activities of any trade union and its officers, in particular on matters of collection and expenditure of funds and the election of officials. Eligibility of a trade union was limited to workers from the same industry in order to avoid general unions. In an effort to discourage appeals, cancellation of registration was not subject to any appeal, or open to question in a court of law (Aluchio 1998). Appeals could only be made to the then Governor of Kenya (Clayton & Savage, 1974).

Clayton and Savage (1974) have postulated that the true agenda of the ordinance may have been to control and monitor the development of trade unions. This sentiment has been expressed by Panford (1994) who states that the passing of the Trade Union Ordinance was a tactful move by the colonial government to defuse the increasingly explosive social and political situation in Kenya. The government wanted to prevent unions from pursuing political goals, which they feared would affect their rule in Kenya (Okoth-Owiro, 1980). The inadequacy of the 1937 Ordinance was officially acknowledged with the introduction of the 1940 Trade Dispute Ordinance.

The Trade Dispute Ordinance of 1940

The purpose of the Trade Dispute Ordinance of 1940 was to provide a means for the workers to settle disputes at work through the use of arbitration tribunals and boards of inquiry without resorting to strikes (Clayton & Savage, 1974). The Ordinance was not received well by the workers because they saw it as yet another attempt by the colonial government to weaken the workers' struggle. According to Singh (1969), the LTUEA was opposed to the establishment of the arbitration tribunals because they feared that the government would

misuse them. The workers doubted the impartiality of the proposed arbitration tribunal because past experience had shown that the government always favoured the interest of the employers against those of employees (Ogolla-Bondi, 1980). They felt that the government, as constituted, was in no position to remain impartial in trade disputes (Singh, 1969).

The above sentiments led to the amendment of the Trade Dispute Ordinance in 1943, which resulted in the passing of the Trade Union and Trade Dispute Ordinance. The new Ordinance specifically asserted that trade officials and members were not to be held liable in tort for actions taken in “contemplation or in furtherance of a trade dispute” as long as the activities in question were not criminal (Ogolla-Bondi, 1980:35). The ordinance also permitted peaceful picketing in the furthering of a dispute. It provided for appeals against refusal of registration to the Supreme Court and not as previously to the Governor-in-Council (Singh, 1969; Clayton & Savage, 1975). According to Okoth-Owiro (1980), the Trade Union and Trade Dispute Ordinance laid down the foundation for arbitration and conciliation, which remains central to the process of collective bargaining in Kenya today.

Despite the passing of the Trade Union and Trade Dispute Ordinance, the colonial government maintained control through Registrar of Trade Unions. According to Panford (1994), the Registrar was vested with the powers to: refuse trade union registration on the grounds of illegality or impropriety of purpose; suspend or cancel the registration of a trade union in case of non-compliance with union rules; decide on rules to govern the eligibility of trade unions and ensure that all trade union officials, apart from the Secretary General, had to be from the particular industry that was represented; summarily order audits of trade union accounts by requiring them to keep a register and financial records. Thus even successful completion of the tedious process of union registration could not guarantee the survival of trade unions because there was always the threat of de-certification and dissolution (Panford, 1994). The real reason for such close supervision was an attempt to ensure that the unions were not involved in political affairs. Such manipulation and control of trade unions by the government, not only influenced the formation of union organisation and selection of their leaders but also the decision on which unions would be legally recognized and allowed to exist (Stichter, 1975).

The situation improved for trade unions in Kenya after the end of the World War II in 1945. According to Amsden (1971), the establishment of trade unions became a little less than a crusade after World War II. During this period, the labour government in Britain, the British Trade Union Congress (BTUC), the American Federation of Labour (AFL) and the International Confederation of Free Trade Unions (ICFTU) all became interested in the problems of African labour and believed that the problems would be solved through trade unions. For instance, the ICFTU not only sent some people to organize and advise trade unionists, but also sent money to help feed the evicted families during the emergency period in Kenya. Other unions such as the BTUC and the AFL also assisted financially, in education, training and advice. This interest by outside unions boosted the morale of the trade unions in Kenya, resulting in growth both in strength and popularity.

In 1947, following the advice of the Colonial Labour Advisory Committee, a trade union expert was sent to Kenya. His task was to help mould responsible trade unionism in Kenya by advising workers and employers on industrial relations. The labour department also offered training for union leaders on unionism (Okoth-Owiro, 1980). In addition, in 1948, a fully qualified labour officer was appointed to the labour department with the express objective to give advice on all matters affecting trade unions. It is also during this period the labour department in Kenya sought to establish a labour code in line with the recommendations laid down by the International Labour Organisation (ILO) Charter passed in the 1944 Declaration of Philadelphia (Amsden, 1967). The objective of the Charter was to improve working conditions and to promote more equitable growth in the post-war economy. As a member of the ILO, Britain had no choice but to review the industrial relations systems in her colonies.

External support for trade unions was given on the understanding that they would facilitate industrialization and social development by providing channels for workers to express their economic grievances and social interests and hence facilitate both economic growth and democratic practices (Panford, 1994). However, despite the apparent efforts made by the colonial government to improve the conditions of workers in Kenya, the labour situation did not improve much. The unsatisfactory situation was attributed mainly to insufficient wages, which could not meet the high cost of living especially in urban centres.

East Africa Trade Union Congress

Trade union activities in Kenya were strengthened by the activities of the East Africa Trade Union Congress (EATUC). The EATUC was established in 1949 and had six affiliates namely: Labour Trade Union East Africa (LTUEA); Transport and Allied Workers' Union (TAWU); Typographical Union of Kenya (TUK); Shoemakers Workers Union (SWU); Tailors and Garment Workers Union (TGWU); and Domestic and Hotel Workers Union (DHWU) (Singh, 1969). The congress was formed with the basic objective of "ameliorating the economic, social, cultural and other conditions of the East African working class and co-ordination of the aims and activities of all organized workers in East Africa" (Singh, 1969:203).

Although the EATUC rapidly gathered strength in Nairobi, the Registrar of Trade Unions refused to register it on the grounds that its principal purpose was not in accordance with the statutory definition of a trade union and that it was a general union. As such, it was argued that EATUC could not effectively champion the various sectional interests of its members. To circumvent the above argument for refusal of registration, the EATUC decided to continue its existence as a central organisation of trade unions, which, like other societies, did not need registration in order to function (Amsden, 1967).

During this period, the trade unions were getting more involved in political activities. The EATUC made its significant political action in 1950 when it organized a protest against the grant of a royal charter to the then European controlled Municipal Council of Nairobi (Okumbe, 2001). The EATUC contended that there was nothing to celebrate as long as the government was not democratic. The sentiments of the congress were summarized as follows: "How can the workers feel the pleasure of expansion and progress of Nairobi, which has been built by exploiting the toil and sweat of hundreds and thousands of workers by a handful of money-lords and in which progress the workers have no voice" (Amsden, 1971:31). In its 1950 May Day speech, the EATUC pledged it would do its best not only to achieve the workers' demands and freedom but also to attain the independence of the East African territories (Muir & Brown, 1974). Soon after, Fred Kubai (Chairman) and Makhhan Singh (Secretary General) were arrested and charged with being officials of an unregistered trade union.

The arrests of their union leaders made the EATUC more cautious its approach. At the same time, the white settlers were pressuring the colonial government to tighten their policy on trade unions. The Labour Commissioner at the time, Frank Carpenter, was determined to prevent any revival of the EATUC. He believed that industrial relations in the colony should be introduced slowly and gradually (Clayton & Savage, 1974; Amsden, 1967). Together with the commissioners of the three East African countries (Kenya, Uganda and Tanzania), the Labour Commissioner recommended more control and supervision including probationary status, suspension for misconduct and stronger powers for the Registrar. They also pressed for the banning of general trade unions, simpler forms of organisation and the formation of employer federations (Clayton and Savage, 1974). These ideas were reflected in the Trade Union Ordinance of 1952.

According to Clayton and Savage (1974), the Trade Union Ordinance of 1952 was designed to prevent trade union involvement in politics through a number of measures which included: imposition of more stringent controls over trade union finances so that trade union could not be tempted to make contributions to political parties; stipulation that all trade union executives had to be employed in the industry represented by their union; putting of trade unions on probation until they met the statutory registration requirement; and refusal of

trade union registration when the scope of a trade union's jurisdiction was too broad. The ordinance also allowed for deregistration of a trade union if it was engaged in activities contrary to its constitution. This was regarded as an important safeguard against trade union movement becoming involved in politics (Amsden, 1971).

The Emergency Period (1952-1958)

Despite the colonial government restriction on trade union activities, unrest and outbreaks of violence increased in 1952, culminating in the declaration of a state of emergency by the governor, Sir Evelyn Baring on 20th October that year (Singh, 1969). The unrest was led by the *Mau Mau*. The *Mau Mau* was an organisation consisting of individuals who took an oath pledging themselves to secrecy, dedication and sacrifice for the cause of land and freedom of Kenya (Clayton & Savage, 1974). The *Mau Mau* was fighting to reclaim all the land taken from the Africans by the colonial government. They wanted the British government to grant full independence to Kenya under African leadership and hand over all the land previously alienated for distribution to the landless (Mazrui, 1987).

The trade union movement was significantly weakened during the emergency period (Muir and Brown, 1974). Many of the trade unions formed before 1952 and based in Nairobi were disbanded when their leaders were detained or arrested (Amsden, 1971). This left the support for the *Mau Mau* uprising coming from just a couple of leaders of the trade union movement (Mazrui, 1987). One of the surviving trade unions was the Kenya Federation of Registered Trade Unions (KFRTU), which was later, renamed Kenya Federation of Labour (KFL) in 1953 (Clayton and Savage, 1975). Under the leadership of Mr. Tom Mboya, KFL became a leading voice of the African people on labour matters (Amsden, 1971). KFL survived because of its affiliation to the ICFTU and TUC and AFL which provided financial and moral support. For instance, an ICFTU delegation to Nairobi recommended that the government should: stop harassing the trade unions under the guise of anti-*Mau Mau* activities; relax restrictions on dues collection and trade union meetings; and give trade union officials passes for travel without much red tape. It also recommended that the ICFTU should station a representative in Nairobi to serve the whole of East Africa (Clayton & Savage, 1974).

Despite difficult circumstances during the emergency period, trade unions intensified their activities. At the same time, arrests continued throughout Kenya with sweeps being made through major towns. For instance, in the "operation Anvil" of June 1954, 35,000 persons were detained in a massive sweep through the city of Nairobi (Okumbe, 2001:158). The aim of the colonial government was to crush any movement that advocated freedom and independence for the Kenyans.

The shock and alarm caused by the *Mau Mau* uprising led the colonial government to form a special committee to investigate African wage levels (Clayton & Savage, 1974). Following the committee's recommendation, a minimum wage that was intended to cater for the whole family was implemented in 1954. Employers were alarmed at the increase of the minimum wage came together and formed an employers' federation, the Federation of Kenya Employers (FKE) in 1956 (Amsden, 1967). The employers hoped to reach a consensus whereby labour and management would be able to regulate their own affairs (Amsden, 1967).

In 1958 the FKE and FKL reached an agreement to work together for their mutual benefit. The FKL agreed not to form a general union but organize on an industry wide basis so that collective bargaining would proceed in an orderly manner. FKE on its part pledged that its members would recognize and bargain with trade unions. According to Amsden (1967), the 1958 Agreement had a great impact on the future course of industrial relations in Kenya. The Agreement was a stepping-stone to that of signing the Industrial Relations Charter in 1962.

The Industrial Relations Charter

The anticipation of the country's independence, which was attained in December 1963, made many trade unions bolder in their demands. Work stoppages were called over a variety of bread and butter issues including union recognition, higher wages, leave allowances and Africanization (Amsden, 1967). As the country approached independence, the colonial government realized the importance of industrial stability (Livingstone, 1967). Consequently, following a series of conferences by both the FKE and the FKL the Industrial Relations was signed on 15th October 1962 (Roberts, 1967; Cocker, 1981). The Charter was essentially a resolve by the government, the employers and labour to address the labour issues in a constructive manner in order to rebuild the country's economy (Amsden, 1971; Aluchio, 1998; Tubey, 2015).

The Industrial Relations charter basically: spelt out agreed responsibilities and respective obligations of management and trade unions; defined a model Recognition Agreement as a guide to parties involved; established steps to be followed in event of redundancy; set up a Joint Industrial Councils and Joint Dispute Commission to deal with disputes using the machinery provided in the negotiated agreement; agreed to adopt the ILO Convention of June 1962 regarding abolition of all discrimination among workers on grounds of race, colour, sex, belief, tribal association or trade union affiliation; and agreed that the FKE and the KFL would discourage and seek to bring to an end any strikes or lockouts, which may arise from or be caused by a dispute (Roberts, 1967; Okumbe, 2001).

The Industrial Relations Charter, which has since been revised severally, is thus a tripartite agreement which brings together the government, the employers, and the workers. The concept of tripartitism was designed to encourage the collaboration and consultations of the tripartite partners for the development of the economy as a whole (Odhong, Were & Omolo, 2014). The ultimate objective was to provide a framework for sound industrial relations, which would promote co-operation, efficiency and improvement of workers conditions of service (ILO, 2004). The Charter is said to have laid a solid foundation for an industrial relations system in Kenya (Amsden, 1967; Muir & Brown, 1974). According to (Tubey, 2015), after the Charter, the number of strikes progressively declined, from 285 in 1962 to 93 in 1968.

Trade Unionism in Kenya after Independence

Trade unionism in Kenya after independence can be studied under three epochs: trade unionism under KANU (1963-2002); trade unionism after multi-partism under the independence constitution (2002-2010); trade unionism after the promulgation of the new constitution (2010 to the present).

Trade Unionism under the Kenya African National Union (1963-2002)

After Kenya gained independence in 1963, trade unionism in the country was supported by: the country's constitution which provided for the freedom of association and expression; the law, particularly the Trade Unions Act and the Trade Dispute Act which stipulated the procedures and conditions for the formation of trade unions and the dispute settlement mechanisms respectively; the Industrial Relations Charter which regulates the procedural aspects of industrial relations in the country; the ILO conventions No.87 and No.98, which regulate trade unionism at the international level; and the Industrial Court a specialist Court that facilitates the settlement of disputes.

The reality, however was that although the government was explicitly following a policy of union acceptance through the legal and institutional framework, in practice it was actively preventing the development and operations of the trade unions in the country (Muir & Brown, 1974). For instance, right from independence, the Constitution of Kenya, which is the basic law of the land, provided for the freedom of association, which therefore included the right to join a trade union. This was covered in Chapter V, sections 70 to 86, which provided for the protection of fundamental rights and freedoms of the individual. Section 80 (1) specifically stated that: "except with his/her own consent, no person shall be hindered in the enjoyment of his/her freedom

of assembly and association with other persons and in particular to form or belong to trade unions or other associations for the protection of his/her interests”.

The dilemma for the government was that its priority during the period immediately after independence was to ensure the country's economic development and therefore any opposition whether from political parties or trade unions was viewed as interfering with this objective and hence was not encouraged (Gona, 2003). The general attitude in the early period of independence was that there was no room for a multi-party system or trade unionism. Indeed the government used many tactics to repress trade unionism in the country (Sifuna, 1997).

Key among the machineries used to repress trade unionism was the establishment of Central Organisation of Trade Unions (COTU) in 1965 whose Secretary General was appointed by the President in consultation the Minister for Labour (Gona, 2003). This gave the government a large measure of control over trade union affairs through COTU. Another regulation used by the government to repress trade unions was the establishment wage guidelines which were revised annually by the Minister for Finance and used by the Industrial Court to set quantitative limits to wage increases (Mukui, 1983). Through wage guidelines, the government could determine the amount a trade union and an employer could agree on. Repression was further legalized with the passing of the Public Security Act in 1966 under which persons involved in opposition to the government were detained without trial (Sifuna, 1997). Thus despite the requirement by country's constitution and legal and institutional framework, the government did its best to undermine the existence of trade unions in the country.

Besides the Constitution, matters of trade unionism were regulated by the Trade Unions Act (Cap. 233), the Trade Dispute of Act (Cap. 234). The Trade Unions Act (Cap. 233) of the laws of Kenya which was first enacted on 1st August 1952 and repealed over the years recognized the right of both employees and employers to form organizations or associations to represent their interests. More importantly it stated the conditions under which such bodies could be registered or refused registration by the Registrar of Trade Unions. It also regulated the membership of these bodies and the appointment of their officers, the use of their funds and the supervision by the state. Therefore, although the Act was meant to facilitate the recognition and registration of trade unions, it was also used by the government to keep close control over trade unions in the country through the Registrar of Trade Unions who was appointed by the Minister for Labour. Importantly, the Registrar of Trade Unions had the powers to cancel or suspend registration of trade unions or place them on probation. For instance in July 1980 the Union of Kenya Civil Servants (UKCS) was dissolved by a presidential decree and consequently deregistered. The explanation given for the de-registration was that its constitution and Recognition Agreement did not take full account of the conditions prevailing in the country. Similarly, in 1980, the Government disbanded Universities Academic Staff Union (UASU) and accused lecturers of being involved in politics, which was not core to their employment. The explanation for the close control and supervision was that the government wanted to ensure that trade unions operated within the law (ILO, 2004).

The TDA was enacted in 1965 to: consolidate and amend laws relating to the settlement of disputes generally and in particular the trade disputes in essential services; provide for the establishment of Boards of Inquiry and a standing Industrial Court; control and regulate strikes and lockouts; make provisions regarding the collection of union dues. The TDA thus provided an institutional framework for recognition of trade unions, reporting, conciliation, investigation and resolution of trade disputes. The TDA regulated the manner in which a dispute would be resolved and provided for both voluntary and mandatory mechanisms of doing so (Mute & Onyango, 1997). According to Ogolla-Bondi (1980), the purpose of the TDA was to contain labour unrest, which had greatly compromised industrial stability between 1960 and 1965.

The dispute settling procedures set out in the TDA were to enable the disputing parties, as much as possible, to settle the disputes themselves without resorting to Court. However, in practice these procedures were too

lengthy and caused inordinate delays in resolving disputes. In addition, rules and procedures in the TDA tended to minimize the freedom of workers in resorting to the strike as a weapon against the employers (Aluchio, 1998). According to the Act, the Minister for Labour had the right to declare any proposed strike illegal, a right that was used frequently to the detriment of organisers and participants of the strike. Thus during this period, strikes were rarely legal. According to a study by Muir & Brown (1974), there was a sharp reduction in the number of strikes in Kenya with the passage of the Trade Disputes Act in 1965.

The TDA further expanded the scope and powers of the Kenya Industrial Court (Section 14). The Industrial Court was established in 1964 because the government of Kenya realized the need for speed, continuity and consistency in the settlement of disputes. Prior to the establishment of the Industrial Court unresolved disputes were tackled through the arbitration tribunal which consisted of one arbitrator who was assisted by one or more assessors nominated by the employers and workers concerned. The resulting judgment was often slow and inconsistent (Cockar, 1981). It was thus hoped that the Industrial Court would facilitated the settlement of disputes.

At the international level, the freedom to associate, form and belong to trade unions is recognized by the International Labour Organization (ILO). Kenya as a member state of the ILO has an obligation to respect and to promote freedom of association and also to effectively recognize the right to collective bargaining. The ILO conventions which provide for the right to form and join a trade union and collective bargaining are conventions No. 87 and No. 98 respectively. Specifically, convention No. 87 provides that workers and employers without distinction whatsoever shall have the right to establish, and subject to the rules of the organizations concerned, to join organizations of their own choosing without seeking prior authorization (Article 2). Furthermore, such organizations shall not be liable to be dissolved or suspended by administrative authority (Article 4). The only condition is that such organizations should act within the law of the country (Article 8). Thus the government was not supposed to use the Registrar of Trade Unions to arbitrary dissolve or suspend trade unions.

On the other hand the right of workers to bargain collectively with their employers is supported by the ILO under Convention No.98 of 1949. The right to organise and collective bargaining are of vital importance to the partners in the employment relationship, since they enable them to establish rules in such areas as working conditions including wages and other general claims (Gernigon, 2002). The challenge in this case was that when the employers were not willing or were not prompt in implementing collective bargaining agreement, the situation was made worse by the slow response from the Industrial Court in giving direction.

Therefore for many years after independence, the government did not encourage trade unions because it saw them essentially as political bodies. This may be because there was a close association between politics and trade unions with trade unions leaders often transitioning into politics. Thus the control of political parties went hand in hand with the control of trade unions. For instance, the government wasted no time in turning Kenya into a one party state. At the eve of independence there were two main political parties, the Kenya African National Union (KANU) and the Kenya African Democratic Union (KADU) which had been founded in 1960. However, in May 1963 KANU won the elections and formed the government. Soon after, KADU disbanded and merged with KANU with some of its officials appointed cabinet ministers in the new government. In 1966, due to ideological difference between him and KANU, Jaramogi Oginaga Odinga broke off from KANU to form his own socialistic political party, the Kenya Peoples Union (KPU).

Due to its intolerance of any opposition, the KANU government employed many tactics to get rid of the KPU including pressurizing employers to dismiss any staff that supported the KPU and denying KPU members passports to travel abroad. KPU was finally dissolved on October 30, 1969 following its supporters' attack on Kenyatta's entourage in Kisumu on October 25, 1969 which resulted in the death of over 10 people. According to the government, the reason for banning KPU was that it had become subversive both in its nature and in its objectives (Emeka-Mayaka, 2009). This basically transformed Kenya into a one-party state

but it was not until June 1982 that the National Assembly amended the constitution, to make Kenya officially a de facto one-party state arguing that it was doing so for the sake of political stability. The forming of a single party regime left little room for free and independent trade unions. KANU remained in power until 2002 despite the introduction of a multi-party system in 1992.

In December 1991, under intense domestic and international pressure, President Moi and the ruling party KANU reluctantly agreed to the legalization of opposition parties following a repeal of section 2a of the Constitution of Kenya (Gona, 2003). Consequently a multi-party system was re-introduced in Kenya in 1992 but due to lack of cohesiveness the opposition was unable to form a strong alliance against KANU, Moi under KANU remained in power until 2002 having won the elections both in 1992 and 1997. Under the KANU rule, despite the introduction of a multi-party system of government, trade unions continued to be repressed. For instance in 1994, doctors working in the public sector, who went on strike for two months protesting the government's refusal to register their trade union, were given a one week ultimatum by the president, Daniel Arap Moi, to return to work or be fired (Mseteka, 1994).

Trade Unionism after Multi-Partism under the Independence Constitution (2002-2010)

The trade union situation in Kenya started to improve from 2002 when Mwai Kibaki took over from Moi as President. For instance, the Kenya Civil Servants' Union which had been deregistered in 1980 was re-registered on 10th December 2002. Similarly, the Universities Academic Staff Union which had also been dissolved in 1980 was re-registered on 2nd May 2003.

The situation further improved with enactment of the Labour Relations Act (No. 14 of 2007). The purpose of the Act was to consolidate the law relating to trade unions and trade disputes and to provide for the registration, regulation, management of trade unions, employers organizations or federations in order to promote sound labour relations. This is to be achieved through the protection and promotion of freedom of association, effective collective bargaining, orderly and expeditious dispute settlement which is conducive to social justice and economic development. The Act has, however, been criticized for violating principles of freedom of association by denying the Armed Forces, Kenya Police, the Administrative Police Force, the Kenya Prisons Service and the National Youth Service the freedom to form and join trade unions (Labour Relations Act (No. 14 of 2007 (3)). This was exemplified in April 2008 when nine prison warders were taken to court for leading a strike that affected almost all the country's prisons (Otieno & Kadida, 2008)

According to the International Trade Union Confederation (2009) survey, Kenya violates trade union rights by imposing restrictions on the right to strike. Although the Labour Relations Act (No. 14 of 2007 (76)) authorises the right to strike, the criteria for a protected strike (or lock out) are stringent. For instance, a strike can be lawful only if the Minister fails to act within the specified 21 days after a dispute has been reported to him/her and if the existing collective agreement has expired. For essential services an additional 7 days' notice is required. The law in this regard, complicates the procedures to be followed before a legal strike can take place.

Furthermore, the definition of essential services under the law is too broad meaning it can be used to cover many services. In addition, the Labour Relations Act (No. 14 of 2007 (81)) gives the Minister the power, after consultation with the National Labour Board, to declare any service as an essential service in order to prohibit the right to strike. Another way the right to strike is violated in Kenya is that the Minister for Labour may send the dispute for mediation during the notice period in which case if the negotiations break down, the matter is referred to an industrial court, thus pre-empting any decision to strike action. If during this period the workers decided to go ahead with a strike, their action will be declared illegal. Therefore as much as the Labour Relations Act (No. 14 of 2007) is meant to facilitate trade unionism, some aspects of it actually frustrate trade union freedom.

Trade Unionism after the promulgation of the New Constitution (2010 to the present)

Trade unionism in Kenya was further strengthened by the promulgation of the constitution of 2010. Under the new constitution of Kenya (2010), chapter four on the Bill of Rights sets out fundamental rights and freedoms for every individual in Kenya. For instance, Article 36 (1) provides that every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind. Article 41 of the constitution gives all workers, except disciplined forces, the right to form, join or participate in the activities and programmes of a trade union or go on strike. This includes the right to join an employers' organisation or a federation.

In addition, under the new constitution, the status of the Industrial Court was improved to facilitate the settlement of industrial disputes. Industrial Court's name was changed to the Employment and Labour Relations Court (ELRC). The ELRC is a superior court with the status of the High Court that exercises jurisdiction throughout Kenya. The ELRC was established in pursuant of Article 162 (2) (a) of the Constitution of Kenya (2010), for the purpose of settling employment and industrial relations disputes and the furtherance, securing and maintenance of good employment and labour relations in Kenya.

Generally, the new constitution has increased the freedom of trade unions. According to Odhong, Were and Omolo (2014), there was an increase in the number of strikes in the country after the promulgation of the new constitution. Most noticeable were the nationwide strikes by the teachers, doctors, nurses and the teaching and non-teaching staff of the public universities. The frequency of teachers strikes has increased since 1997 with teachers going on strike in 1997, 1998, 2002, 2009, 2010, 2011, 2012, 2013 and 2015 (Kaimeny, 2015). The longest doctors' strikes took place from 5th December 2016 to 14th March 2017; lasting 100 days (Irimu et al., 2018). The nurses' strike lasted 150 days; from 5th June to 1st November 2017 (Daily Nation, November 2, 2017). Public university lecturers had a 54 day strike from 19th January to 13th March 2017. Despite the negative economic impact, the increase in the number of strikes in the country may be viewed as indication of increased freedom of association and expression. It is an indication of more tolerance from the government.

Conclusion

Just as in other parts of the world, trade unionism in Kenya arose as a result of harsh economic conditions brought about by capitalism. During the Colonial era, there was oppression of workers due to racial prejudices and deplorable working conditions. For instance, the African workers did not have access to health services, there was poor sanitation, they stayed in cramped living quarters, the workers had to work long shifts with poor pay, and sometimes the workers had no contact with their families for long periods of time.

However, unlike in other parts of the world, where the emergence and development of trade unions was mainly due to economic reasons, the situation in Kenya was a bit different because the unions had to deal with the political element of colonialism. The African workers blamed their unfavourable situation on colonialism and realized that there could be no economic independence without political independence. Thus Kenya's trade union movement was part of the national struggle for gaining independence from the British colonialist. Consequently, it was often hard to differentiate between the fight against colonial rule and the fight for workers' rights.

Despite a raft of laws that were enacted in support of trade unionism during the colonial period, the post-independence period and the promulgation of the 2010 constitution period, there are still indications that in practice the government has not fully accepted trade unions. Implementation of such laws is often not up to par.

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