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**EXPLORING NGOs PARTNERSHIP WITH TRADE UNIONS:
The Case of Commercial, Plantation and Textile Unions
in Kenya**

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DEDICATION

I dedicate this thesis to my beloved parents for their untiring support and encouragement throughout my educational life and, to the Kenyan workers who have continued with the struggle for labour rights and social justice despite the risks to their jobs and livelihoods.

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LIST OF ACRONYMS

AMREF	African Medical and Research Foundation
CNMS	Centro Nuovo De Sviluppo
COOP Italia	Italian Supermarket Chain
COTU	Central Organization of Trade Unions
EPZ	Export Processing Authority
EPZA	Export Processing Zone Authority
ETI	Ethical Trading Initiative
EUREP GAP	European Retailers Representative Group
FDI	Foreign Direct Investment
FKE	Federation of Kenya Employers
FPEAK	Fresh Produce Exporters Association of Kenya
HEBI	Horticultural Ethical Business Initiative
ICCPR	International Covenant on Cultural and Peoples Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICFTU- AFRO	International Confederation on Free Trade Unions – African Region
ILO	International Labour Organization
KANU	Kenya African National Union
KCAWU	Kenya Chemical and Allied Workers Union
KENWVO	Kenya National Women Workers Organization
KFC	Kenya Flower Council
KFL	Kenya Federation of Labour
KHRC	Kenya Human Rights Commission
KLGWU	Kenya Local Government Workers Union
KNUT	Kenya National Union of Teachers
KPAWU	Kenya Plantation and Agricultural Workers Union
KUCFAW	Kenya Union of Commercial and Allied Workers
KWC	Kenya Workers Congress
LARC	Labour Awareness and Resource Centre
LARP	Labour Awareness and Resource Program
MPS	Milieu Project Sierteelt
NARC	National Rainbow Coalition
NGOs	Non Governmental Organizations
NHIF	National Hospital Insurance Fund
SANCO	South African National Civic Organization
SANGOCO	South African National Non- governmental Organization Coalition
SLAREA	Strengthening Labour Relations in East Africa
TAWU	Transport and Allied Workers Union
TTWU	Tailors and Textile Workers Union
UDHR	Universal Declaration of Human Rights

UKCS
UN
WRA

Union of Kenya Civil servants
United Nations
Workers Right Alert

CHAPTER 1: THE RESEARCH

1.0 Introduction

Why are trade unions – NGOs relations in Kenya strained? This research argues that the prolonged state intervention (Hashim, 1994) in union affairs which began after independence aiming to consolidate power and to create an enabling economic environment is responsible for the strained relations.

Unions emerged from pre- independence period as a strong and popular mass movement buoyed by their leading role in independence struggle (Ratnam et al., 1999:82, Aluchio, 1998:5). Through years of state intervention using various political, legal and economic policies, the once vibrant and fiercely independent unions were transformed into partners and apologists for the state with the consequent alienation of their membership.

Resistance to NGOs intervention (Jenkins et al., 2002:15) in labour affairs was therefore inevitable in spite of its demonstrable positive impacts on the union membership because it threatened the unions' entrenched aristocratic positions within the labour movement underpinned by the tripartite industrial relations structures.

However, since the onset of the 90's the 'status quo' has been challenged on two fronts; first by an informed labour force operating in a politically liberalized environment¹ that demanded fair labour practices and secondly, by challenges of globalization which call for building of broad alliances with the civil society (Gallin,2000:10).

This study, while exploring the impediments and opportunities influencing trade union – NGOs relations, is optimistic that, a case for cooperation exists. This is because; both organizations are actors in civil society with specific agendas for improvement of human condition (Gallin, 2000:1). However, cooperation must be predicated on a realistic framework and mutual respect between the organizations.

1.2 Indication of the problem

Recent debates in the realm of development and social justice point to an increasing cooperation and collaboration between unions and NGOs internationally with a view to advance the social agenda of the labour movement (Gallin, 2000:1). This need for cooperation has been made imperative by the challenges posed by globalization which require "that civil society organizations break down the barriers that have traditionally divided them in order to ensure that the rights of those who are marginalized or vulnerable are kept firmly on the international agenda"².

While there exists some misunderstanding on the nature and extend of cooperation between trade unions and NGOs, ample evidence of successful cooperation is available and tends to point to the inevitability of continued relationship (Spooner, 2005). Cooperation has been on a wide range of issues and

¹ Political pluralism allowed in 1990 encouraged more scrutiny of governance institutions by the public.

² See page 1- http://www.ifwea.org/archive/trade_unions_and_NGOs.html- accessed on 02/05/2007

has included; human rights-workers rights, women's rights, environment, and corporate social responsibility among others (Gallin, 2000; v). In South Africa for example COSATU cooperates with SANGOCO and SANCO on a wide range of issues including poverty alleviation, HIV/Aids campaigns, advocacy and research and policy analysis among others³.

Notwithstanding the substantial gains that NGOs have achieved for workers in the few areas they have intervened, Gallin reckons that they can not wholly take over the unions role and that the advancement of the labour cause and the broader social agenda in general in the face of globalizing economy is best served by forging partnerships between the two adversaries (Gallin, 2000:30; Wedderburn, 2003:4).

In the Kenyan context, unions and NGOs have failed to forge meaningful relations despite clear cases of positive results for both workers and the labour movement in general where they have intervened. Instead of embracing the NGOs to gain from their comparative advantage and thus counterbalance the growing power of transnationals (Gallin, 2000:28), unions accuse NGOs of interfering in labour affairs⁴ with sometimes very adverse consequences for workers. They often cite a case in 2003 when over 8000 workers of the Export Processing Zones sector were dismissed for striking over poor working conditions and denial of their freedom to associate⁵.

However, what the unions' fail to acknowledge is that despite some shortcomings of NGOs intervention on labour issues, their actions have gone along way in helping the unions to organize workers in some of the atypical sectors which the unions had failed to penetrate for many years, like the EPZ sector and also to substantially improve the poor terms and conditions of employment of workers.

In 2004, and as a result of persistent pressure by the NGOs, seven garment factories in Athi River Export Processing Zone signed a collective bargaining with the TTWU thus allowing many workers to exercise their right to freedom of association⁶.

Similarly, due to persistent local and international campaigns against poor working and living conditions at Del Monte Kenya whose processing and plantation workers are members of Kenya Union of Commercial Food and Allied Workers and also Kenya Plantation Agricultural Workers Union respectively, the management was compelled to improve their terms and conditions of service which resulted into the company's certification as SA8000 compliant⁷.

In the flower sector, the civil society organizations managed to mount successful campaigns against poor working conditions of workers especially in the overseas markets forcing the investors to initiate a constructive dialogue with them (Opondo, 2002). A steering committee known as the HEBI was formed to help in

³ <http://cosatu.org.za/speeches/2001/zv121101.htm> - accessed on 03/10/2007

⁴ See Comments by Trade Unionists in a Workshop organized by ILO/SLAREA held in September 2005.

⁵ <http://www.wsws.org/articles/2003/feb2003/keny-f07.shtml>

⁶ see http://state.gov/e/eeb/ifd/2006/62005.htm#_labour accessed on 22/05/07

⁷ SA8000- is Social accounting standard which takes into account the terms and conditions of workers including rights to freedom of association... See- <http://www.isealliance.org/index.cfm/fuseaction/page.viewpage/pageid/709> - accessed on 11/05/2007

the development of a social accountability code for the industry which to date the unions have declined to participate in despite having been invited. Other members include the government, civil society organizations and trade associations and employers federation (Auret & Barrientos, 2004:29; Dolan, et al. 2004:59).

Using case studies of the three unions in whose sectors NGOs have intervened in the past, the paper investigates the constraints and opportunities inherent in Union – NGO relations and how cooperation can be sustained to advance the workers' cause.

1.3 Relevance and Justification

Trade unions in Kenya just, like others elsewhere, appear to be facing serious challenges in organizing and defending their members' rights in the face of a globalizing world driven by increasing power of transnationals (Spooner, 2005: 11). This is aggravated by the government's willingness to compromise on the minimum labour standards in a drive to attract foreign investments (Dolan, 2004:115). Examples of these measures to attract investments include; the exemption of companies operating in EPZs from the health and safety inspections in 1991, the repeal of restrictive redundancy provisions to allow for a flexible employment regime in 1994 and, the recent freeze on issuance of minimum wage guidelines passed in May 2007 (Daily Nation-01-05-2007)⁸.

However, despite the above evidence pointing to erosion of unions power to effectively discharge their mandate of defending and advancing the workers cause, coupled with recent research which points to the need for the creation of broad popular coalitions with NGOs,(Gallin,2000:1; Spooner,2005: 11;Connor,2005), unions in Kenya have continued to oppose NGOs involvement in labour affairs terming it as interference with their legal mandate (ILO/SLAREA, 2006:5).

The results of the study will help to offer clear direction as to how the unions – NGOs relations could be managed including which organization would ultimately be responsible for leading the defence of workers rights in general.

Such a conclusion would also help the Kenya Government in formulating responsive policies and legislations that take account of existing realities and interests of all stakeholders in the labour movement and hence eliminate turf wars that only serve to aggravate the workers' position.

1.4 Objectives and Research Questions

1.4.1 General Objective.

- Establish why NGOs have taken up the representation of workers issues and whether it is a sustainable undertaking.
- Explain why trade unions in Kenya are opposed to NGOs interventions in labour affairs.
- Suggest ways of harmonizing the relation (ships) between unions and NGOs in the interest of strengthening the labour movement in a globalized world.

⁸ See also, <http://allafrica.com/stories/200705010589.html> accessed on 22-05-2007

1.4.2 Main Research Question

What are the impediments and opportunities for successful and sustainable NGO-trade union cooperation?

1.4.3 Sub- Questions

- What has prompted NGOs to intervene in labour affairs in sectors which are already represented by established trade unions?
- How has the intervention impacted on trade unions and how have they responded?
- Why are unions opposed to NGOs intervention in labour affairs?
- What is the position of the government and employers towards the increasing participation of NGOs in labour affairs?

1.5 Methodology

The research relied mainly on primary data obtained through fieldwork carried out in the months of July – August 2007. Data was collected through qualitative semi-structured interviews with 14 people drawn from trade unions, NGOs, employers' organizations, Company management, Export Processing Zones, the Kenya Flower Council and the Ministry of Labour (See Annex A - list of interviewees).

The interviewees were people who had participated directly or indirectly in the conflict between trade unions and NGOs in their official capacities and therefore, the use of semi- structured interviews allowed the interviewees to comprehensively relate their experiences beyond the narrow confines of the questions thus enriching the data. The method also helped to collect information in a cost efficient manner given that most of the interviewees are senior people in their own right or held elective positions which made them busy and unable to handle questionnaires. Respondents from trade unions, employers came from sectors/ organizations which had at one time or another experienced conflicts emanating from NGOs interventions in labour affairs while for NGOs, interviewees were persons who had directly or indirectly participated in the conflicts. The rest of the interviewees were persons who represented their organizations because of their expertise in the matters under research.

The research questions focused on specific periods of NGOs intervention in the sectors which were as follows; Del Monte Kenya – 1998 -2001; EPZs – 2002-2005; Cut flower farms – 2003- 2006.

The research also benefited from secondary data drawn from previous research on the subject under study mainly from; libraries, internet, course work and government policy papers and newspapers. Personal experiences gained in the field working as an industrial relations/ labour officer complemented the above two sources especially in the analysis of relevant literature.

1.6 Limitations of the study

The research has several limitations; it was not possible to interview workers directly in both the flower farms and the EPZs because the managements' feared it might affect production and hence missed first hand views of their experiences. The management of Flower farms were also unavailable for an oral interview and only sent general response to the questionnaires meant for the interview thus

limiting the research from getting an in depth perspective on the NGO – Trade Union conflict. More so the management of DMK gave a short generalized interview and promised a detailed response to the questionnaire which to date has not been send.

To ameliorate the above limitations, the researcher was able to have extensive interviews with the branch secretaries of the three unions representing the three sectors who had direct contact with the workers on a regular basis. For the EPZ, it was possible to interview some workers in the offices of the union branch secretaries. For the management of Flower sector and DMK, the scanty responses received during the interview visits were complemented by an in- depth interviews provided by the official of the FKE and KFC who represents the employers in the said sectors. These primary sources were further complemented by specific researches carried on the sectors in previous researches.

Secondly, fieldwork time was not enough to interview more people in the research population to triangulate the views obtained from the interviewed people thus limiting then generalizability of the research findings.

1.7 Structure of the Paper

The paper is organized in 6 chapters. Chapter 2 gives the analytical and conceptual frameworks relevant to the paper. Chapter 3 gives the context of Trade Unions in Kenya and, the NGOs which have been involved in labour affairs. Chapter 4 describes the Labour conditions in the three sectors where NGOs have intervened while Chapter 5 analyses the data with the aim of explaining the research question. The last chapter summarizes the findings and draws conclusions.

CHAPTER 2: THEORETICAL AND ANALYTICAL FRAMEWORK

2.0 Introduction

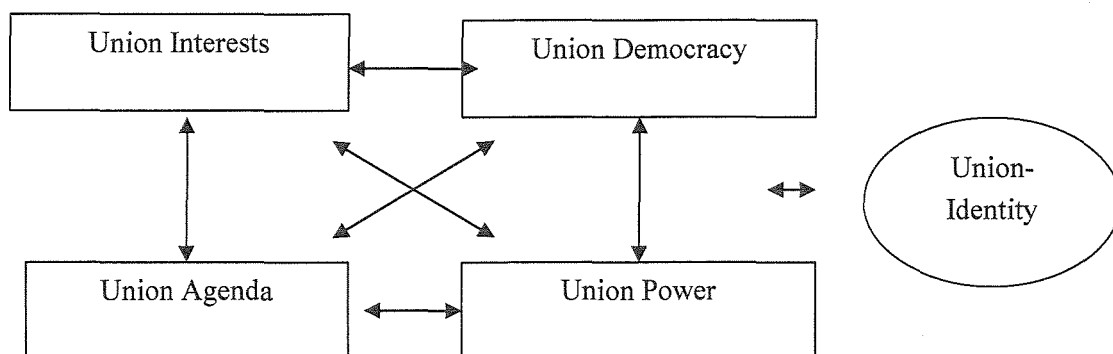
The research will rely on two approaches: the first one is the model of union identity and the second is the conceptualization of labour rights as human rights. These two approaches will be used to analyze the NGOs - union relationship in a globalizing world. The research will also review the debates/perspectives advanced for and against NGOs – unions' cooperation. It is hoped that this analysis of the conceptual framework will shed more light on the choices NGOs and trade unions have made and thus the basis, nature and future direction of the NGOs-union relationship in as far as the advancement of the workers/labour agenda is concerned.

2.1 Model of Union Identity

The model proposed by Hyman (1994) tries to analyze union responses to hard times, in the context of changed economic and political environment resulting from the effects of global competition. Some of the challenges facing unions include, growth of atypical forms of employment, feminization of labour, increase of young workers, differentiated membership interests, assertive/questioning membership base, blurred jurisdictional boundaries between unions and concession bargaining among others.

As a way of analyzing the dynamics involved in the determination of union identity Hyman (1994: 120) uses a model showing how four variables-interests, agenda, democracy and power relate to each other. This model (Fig 1) is discussed below.

Figure 1
The identity model



Source: Hyman, 1994:120

2.1.1 Interests

Unions being organizations representing interests face several dilemmas; whether to represent members and non-members, collective interest plus individual interest, how to integrate formerly marginalized groups as a result of such factors such as ethnicity, gender and employment status, and finally, representation of qualitative interests – training, working conditions, collective control of production among others.

In analyzing the above variables using the case studies in this research, we will be able to show the extent to which unions have addressed the problems associated with feminization of labour in the EPZ and the horticultural (flower) sector in Kenya. We will also be able to show whether health, safety and working conditions of workers in the same sectors have been adequately addressed. More so, the analysis will help to determine the extent to which unions in the case studies have addressed issues of temporary/casual workers who in most cases are not members but make a significant proportion of the work force.

2.1.2 Agenda

Union's agenda is ideally manifested by the interests which are pursued and also the internal processes of democracy (Hyman, 1994: 125). Although traditionally, quantitative issues tended to dominate collective negotiations since they didn't challenge managerial authority and could easily be quantified, increased competitive pressures associated with globalization have in recent years made them to be less of the 'soft' option. Trade unions are therefore faced with a dilemma of making policies which reflect the diversity of their constituents and are realistically attainable in negotiations with cost conscious employers or go through political channels which are already sensitive to issues of national competitiveness (Hyman, 1994:26).

Union agenda is also shaped by the relations that exist between them and the state. In most developing countries, the need to ensure stable and sound industrial relations in order to attract FDI has had a significant influence on state policy on unions since independence. Through the use of legal, political and even coercive measures, the state has been able to mould trade union leadership and industrial relationship structures that identified closely with its interest thus reflecting a relationship that has been characterized as corporatism (Hashim, 1994:4).

In this relationship, the state is responsible for licensing of unions, creation of monopolistic unions, and their integration into party, parliament, cabinet functions whereas the unions are expected to reciprocate by maintaining a restrained and predictable demand articulation, and ensure discipline and compliance from their membership (Hashim, 1994:17).

Drawing from the above, we will be able to analyze how unions in our case study have handled issues of conditions of work and employment which have been a source of concern to workers in Kenya. It will also enable us to understand the agenda the union represents, whether it is a workers agenda, an employers agenda or a government agenda and lastly, whether it is motivated by ideological pursuits or it is for reasons of self preservation.

The corporatist label will help to explain the basis of state interference in union affairs, the extent and, the impact it has had on union's ability to represent

their members. It will also assist in understanding whether the attribution of public status⁹ makes unions feel immune from members' demands (Hashim, 1994: 20)

2.1.3 Democracy

This concept relates union's efficiency in articulating members interests to the level of participation and distinguishes two models of union democracy which are participative and representative (Hyman, 1994:123). It argues that unions are more effective if they adopted a representative approach and less effective if they adopt a participative approach. This argument implies that there is likely to be a conflict of interest between efficiency and democracy if participative approach is adopted – 'iron law of oligarchy' or the goal displacement proposition (Pegler, 2003: 6).

This means that the need to keep the union viable through the pursuit of moderate rather than radical demands is likely to alienate the rank and file membership of the union who interpret this leadership's way to perpetuate power. However, the application of participative democracy has been questioned in view of the changes in employment and union membership and also noting that it requires the availability of resources and favourable context. As such, what is important is to make sure that a 'representative union seeks workers' views, interprets their demands, proposes new themes, reports back to workers and pursues members demands' (Pegler, 2003:7).

This concept will thus help us to explain whether democracy or absence of it in unions has in any way contributed to NGOs entry into Labour Affairs.

2.1.4 Power

One of the dimensions of unions' power is the ability to achieve its objectives in the face of resistance. The manifestation of this power which has traditionally been through strike action has in recent times been constrained by the increasing power of transnationals in a liberalized market as well as restrictive legislative obstacles (Hyman, 1994:128). Unions therefore have to 'win economic gains through the political market place' (Hyman, 1994:130), which requires them to muster sufficient industrial strength failure to which they get marginalized. This must involve rediscovery of unions' role to include campaign mobilization at societal level, broadening their membership interests and cultivation of alliances with social movements whose interests overlap.

In our case the concept will help us in understanding whether or not the circumstances affecting the three unions in this research warrant the need to make alliances with social movement organizations like NGOs, in order to achieve the mandate of the members or whether such alliances are unsustainable.

⁹ Some attributes of public status that states accord to interest organizations (unions) include, resource status, representation status, organizational status and procedural status. Acquisition of such status often results in organizations becoming more reliant on the goodwill of the state and less on that of their members. This leads them to be more concerned with honouring states interests than members concerns (Hashim, 1994:71).

2.2 Perspectives on NGO- Trade Union Cooperation

Debates relating to NGO –union relationships seem to acknowledge that both organizations are actors within civil society with specific agendas geared towards the improvement of the society. Unions' societal agenda is anchored in their belief that, only by having a broad social and political approach to their activities can they be able to effectively guarantee the interests of their members (Gallin, 2000:9). This broad approach requires them to get involved in issues of human rights, development, education, women's rights and equality and environmental protection which are the same issues at the core of NGOs mandate. It is on these issues where cooperation co-operation has been developed¹⁰.

It is however been observed that, over the years and particularly during the post war period, unions withdrew to their 'core business' (wages and conditions of employment) and left the broader social issues to be handled by specialized agencies within the labour movement. This happened because of loss of trained and experienced political leadership, the post war social compromise based on the ideology of social partnership, guaranteed state support on union agenda and distortion of labour movement during the cold war (Gallin, 2000).

The gap left by the union coupled with the adverse consequences of globalization and, especially the need to counter the growing power of transnational corporations, has led to the increased participation of NGOs in societal governance issues including the 'core' union issues of employment, wages and working conditions thus making cooperation inevitable (Gallin,2000:10; Spooner, n.d¹¹). That notwithstanding however, cooperation between unions and NGOs has been constrained and has largely depended on factors such as existence of shared objectives on issues such as gender; their specific situations; source of legitimacy; existence of democratic and accountable structures and whether they have a radical or conservative approach to issues (Spooner, 2000; Gallin, 2000:27).

All in all, the pressures of globalization and the neo-liberal agenda endorsed by most governments and on which both unions and NGOs are against because of its adverse socio-economic consequences continue to strengthen the case for cooperation. For this to be realized, it is argued that both unions and NGOs need to have clearly set out objectives, be transparent in their operations and maintain mutual respects between themselves (Gallin, 2000:30; Spooner, 2000).

In conclusion, it is hoped that, the debates will help to explain the rationale for NGOs entry into labour affairs and unions response to the interventions and hence allow us to be in a position to assess how their actions affect the advancement of the labour cause.

¹⁰ Cases of cooperation include ; ZCTU assisting the informal sector in Zambia, Transport and general workers union of Britain supporting Kalyan- an NGO established to support migrant workers in Britain, Urban industrial mission, young Christian workers and Korean Christian workers (all church based NGOs) support to formation of independent trade union in Korea since 1987, Home Net which represents home workers in unions such as SEWA,SEWU as well as home workers in Bangladesh, the Philippines and Thailand, COSATU partnering with SANGOCO and SANCO (Gallin, 2000; Spooner,2000).

¹¹ See http://www.ifwea.org/archive/trade_unions_and_NGOs.html accessed on 02/05/2007

2.3 Labour Rights as Human Rights

The concept of labour rights as human rights is anchored in international labour standards developed by ILO since its founding in 1919 (Valticos,1998:1; Maclem,2005:64) and UN human rights covenants developed since 1948 (Valticos,1998:136). It is strengthened by the fact that conventions which the ILO has deemed to be 'basic human rights standards' (Leary, 2003:38, Valticos, 1998:139), also included in the UN human rights covenants thus making them to be of prime importance. These rights which include; freedom of association and collective bargaining, elimination of forced labour, equal remuneration and discrimination in employment, appear in the 1948 UDHR and the 1966 covenants on – ICCPR and ICESCR (Leary,2003:28). They have also been included in regional human rights conventions such as the European convention on Human Rights of 1950, the American convention on Human Rights of 1969, and the African Charter on Human and Peoples Rights of 1981 (Valticos,1998:140).

Further, the universality (Valticos, 1998:140) of these rights is underscored by the high ratifications¹² which they have received from member states and also the special supervisory procedures that the ILO and UN have in place to ensure observance. However, despite the foregoing, workers rights have been met with violations (Valticos, 1998:140, Maclem, 2005: 82) even in members states which have ratified the relevant conventions and covenants thus demonstrating the challenges that exist in complying with the rights. The adoption of the 1998 declaration is seen as the ILOs response in addressing the challenges of globalization (Jenkins et al. 2002:33) and, reinforces the conception of labour rights as international human rights (Maclem, 2005:82) and the need for constant review (Valticos, 1998:142).

The concept is relevant in our study because, categorizing labour rights as human rights was critical in that it opened the field of labour relations (long seen as the preserve of organized labour) to human rights NGOs and other stakeholders who for long had been involved in civil and political advocacy. Further, the end of cold war and the deepening of globalization with its attendant adverse social consequences as the states influence in public affairs receded legitimized the focus of NGOs on labour affairs (Braun & Gearhart, 2005:206). The ability of NGOs to focus on human rights violations hitherto beyond the reach of unions (Braun & Gearhart, 2005:218) and force change using broad coalitions such as consumer activist's development organizations and students¹³, has greatly inspired and encouraged the entry of Kenya's human rights organizations in labour affairs.

Using the concept, we will therefore be able to show the rights which were being violated in the three sectors covered by the study and the positions of unions, governments and other stakeholders.

¹² ILO human rights instruments have been ratified by 125 states on average while as at 1 Jan 1997, 137 states had ratified ICESCR and 140 states had ratified ICCPR. See Valticos,1998: 138

¹³ The involvement of human rights NGOs into monitoring of labour rights has for example made corporations to stop treating codes of conduct as statements of goodwill but as commitment to the policies and principles contained therein. Some of these multi-stakeholder initiatives formulated with the contribution of human rights NGOs include the Clean Clothes Campaign (CCC), ETI (Ethical Trading Initiative), SAI(Social Accountability international) and FLA (Fair Labour Campaign). (Braun &Gearhart, 2005:208)

CHAPTER 3: TRADE UNION CONTEXT AND THE NGOS

3.1 Introduction

In this chapter, we will discuss four issues namely; evolution of trade unions in independent Kenya, the industrial relations framework and their current status in terms of structure and organization. The NGOs which are the subject of the paper are also covered. The review will help in understanding the nature and identity of unions that exist in Kenya and how that identity has been shaped. It will also help in assessing their capacity and effectiveness in discharging their mandate.

3.2 Trade Unions in Independent Kenya

At Independence in 1963, unions in Kenya were popular and powerful organizations owing to the role they had played in the struggle for the country's independence (Aluchio,1998:6).This popularity was attested by their quick growth which rose to 52 in number covering most of the economic sectors hitherto without union representation (Apiyo,2000:17).The split within the then central workers organizations – KFL which arose due to ideological differences between those opposed to its affiliation to ICFTU-AFRO which they considered a pro-Western body, further attested to the vibrancy and independence with which the unions carried their affairs. The split led to the emergence of a second workers' body-KAWU which had left-wing leanings (Aluchio, 1998:6).

In the meantime, the Kenya government, like many other newly independent governments in Africa expected post-independent to play a new role in building the young nation by promoting political stability and ensuring a sound investment climate devoid of labour unrest and hence, the militancy with which the unions had been used to during the struggle for independence was unnecessary (Hashim, 1994:3-4).

The Government was also in the process of consolidating power within key institutions of the state to guarantee stability as was witnessed by the merger between the opposition party KADU with the ruling party KANU in 1964 which made Kenya a de facto one party state, and hence, the prospects of unions' articulation outside the state policy was constrained. This is the context in which the existing industrial relations framework and policies were formulated.

3.3 Industrial Relations framework

3.3.1 *Industrial relations charter*

The country's industrial relations framework can be traced back to 1962 (see Appendix B) when the first industrial relations charter was signed between the three social partners namely, the employers association, the workers representatives and the government. Its principal objective was to ensure industrial peace was maintained by laying out elaborate dispute resolution machinery with clear obligations and responsibilities for each of the social partners (Apiyo, 2000:19). Consequently unions could not easily resort to strikes in pursuit of their

collective interests¹⁴. It also excluded managerial and confidential staff from unionization thus considerably denying union's significant support (Cockar, 1981:268).

3.3.2 The Disputes Act

The Trade Disputes Act introduced in 1965, is the principal act which regulates disputes settlement in Kenya. It is significant because it recognizes the three social partners (employers, workers and Government) as the only legitimate organs within the country's industrial relations framework and excludes other stakeholders. Further, besides promoting monopolistic behaviour among the employers' and workers' organizations, the Act also controlled the maximum compensation which workers could get from collective negotiations by subjecting wage increases and awards of the industrial court to wage guidelines (Cockar,1981:84) determined from time to time by the Minister for Finance.

3.3.3 The Trade Unions Act

The Trade Unions Act was introduced in 1952 by the colonial government to control militant unions which had also involved themselves in the struggle for independence (Aluchio, 1998:3). The Act vests the power to register and regulate the conduct of trade unions with the Registrar of Trade Unions and hence it has been a useful tool for the government in influencing the type of unions which are registered including the leaders who lead them.

3.4 Related policies and Actions

Post independent Kenya has witnessed a number of policy actions which have shaped the conduct of industrial relations in Kenya and the capacity of unions to operate. It is to be noted that although the government had committed itself to African socialism (Republic of Kenya, 1965) eschewing alignment with the cold war powers, it was silently pursuing a capitalist path and hence needed to create a favourable economic climate devoid of industrial instability.

In 1965, the KFL and KAWU, the two workers bodies were banned and replaced by COTU after it became clear that they had affiliated themselves with the cold war protagonists of the east and the west, an eventuality which threatened the governments' ability to guarantee economic stability (Apiyo,2000:17). COTU's creation marked the beginning of incorporation of union's within the state (Hashim, 1994) because in its constitution, provisions were made allowing government to have representatives with its board and also gave the President authority to appoint its three top officials.

Cooptation of the workers organization into the state was completed in 1986 when COTU officially became an affiliate of the ruling party KANU thus making the workers' body to subordinate the interests of the workers to those of the state with obvious consequences of alienating the rank and file membership. COTU was now akin to a state instrument doing the government's bidding (Mwamodo et al., 2003: ii).

¹⁴ See further discussion on strikes – *ILO Principles Concerning the Right to Strike by Gernigon et al.1998*

Other intervention measures which further whittled down the unions ability to have leverage in industrial relations were the barring of the UKCS and KNUT from affiliating to COTU – K on the argument that they were essential services and the eventual banning of the Civil Servants union in 1980¹⁵(Nyakundi,2006:5).

3.5 Unions organization and leadership

Trade unions organization and leadership are governed under the Trade union's Act and their own constitution's. The Act is elaborate on union's regulation including registration and deregistration but is silent on the matters of election procedures and removal of union officials hence giving room for electoral frauds and leadership wrangles which have affected unions effectiveness. The union constitution's are undemocratic and impede the conduct of free and fair elections where popular leaders can emerge. This arises from the constitutional clauses which require aspiring candidates to meet stringent eligibility requirements some of which are impossible to meet because they require payment of huge non refundable fees¹⁶. Union's leadership position are therefore not held because of ability to lead and popular mandate from workers but because of ability to manipulate the weak processes hence resulting to weak and unaccountable union leaders (Apiyo, 2000:22).

During the last union elections held in 2006, national election results of the TTWU and TAWU were challenged in courts on grounds of electoral malpractices by the incumbent official and the matter is still awaiting determination.¹⁷

Finally, the interventionist role of the government in labour affairs has influenced union leadership in ways that affected the discharge of their mandate. Whereas some unionists are cowed and refrain from antagonizing the government, others have taken advantage and used the trade unionism as a ladder to national politics¹⁸. Such patronage has been responsible for impunity with which leaders treat their members' hence accentuating divide with the rank and file.

3.6 Conclusion

It is clear that, since Independence the government has pursued a policy of encouraging economic growth through creating a stable investment climate. This could not be guaranteed in an environment where trade unions were independent and hence the government moved in earnest to change the course of their development. This was done through a series of legislative provisions and policies which succeeded in making them to be more responsive and cooperative to government policies hence making them predictable (Hashim, 1994:4, Mwamodo, 2003:3).

¹⁵ UKCS and KNUT are the largest union's because they draw their membership from the Civil servants and Teachers respectively.

¹⁶ For instance aspirants wishing to contest for the General Secretary's post in TTWU are required to pay KSH 250,000 (USD 3846) to be eligible to contest.

¹⁷ Field interviews with branch secretary TTWU Machakos.

¹⁸ Between 1997 and 2002, Joseph Mugalla, the then Secretary General of COTU K was elected as a member of parliament and was made an Assistant Minister for local Government. On Labour Day 2006, Secretary General's of COTUK, KLGWU, KCAWU, were awarded medals by the Head of State during which time he also discontinued issuance Minimum Wage Guidelines.

Union articulation within the state also led to the emergence of what Hashim (1994:4) terms as “privileged and prosperous labour aristocrats”, at the helm of the unions who are completely oblivious to the core interests of their members hence making the organizations to loose support and credibility. It is this gap created between the leadership and the members which made it easy for the NGOs to move into the labour sector.

3.7 Non-Governmental Organizations

NGOs have been defined variously, but generally, the term includes all manner of organizations like activists groups, development organizations, research driven bodies, and watchdog bodies among others¹⁹. In Kenya, they are defined as, ‘private voluntary grouping of individuals or associations not operated for profit or for other commercial purposes but which have organized themselves nationally or internationally for the promotion of welfare, development, charity or research through mobilization of resources (Republic of Kenya,1990:10).

They have operated for many years in the country but their involvement in labour affairs began in earnest in late 1990s when several human rights NGOs which were key players in political agitation for the return of multi-party democracy expanded their mandate to include social and economic rights for workers as well. For the purpose of this research we are going to focus on two human rights NGOs whose activities in the labour sector have had a significant impact on workers welfare. These are the Kenya Human Rights Commission and the Labour Awareness and Resource Centre.

3.7.1 Kenya Human Rights Commission

KHRC was founded in 1992 with a mission to promote, protect and enhance the enjoyment of the human rights of all Kenyans. Its means of action include research and monitoring, advocacy, and human rights education and outreach. Some of its key strategic objectives include; support for human rights centred governance; holding state, institutions and individuals accountable for human rights violations; strengthening the human rights movement in Kenya and reduction of human rights violations (KHRC,2004:1)

KHRC mobilized a coalition of NGOs called Solidarity committee which spearheaded labour campaigns at DMK (1999 – 2001) and the EPZs (2002 – 2004). other NGOs which operated under this coalition included; Legal Advice Centre (Kituo Cha Sheria), Federation of Women Lawyers (Kenya Chapter); The Labour Caucus; The Kenya National Women Workers Organization; Labour Awareness and Resource Centre among others (KHRC,2001: 9).

3.7.2 Labour Awareness and Resource Centre

It began its operations around 2001 under the name Labour Awareness and Resource Program. It was part of a coalition of NGOs known as the solidarity committee with DMK who were involved in the campaign for the improvement of workers rights at company between 1999 and 2001. It is

¹⁹ See <http://www.bsdglobal.com/ngo/roles.asp> accessed on 12/10/2007

purely a labour NGO and provides capacity building services to union officials and workers aimed at creating an awareness of their rights through workshops and seminars. It also used to provide legal representation to workers whose rights were violated but this has been discontinued due to lack of funding²⁰.

²⁰ interview from program officer LARC – August 2007

CHAPTER 4: THE CASE STUDIES

4.0 Introduction

The chapter surveys the prevailing labour conditions in the three sectors where NGOs intervened and helps to assess the extent of workers rights violations and how they contributed to intervention. The sectors are; EPZs – represented by TTWU, the Cut Flower sector – represented by KPAWU and the DMK represented by KUCFAW. To illustrate some conditions boxes will be used where relevant.

4.1 The Export Processing Zones

Background

EPZs were established in 1990 as part of a government strategy to attract FDI necessary for development and compensate for reduction of foreign aid resulting from the end of cold war. Attractive incentives ranging from generous tax holidays, ready infrastructure, security, and exemptions from certain labour laws among others were offered to the prospective investors (Jauch, 2002:102; Kariuki & Smith, 2003:8).

Key labour incentives which have been blamed for the erosion of worker rights include the following; exemption from inspections on health and safety by Ministry of Labour; introduction of flexible redundancy laws and restricted access of premises to unauthorized personnel. These incentives explain the quick growth of the sector and the employment created as shown in table 1 below.

Table 1
Performance of EPZ Selected Indicators: 2001 – 2005

	2001	2002	2003	2004	2005
Operating Enterprises (No)	39	54	66	74	68
Total Employment	13578	27148	39111	38560	38851
Exports (Ksh Millions)	5962	9741	13812	23047	20036

One USD = Ksh 75.

Source: EPZA Annual Report 2005 with author's adaptations

4.1.1 Labour conditions

Although the EPZs have been responsible for expanding employment opportunities in the country and particularly for the female labour force, this has not been matched by improved welfare on the part of workers because of the precarious

conditions under which the jobs are performed (KHRC,2004:18)²¹. Violations of workers rights have often been cited on issues of freedom of association, working conditions, and gender matters as detailed below.

4.1.2 Freedom of association

Freedom of Association is a fundamental right established in the country's constitution, the Labour laws and ILO Declaration which obligates member states to respect the principles of the declaration even if they have not ratified the conventions therein (Bellace, 2001:272; Murray,2002:33). However, within the EPZs the right to belong to trade unions is restricted and by the end of 2002, only one EPZ firm – Rayshian Apparels out of a total 54 enterprises KHRC,2004:15) operating at the time, had a recognition agreement with TTWU which was secured through court orders²². Investors resent unionization of workers because it means an added cost to the operating expenses which they can not guarantee due to the competitive nature of the industry which thrives on ability to meet secured orders. The views of workers on the issue of unionization are evidenced by comments of Lucy a worker in an EPZ whose factory supplies to Wal-Mart.

Box 1

Talk of trade union is banned and the factory atmosphere is intimidating. Supervisors abuse us ... if we talk they say, shut your beak even a child can do your job (KHRC, 2004:33).

4.1.3 Working Conditions

Majority of employees are employed on casual contracts and also work for long hours due to high production targets which they have to be meet. Investors attribute this production arrangement to the dependency on business orders which can not be guaranteed all the time and, lead times which are sometimes too short hence necessitating continuous operation. The effect of these production arrangements has been the intensification of work for employees without adequate compensation. This is because excess hours worked to meet the high targets are not compensated as overtime. In addition, casual employees are not eligible for pension and medical benefits like the permanent workers (Dolan, 2004:112).

The views of Ms Mulonzya an EPZ worker attests to some of these conditions.

²¹ This confirms the *immiserating* growth thesis where growing participation in industrial activity reflected by increased trade and employment levels may be associated with an overall decline of living standards (Kaplinsky, 1998:4).

²² Interviews with the Branch secretary - TTWU Nairobi – August 2007.

Box 2

It is not possible to do anything else. There is no time to take care of your own children, visit people, do business or go to college... Sometimes we don't even know what is happening outside EPZ... (KHRC, 2004:41)

Medical care for workers is also not adequately provided. Only injuries sustained at the workplace are treated but even so, the treatment does not go beyond provision of first aid. Interviews with the branch secretary revealed that only two companies in the EPZs— JAR and Protex pay employees while on sick leave while the rest do not. In others like Tri-star, workers are deducted Ksh 1500 (USD 21) if they are taken to private hospitals on company cost.

4.1.4 Gender Issues

Female employees suffer discrimination on account of their gender by being denied employment if they are found to be pregnant and also being denied maternity leave benefits if they become pregnant while in employment. JAR administers pregnancy tests before employment of women and those found to be pregnant are 'sieved out'. This is captured by the trivial manner in which a manager responded to the issue when asked stating that, '... we are here for production not reproduction' (KHRC, 2004:46).

Further, EPZ have been accused of perpetrating sexual harassment of women who constitute 75-80 percent of the workforce. This is done as a condition for favours such as gaining employment position, promotion or being assigned less-intensive assignments. Workers who decline such advances risk losing their jobs. Eradicating the vice has however been not easy because existing laws do not recognize sexual harassment as an offence (Dolan et al. 2004:65). The case of Lucio illustrates the predicament of many women in the EPZs;

Box 3

I joined Rolex EPZ in 2001. Since September 2002, the line manager has been disturbing me during working hours telling me nonsense.... One day he stopped near my machine and told me 'I need your lips'. I refused to talk to him, and then he started cancelling my overtime payments. I reported to the union but nothing was done. I was eventually sacked for talking to a colleague while at work. That's when I reported to the Kenya Human Rights Commission (KHRC, 2004:39).

4.1.5 Conclusion

What has emerged is that, management of EPZ companies were more concerned about the profits they made from their operations than ensuring the existence of fair labour conditions in their companies. Although labour laws are in place, they have been weakened in order to attract EPZ investments, and those still in place are not effectively enforced (Kariuki & Smith, 2003:8). Unions are aware of the problems of the workers in the zone, but they have been unable to protect them and

have identified with government interests as evidenced by comments of COTU (K) and the Trade Minister when workers went on strikes in Jan 2003.

Box 4

The Minister for Trade described the strike as barbaric and an act of hooliganism, and police were called to disperse the demonstrating workers. COTU also distanced itself from the strike because the unions in the EPZs had not been legally recognized by the factories. They were therefore illegal. Without a definite forum through which to address their disputes, most of the workers were dismissed and to date some are yet to receive their benefits (KHRC: 2004:32-33).

The entry of the NGOs in the labour movement was thus necessitated by the need to assist workers reclaim their rights which were being violated by the employers with a government and a union that were indifferent to their interests.

4.2 Cut Flower industry

4.2.1 Background

Kenya has witnessed a phenomenal growth in cut flower industry in the last 15 years and is the leading exporter from Africa to the European market where it accounts for 31 percent of the market share²³. It is second to tea in terms of foreign exchange earnings to the country and employs between 50,000 – 70,000 workers directly and more than 1.5 million indirectly (see Table 2). Most of the flower farms are located in Naivasha Sub district in Rift valley Province, with foreign investors accounting for 75 percent of the exports while local investors account for the rest.

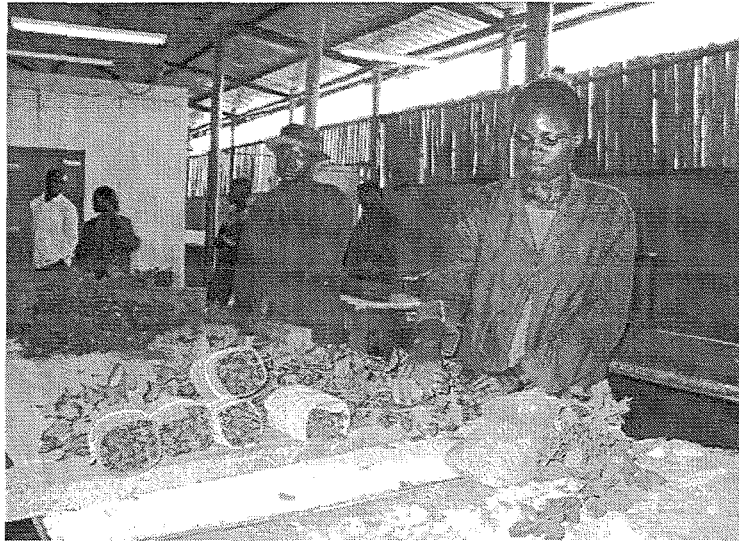
Table 2
Trends in Cut Flower Exports

Year/Indicator	1990	2000	2003	2005
Export Volume (Tons)	14000	39000	61000	81217
Value of Exports (Billions of Ksh)*	1.0	7.0	16.0	22.8

One USD = 75 Ksh*

Source: Kenya Flower Council - 2005

²³ <http://www.kenyaflowers.co.ke/industryinfo/marketdata.php> accessed on 18/10/2007



Women workers Cutting and Packing flowers in one of the Flower farms.

4.2.2 Regulatory Framework

The industry is regulated under the labour laws relating to employment contracts, working conditions, occupational health and safety and workmen's compensation among others. Further, the need to address issues related to market access, environment and social concerns of flower production have led to the formulation of voluntary private initiatives (codes) by buyers, importers/exporters, trade associations and independent bodies (stakeholders) to guide the industry. Among these codes are MPS, EUREP GAP, FPEAK, KFC, ETI and HEBI (Opondo, n.d).

Despite the quick growth of the sector and existence of elaborate regulation, the industry has faced sustained criticism from NGOs because of violations of labour rights on most of the farms. KENWWO and WRA, both NGOs operating in flower sector have highlighted violations in relation to freedom of association, working conditions and gender rights to be of serious concern (Opondo, 2002:12; ETI, 2005: 8-12). We now proceed to examine the labour conditions in the flower farms in the next section.

4.2.3 Freedom of Association

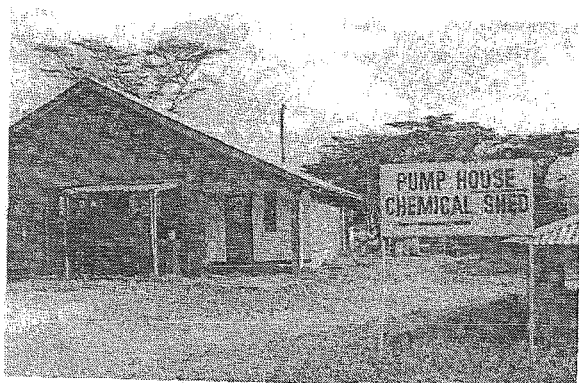
Workers right to belong to unions is constrained and in many cases denied altogether. Only 3,400 out of a total workforce of 50,000 workers were union members as at 2001(ETI, 2005:37). Women and casual workers who constituted 70 percent and 65 percent of the labour force respectively accounted for the low unionization because they considered the union to be corrupt and ineffective. They would prefer an alternative union but reckon that its not possible under the current framework (KHRC, 2001: 48-49). Unionization is also restricted to permanent workers who constitute about 35 percent of the workforce and this limits the union

ability to gain enough membership to warrant recognition by the companies ²⁴ (Dolan et al. 2004:42).

4.2.4 Labour Conditions

Working conditions in most farms are characterized by unfair labour practices which include; non-provision of protective gear/clothing leading to exposure to chemicals, inadequate transport facilities, sub-standard medical facilities and workmen's compensation arrangements²⁵. This is partly explained by the weak labour legislation, ineffective enforcement and conservative union.

Investors therefore exploit these legal loopholes to retain a majority of employees on casual contracts even when their work is of permanent nature, because of the costs savings involved²⁶. Ineffective enforcement of the law has led to rights violations such as exposure of workers to dangerous chemicals as was the case in Lake Flowers in 1999 where, two workers died and 200 others were hospitalized following exposure to such chemicals leading to the closure of the farm (KHRC, 2001:57).



Chemical Store in one of the Farms

Interview with branch secretary KPAWU confirmed that unlike the casuals and temporary workers, permanent workers were few and mostly in managerial cadres. They also enjoyed better terms and conditions of employment (Smith & Dolan, 2006:85). A summary of working conditions for majority of temporary workers is as narrated in Lucy's account shown below in Box 5. See also Fig 2 below.

²⁴ Trade Disputes Act requires 51% membership before union is recognized by an employer.

²⁵ Interview with Branch secretary – KPAWU. See also discussion by S. Smith & C. Dolan,(2006).

²⁶ Casuals are not entitled to employment benefits like leave, pension, maternity, and hospital insurance – Employment Act Section -2.and also Catherine Dolan, *On farm and Packhouse: Employment at the Bottom of a Global Value Chain*, p. 174.

Box 5

I work for Goldsmith Ltd in harvesting section. I receive 95 Ksh per day (1.3 USD) for working 12 hrs with no lunch break. Each morning, I wake up at 5.a.m.... Although I am afraid to walk when it's dark, Goldsmith does not offer transportation so I have no choice... My main concern is that I am underpaid and over worked... Some of the powders(chemical) that I have worked nearby have made me to start itching, sneezing, and coughing, and I have heard many women who have miscarried. Whenever I feel ill, am reluctant to go to hospital because the company deducts the costs of treatment from my pay... (KHRC, 2004:37-38).

4.2.5 Gender Issues

Gender issues mainly concern female workers and involve complaints of sexual harassment and discrimination in employment such as, denial of maternity benefits and confinement to low ranking jobs. Interviews with KPAWU branch secretary in Naivasha which were also confirmed by the Program officer LARC indicated that women are preferred employees in the flower sector because of their docile and unquestioning disposition and that's why they were the majority of the labour force.

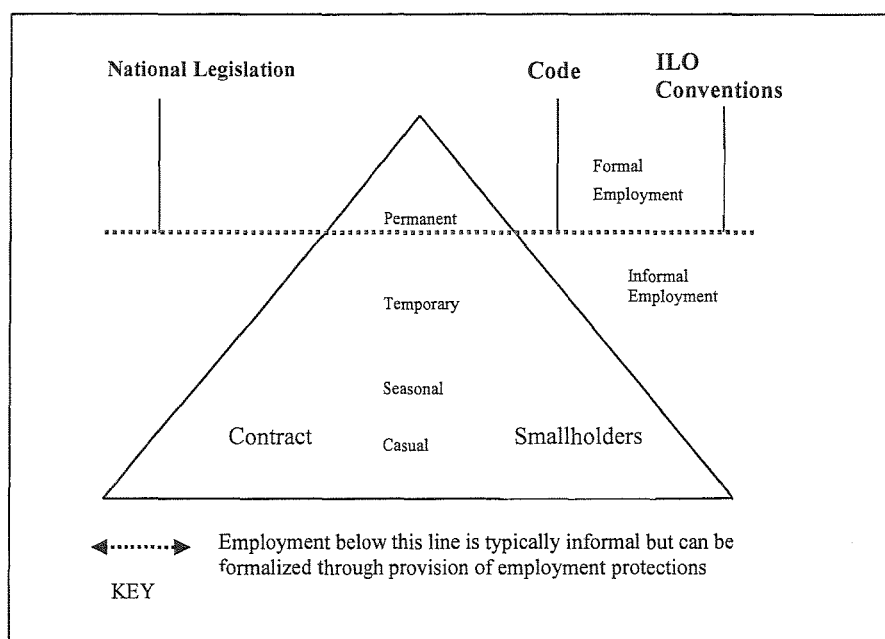
This also helped to keep the union away because they are less enthusiastic about joining the union compared to men and hence unions find it hard to meet recognition requirements pertaining to membership. Managers therefore find it easy to deploy women in less paying and routine jobs which are also demanding while the few men occupied supervisory positions and technical jobs. Gender segregation in job categories and skill levels thus creates wage differentials between men and women, with men jobs like in spraying and cold store being considered as 'difficult jobs'²⁷, while standing for long without breaks and doing repetitive work for women is not considered as such (Dolan et al.2004:41).

According to the branch secretary, the dominance of men in managerial positions coupled with weak laws was to blame for the persistence of sexual harassment complaints. Further, company policy which is dominated characterized by popular refrain that, if I hear of it, the person will be dismissed', dose not dissuade rogue supervisors from sexually harassing 'young, single females desperate for work' (KHRC, 2001:64).

Discrimination against women was also prevalent with respect to denial of maternity leave and benefits and also loss of jobs especially for the casuals' workers upon becoming pregnant. These violations were common in small and medium scale farms which were unable to meet the financial obligations related to the benefits and where also unionization was non existent. See fig. 2.

²⁷ In some farms sprayers received a daily allowance of Ksh 20 while in others they received a monthly allowance of Ksh 550.

Figure 2
Mapping the reach of Labour Rights Provisions



Source: Dolan, et al. 2004:21

4.2.6 Union response

The union through the branch secretary pointed out it was working hard to ensure that workers in flower sector were adequately protected from labour exploitation but faced some constraints (Wedderburn, 2003:6). These included the weak and archaic labour laws²⁸ as well as weak enforcement machinery by the Ministry of Labour. The official just like his FKE counterpart welcomed the support of the NGOs in labour rights protections but questioned their approach (Wedderman, 2003:3) which he said was bent on undermining the unions. This, coupled with their operational structure did not provide a framework for cooperation (Auret & Barrientos,2006:144) and was the reason that his union did not participate in the stakeholder initiative aimed at formulating an industry-wide code for regulating the sector (ETI,2005:6).

4.2.7 Conclusion

It is clear that investments in the flower sector have created jobs for unemployed Kenyans but the jobs are not decent hence confirming the general observation by globalization studies that have paid attention to labour that increasing integration into global economy is accompanied by increasing insecurity and precariousness (Knorringa & Pegler, 2006:473). While a union exists to defend workers interests it is constrained by weak laws, corruption and conservative approach to issues hence employers continue to maximize their profits by exploiting workers. The government though aware of the problems facing the industry, it is at crossroads when it comes to balancing its interests of promoting investments and creating jobs on one hand and protecting the rights of workers on the other hand. This scenario

²⁸ Labour laws have been reviewed and are awaiting parliamentary debate and approval.

therefore, explains why the NGOs have intervened in the sector although the union questions their approach and operational style.

4.3 Del Monte (K)

4.3.1 Background

This is subsidiary of a multinational company Del Monte International and is based in the industrial town of Thika which is about 40 kilometres east of Nairobi. Annually, the company produces about 250,000 tons of pineapples which are processed and exported earning over Ksh 4 billion in foreign exchange (Oloo, 2004:160). Its workforce which ranges from 5500 to 6000 is represented by the KPAWU (plantation side) and KUCFAW (processing side).

4.3.2 Labour Conditions

Despite the presence of two unions²⁹, labour conditions have continued to deteriorate leading to persistent complaints from workers to the authorities and NGOs. Violations involved lack of protective equipment, working as casuals for long periods, non payment of service benefits to seasonal and casual workers; intimidation of union leaders and restriction of right to associate for seasonal and casual workers, inadequate medical and housing facilities, underpayments and unfair terminations³⁰.

Since 1997 the KHRC had been receiving reports of violations through its research and advocacy program but when Peter Mutiso Komolo a seasonal worker, died in 1999 due to company's failure to administer first aid due to his employment status, KHRC intervened to help the workers. It mobilized a coalition of local and international NGOs in what came to be known as the solidarity committee with Del Monte workers, and launched a public campaign against the violations anchored on consumer boycotts of DMK's products internationally (KHRC, 2001:8).

This campaign resulted into changes in labour conditions in the company which qualified it to be certified as SA 8000³¹ compliant and also undertook to adopt an accommodative policy towards union leaders and stakeholders including a monitoring role for the solidarity committee (See Appendix C agreement between NGOs and DMK).

4.3.3 Union Response

Although workers were happy with the improvements realized by the campaigns, the union especially the national office remained hostile to the NGOs entry into labour affairs terming it interference with their mandate as outlined under the industrial relations machinery. This was evident during a joint meeting to signify the end of the campaigns where the Secretary General of KPAWU reiterated the position by stating thus; 'Any agreement on matters touching on employees of the company can only be signed by the two unions. KHRC has no business whatsoever as they do not feature anywhere in the tripartite system laid down in the trade Disputes Act' (KHRC, 2001:50-51). This confirms the assertion by Braun &

²⁹ DMK has had a recognition company with the two unions since 1966

³⁰ Field interview with Chief Shop Steward - KUCFAW

³¹ Social accountability standard

Gearhart (2005: 218) that 'unions may welcome outsiders to help arbitrate between labour unions and management, but never between workers and management.'

CHAPTER 5: DATA PRESENTATION AND ANALYSIS

5.1 Introduction

This chapter deals with presentation and analysis of data explaining the basis of existing antagonistic relations between trade unions and NGOs first, from their own perspectives and second, from those of the principal stakeholders – the government, management of companies and the Federation of Kenya Employers. The emerging explanations are evaluated against the theoretically established frameworks as explained in chapter 2.

Third, the impact of NGOs activities is assessed against the changes it has had on workers, trade unions, employers and government and the extent to which it has positively impacted on the Labour cause in general. These indicators include membership, freedom of association, legislative changes, terms and conditions of service, accountability and, union renewal and empowerment as a whole.

The chapter concludes with an assessment of the sustainability of NGOs intervention in labour affairs.

5.2 Why the Intervention?

The grounds upon which NGOs used to intervene in labour affairs as revealed from the interviews with the Deputy Executive Director KHRC and Program officer LARC are as discussed below;

5.2.1 Workers Rights are Human Rights

NGOs in Kenya led by the KHRC subscribe to the view that workers rights are human rights. This conception allowed them to broaden the parameters of workers' rights in an employment contract from the narrow and oppressive domestic legislation to the internationally agreed parameters as defined in ILO and UN standards (KHRC, 2001:14). In this regard, they have relied on international instruments which guarantee the enjoyment of fundamental worker rights³² and are applicable to Kenya by virtue of its membership to such international bodies regardless of whether they are ratified or not.

To realize the above rights in context where the enabling environment was not conducive, the KHRC and other NGOs recognized that, a society aware of its rights defends them better if and when they are violated. It therefore used the solidarity committee to popularize and educate workers, employers and the government on workers rights as human rights. (KHRC, 2001:8).

5.2.2 Workers Agenda not prioritized

Unions' primary responsibility is to 'organize members in specified trades and protect and defend their members' interests with a view of having a just and proper wages, working hours and other conditions of employment (see Appendix D

³² International standards invoked included the ILO declaration of 1998, Universal Declaration of human rights of 1948, UN conventions such as the ICESCR, ICCPR and the African Charter on human and people's rights.

extracts of union constitutions). According to the NGOs, unions under study in this paper failed in certain respects to prioritize workers interests.

With respect to DMK, interviews from the branch secretary and chief shop steward revealed that the National Union office which has the responsibility of reporting disputes to the Minister for Labour upon receipt of the same from the branch office failed to do so despite repeated reminders. Instead they accused the chief shop steward of 'pretending to know too much' and started to undermine him.

As a result workers issues remained unresolved for a long time making them to feel like orphans, a situation which made them to liken their plight with salvation by stating that, 'if their salvation depended on using the union then they were ready to go to "heaven" without using the church' (read union)³³. Key worker concerns that remained unsolved were, underpayments due to company' refusal to carry out a job evaluation to determine right job placement; Discrimination of seasonal workers from earning terminal benefits, housing and medical benefits, and poor housing conditions for workers among others.

With respect to EPZs, neglect of the workers agenda was manifested by the union's failure to organize and secure a collective bargaining agreement. Out of an estimated 54 companies operating as EPZs by December 2002 employing 26,447 workers, only one company – Rayshian Apparels had recognition with the union (KHRC, 2004:15). With the intervention of NGOs, 7 CBAs were signed within a period of one year³⁴.

As pertains to the cut flower sector, interview with the branch secretary KPAWU revealed that, out of the 56 farms operating in Naivasha by 2006, only four had signed recognition agreements with the union while the rest were members of Agricultural Employers Association whose CBA with KPAWU obviated them from mandatory implementation.

Unions failure to use all means to organize workers including resulting to strike action where necessary shows that they valued stable industrial relations (which benefited the investors and the government) more than the interests of their members hence confirming the claim that they had become corporatist unions.

5.2.3 Lacked Interest

An active and responsible union first and foremost champions the interests of its members over and above individual or sectional interests. In as far as the three unions in our research are concerned; they seemed to relegate interests of their members to the periphery while they concentrated on individual gains.

In all the three case studies women dominated the workforce but most of them were employed on casual basis. They were not represented in leadership positions and also laboured under precarious conditions with limited or no union representation³⁵.

³³ Interview with chief shop steward – DMK.

³⁴ Interview with branch secretary TTWU

³⁵ Casuals are not eligible for employment benefits such as Normal leave, maternity, medical, House allowance among others-Interviews from branch secretaries of the three unions.

In DMK, of the 82 per cent of workforce who were seasonal, 92 percent were of them were women³⁶. In the EPZs, women comprised of 70-80 percent of the workforce (KHRC, 2004:32), and in the cut flower sector they were 70 percent. Failure to integrate such a large constituency of the memberships into the mainstream union activities was a manifestation of lack of interest on members concerns.

Further, the weakening of redundancy laws to ease termination of employment effected in 1994, at a time when the COTU Secretary General was an Assistant Minister exposed where the interests of the union lay. In the cut flower sector, KPAWU's pre-occupation with questioning of the legality of NGOs involvement in labour affairs when stakeholders were busy trying to come up with an industry-wide standard through the HEBI forum³⁷ showed a union that was out of touch with core worker concerns. They eventually declined to be part of the forum thus loosing a golden opportunity to extend their representation within the sector thus confirming the deep suspicion and tensions that constrain the success of multi-stakeholder initiatives (Barrientos & Dolan, 2006:145).

5.2.4 Lacked Power

Union's power is manifested by its ability to achieve its objectives in the face of resistance. Strikes are the union's most potent weapon in achieving its objectives although for it to be successful the union has to have a majority membership within the organization. In our cases, the unions lacked sufficient membership to exercise the power of strike in the face of labour rights violations.

With respect to DMK, membership was only 50 percent of the permanent workforce before the campaign by NGOs and, seasonal (temporary workers) who formed 82 percent of the company's entire workforce of 5500 workers were not unionized hence making the union to have very few members. As relates to the EPZs, membership was estimated at 4500 out of a workforce of 27,148 as at 2002, again showing insufficient membership to enable the exercise its power of strike³⁸. For the cut flower farms, membership was 3,400 workers before 2001 out of an estimated workforce of 50,000 workers (KHRC, 2001: 9).

Besides, the lengthy legal procedures constrained use of strike³⁹ as a bargaining weapon and also militated against expeditious dispute resolution. The requirement to attain 51 percent membership before being granted recognition by employers further limited unions' ability to expand membership and also, made it easy for unscrupulous employers to frustrate the unionization process⁴⁰.

According to TTWU Branch Secretary – Machakos, unions' also lacked resources to push through their collective agenda. Without resources, qualified personnel and adequate facilities it was impossible to fulfil their members' interest. His testimony on the state of affairs in his branch is pertinent;

³⁶ Interview with branch secretary KUCFAW.

³⁷ HEBI was organized by the KFC which included all stakeholders in the sector and aimed at formulating a code to address all flower production issues including worker concerns.

³⁸ Field interview – Branch Secretary KUCFAW and TTWU, August 2007

³⁹ The law requires unions to issue a 21 days notice to the minister of their intention to strike and it can only take place if the minister does not take measures to mediate.

⁴⁰ In 2005, Leena Apparels an EPZ firm, closed down and sacked workers after being ordered by court to recognize union. It reopened shortly under different name.

Between July 2002 and July 2003, we operated in the open because we could not pay rent. I work alone because the union cannot afford an assistant. I have not been paid for one year which has made me report a wages complaint to the labour office.

5.2.5 Lacked Democracy and Transparent Leadership.

Unions in Kenya as elsewhere are expected to uphold democratic principles and practices, be transparent and accountable to their members in all their dealings. The instruments for achieving these objectives are the union's constitution and the legal framework in place. In Kenya however, though union elections are carried out every five years, union constitutions, operating legal regime and the actual process do not render the process democratic and transparent and hence, the outcome does not reflect the members' interest. Due to the weak institutional frameworks, unionists are able to corruptly influence democratic processes in their organizations hence betraying the very ideals upon which they are founded.

5.2.5.1 The Legal Regime

The legal regime regulating trade union matters falls within the Trade Unions Act Cap 233 and, whereas it is long on registration, operationalization and deregistration of a union, it is short on the mechanisms for ensuring free and fair electoral processes (Mwamodo et al. 2003: 30). Once the Registrar of Trade Unions calls elections when they fall due and requests the Ministry of Labour to oversee the same administratively, he does not have further powers of overseeing the fairness of the actual process and only waits to register the new officials as communicated by the Ministry officials. The lack of a clear electoral guideline has perpetrated electoral fraud and malpractices thus undermining the objective of democratic dispensation (Auret & Barrientos, 2006:114). A case in point is the registration of a faction of the current officials of TAWU even when a dispute existed challenging the election due to last minute change of election venue resulting to non participation by the challengers⁴¹.

5.2.5.2 The Union Constitutions

The Deputy Executive Director of KHRC also pointed out that, whereas union constitutions are supposed to engender and provide for democratic practice in the organization, the opposite holds true as they do not foster fair competition and tend to favour the incumbents. He cited the common clauses in virtually all unions including the three unions under study which require external candidates wishing to compete with incumbent official to pay a huge fee before being cleared by the same person whom they are competing with. This is more common for executive positions like Branch secretary, Secretary General, and Treasurer – Generals. He

⁴¹ Field interview from Branch secretary KUCFAW - Thika

contented that placing financial barriers for aspiring candidates stifles democracy and deprives members of the freedom to choose candidates whom they consider popular and capable⁴².

He further observed that unions' constitution had no term limit for elective office holders. Power-hungry leaders⁴³ continue clinging to power by manipulating the flawed electoral laws⁴⁴ and sometimes relying on state patronage. Government policies since independence aimed at having a compliant union movement which identified with its interests, so helping 'cooperative union leaders' to remain in office was within its agenda irrespective of the wishes of the unions rank and file. To the NGOs therefore, corporatist unions had nothing to offer the members thus prompting their intervention.

5.3 Why the Opposition?

Drawing from the responses received from unions, employers and employers representatives, the main reason for opposing NGOs intervention in labour affairs tended to centre on their lack of mandate, whereas others like the employers marketing and regulatory bodies – KFC, and EPZA were more concerned with the mode of operation than anything else. Government positions on the matter seemed ambivalent relying on most occasions with the consensus view of the employers and workers organization⁴⁵. However, what also emerged from the unions' position was that, though they are vocal in their opposition of the intervention (ILO, 2005:9), this was not the consensus view of labour movement in Kenya and neither was it for any individual union.

Opposition was voiced in personal views of individual union leaders based on the impact the NGOs intervention had on their continued hold on to power and, was not representative of the views of the lower union hierarchy. This was indeed confirmed by responses from middle level officials from the three unions who clearly were happy with NGOs intervention and collaborated with them on many union matters despite opposition from their top leadership (see Appendix E). Their only concern was sometimes how the NGOs conducted themselves otherwise their aims were constructive. Some of the specific reasons advanced were as follows;

5.3.1 Lack of Mandate

The Deputy Secretary General COTU and Principal Executive of the FKE seemed to question the NGOs mandate and capacity to deal with labour issues by observing as follows, 'who do they represent? , what structure do they have to operate?'⁴⁶ (Braun & Gearhart, 2005:211-212). They argued that NGOs are registered under the NGOs coordination Act of 1990 and this does not confer them

⁴² See previous discussion on union organization and leadership

⁴³ Secretary Generals of KCAWU, KEWU, KGHWU, and BIFU have been in office for more than three terms.

⁴⁴ All elections for National Positions are held through the delegates system and are characterized by bribery of official to influence voting for incumbents. In TTWU constitution, delegates from seven inactive branches participate on an equal footing with the active ones thus influencing the outcome of the elections in favour of the incumbents.

⁴⁵ Having secured a favourable industrial relations framework and cooperative social partners the government was content to stay in the background.

⁴⁶ See Barrientos & Dolan, 2006:144, for further discussions.

any mandate to represent workers whatsoever unlike unions whose mandate in industrial issues was explicit under the Trade Disputes Act Cap 233.

The employers' view concurred with the position of the unions as confirmed by remarks of its Principal Executive officer, who stated thus,

Box 7

Workers issues are professional matters which must be handled with care bearing in mind the statutes in place, the CBA, Recognition Agreement, and customs and practice... The danger with the NGOs is that they forget the statutes are there and include extra issues that are likely to incite, employers, unions and workers.

Both officials averred that the industrial relations charter and the Trade Act cap 234 recognize only three social partners (Governments, Employers and Trade Unions) in matters of industrial relations and hence NGOs have no role to play.

The desire to monopolize industrial relation matters on the basis of the law showed the extent to which the social partners were contended with the state's ascribed roles and how determined they were in ensuring that they 'fulfilled their part of the bargain' to the state by ensuring that states interests in labour affairs were not 'betrayed' (Hashim, 1994:17). This corporatist approach to labour relations was however opposed by the branch officials who characterized some of the laws like the industrial relations charter 'as public relations document introduced by the government in 1962 to control the union and concretized by the Trade Unions Act'⁴⁷ while others viewed the industrial relations charter 'as quite limiting in an era of globalizing world'⁴⁸.

5.3.2 Single issue and ad-hoc organizations

The union representatives⁴⁹ stated that they had problems dealing with NGOs because they are single issue and ad-hoc based organizations whose impact could not be sustained as opposed to unions whose vocation does not change because they are member based organizations. He explained that dependency on donor funding by NGOs made them operate in this manner, which clearly contrasts with the union whose funding derives from the membership and hence is sustainable. He noted that due this kind of approach, they cannot deliver on workers interests because most issues are of long term nature requiring long term solutions which can not be delivered by organizations whose agenda takes a short term perspective. This argument resonates well with reasoning by Spooner (2000) on some of the constraints to Trade union – NGO cooperation.

With regard to the above, KHRC and LARC represented by the Deputy Executive Director and the Program Officer respectively stated that their agenda in labour matters was not to take over the unions role, rather it was to 'animate the struggle' and let the workers to take ownership of the process after becoming

⁴⁷ Interviews with branch secretary KUCFAW- Thika

⁴⁸ Interviews with Chief Shop Steward DMK

⁴⁹ Views from Deputy Secretary-general COTUK,

aware of their rights. They averred that, they supported trade unions but it is upon workers to decide the leadership they desired 'so if they wished to replace their incumbents so be it'. They also observed that the issue of them dealing with trade union matters from a long term perspective did not arise because each of the organizations had their own space from which to address workers issues. He felt that the objectives of the unions are the same as those of the NGOs and the best way was to let each organization pursue them from their space. In this regard, unions could deal with micro – level, i.e. CBA, while they addressed the broader issues of mitigating the adverse effects of capital on labour from an advocacy perspective. This position is shared by Wedderburn (2003:4) in her address to the first Caribbean labour conference in 2003.

5.3.3 Lack of Democracy and Accountability

The Deputy-Secretary General of COTU questioned how unions are expected to work with organizations which did not subscribe to democratic ideals and have no accountability mechanisms. NGOs have no membership to account to apart from their donors which gives them wide latitude on their operations. This was clearly incompatible with the union's democratic dispensation which allows the membership to audit the performance of their leadership through periodic elections. The COTU official cited their refusal to join the HEBI steering committee meant to come up with a standard code of conduct for the flower sector due to refusal by the coordinators of the proposal, KFC and the NGOs, to agree to a transparent and accountable framework (Barrientos & Dolan, 2006:144) specifying the roles and obligations of each stakeholder and the leadership structure.

However, the views of the Branch officials of both KUCFAW and TTWU seemed to differ on the democratic practice of the unions as expressed by the national officials contending that, unions were no better than NGOs on this front. Theirs was more of rhetoric than reality as shown by the following comments by the branch officials;

Box 8

Yes NGOs are not democratic but also unions themselves are not democratic either, democratic elections are only held up to branch level ... in practice some unions are 'owned' by the individuals that's why branch people who hold different views cannot make it at national level elections. In actual fact unions may be worse than NGOs⁵⁰.

5.3.4 Mode of operation

Unions both at national and branch level who were interviewed and employers including the federations official were unanimous in their views that NGOs mode of operation sometimes made unions unwilling to work with them because the

⁵⁰ Comments of the branch Secretary KUCFAW – Thika

language used was inflammatory and seemed aimed at undermining the leadership and strength of unions which was unacceptable.

The Deputy Secretary General of COTU observed that most NGOs 'worked behind our backs' because they knew what they were doing was encroachment. He added that, 'if they came out openly and told us what they wanted then we would work out programmes jointly without causing problems'. He also noted that they had no problems with 'NGOs like Action Aid and others who were doing a good job and were above board, but had problems with those who were 'inciting' workers and then leaving them when they had problems with their employers for participating in illegal strikes like was the case at the garment producing EPZs in January 2003.

His views were corroborated by those of the branch secretary TTWU- Nairobi who while acknowledging that he was working with the NGOs at his level expressed disapproval with their capacity building and awareness raising methods which though welcome, amounted to inciting workers to rebel against the union leadership and the employers. He added that the use of words like, 'if they don't work for you vote them out' and 'unions are corrupt and inefficient' were not helpful to the members. They should instead concentrate more on enlightening workers on knowing their rights and how to defend them. However his counterpart in Athi-River was comfortable working with NGOs as a civic educator which he began before 2003. This was also the case for the DMK shop steward and the branch secretary KPAWU in Naivasha who were and still are active resource people for the NGOs despite opposition from their national unions. At DMK, the chief shop steward confirmed that, it is them as workers who invited the NGOs through writing after they realized that the national office was not ready to assist them and hence, the argument of intruding through the back door did not hold.

The FKE official concurred with the unions concern noting that NGOs were fond of promising a lot to workers but when they fail to deliver then they left the matter to the unions and the employers to deal while now posturing that 'unions are inefficient and cannot guarantee your protection'. Such an approach only helped to tarnish the image of the tripartite partners in the eyes of their constituents. He also supported the union's argument that NGOs should not interfere with the workers without consent of the union leadership as it had happened in the three sectors under study. For FKE, they are willing to work with NGOs but would not accept direct dealing with their membership without the federation's knowledge (Braun & Gearhart, 2005:218).

The chief executive of the Kenya Flower Council also supported the position taken by the employers and unions regarding the NGOs mode of operation stating that they needed to drop their agenda of 'my job first to my country first' if they really wanted to be taken seriously.

5.3.5 Leadership threatened

The union leadership at the branch level was clear in their responses that, the so-called interference by NGOs in labour affairs was propagated by the national leadership in cahoots with some investors who felt that through capacity building particularly on their rights, workers stood a better chance of demanding accountable and transparent leadership (Mwamodo, 2003:3), which were the very issues that had made them to invite the NGOs. The view was best captured by the branch secretary KUCFAW, who noted that, 'the tripartite power of control was threatened by the NGOs and they rallied together to defend the workers from

assuming their power by invoking the industrial relations machinery which does not recognize NGOs'. In the view of branch secretary TTWU Nairobi, 'the failings of individual unions to serve their members were being made to appear as if the entire labour movement was under siege from NGOs', referring to the active opposition by COTU boss who is also the Secretary General of KPAWU and in whose turf the NGOs had intervened.

The officials further stated that the actions of the national officials to ward off the NGOs action which included frustrating the known union-NGO collaborators were evidence of this fear of being ousted. For instance, Secretary General of TTWU wrote to branch secretary warning him about associating with NGOs (see appendix F). Others included letters to the management of the EPZs asking them not to release workers to attend workshops organized by NGOs ostensibly to disrupt industrial peace (See Appendix G). In DMK, the Secretary General KPAWU while discrediting the KHRC activities in the company wrote to the management of DMK stating thus,

Box 9

On a recent visit to the farm... we were very impressed in the manner our shop stewards openly expressed the good co-operation between the management and the workers. As far as we are concerned as responsible Trade Union in the country, we assure you of our total co-operation and support and we have no complaints or any problem with the company as far as workers satisfaction at work is concerned (KHRC, 2001:26).

The FKE representative was even more succinct when asked whether he would welcome the NGO intervention observing that, 'you are asking NGOs to come and declare me redundant?', it is inconceivable'. This clearly showed that opposition to NGOs involvement had more to do with personal concerns of those opposing than real adverse effects on the Labour Movement.

NGOs on the other hand, denied having any agenda of ousting union leaders stating that their brief was only to create rights awareness among the workers and let them decide on what they wanted. These were the sentiments expressed by the program officer LARC and Deputy Executive Director KHRC, who further added that they recognized the representative mandate of unions (Wedderburn, 2006:4) and neither of them was interested in interfering with the same, but noted that they had a duty to assist workers if they came for assistance on issues of rights violation, as labour rights were human rights too. After all, they quipped, 'where were they (read unions) when the workers right were being violated?' They also denied inciting workers to strike at both the garment producing EPZs and the cut flower industry, wondering, 'who are we to call the workers to strike? It is not our mandate'. They saw their role as that of building a just relationship between workers and management and not fomenting fights explaining that the leadership feared losing their position because they had no mandate from the workers (Mwamodo, 2003: 15).

5.4 Impact and response of NGOs intervention

The impact of NGOs intervention in labour affairs in the three sectors under study has been varied depending on the stakeholders involved and this has influenced their response to the interventions. The response is discussed as follows;

5.4.1 Workers

Workers across the three sectors – DMK; garment producing EPZs; and cut flower farms overwhelmingly welcomed the NGOs intervention in addressing their labour problems. Interviews from the Branch secretaries of KUCFAW, KPAWU and TTWU indicated an enthusiastic response by workers to participate in NGOs facilitated workshops so as to be aware of their rights. For instance at DMK, the branch secretary reported that between 2006 and June 2007 workers benefited from 12 one day seminars involving 30 workers during each session.

Table 3
Recognitions Signed

Company	Total workforce (average)	Membership (% of total)		Other changes
		1999	2002	
Macadamia Nut Co.	5000	10%	100%	-Signed Recognition -Signed CBA
Kenya Nut Co.	1200	25%	95%	-Signed CBA since there was already a Recognition. - Only CBA with a retrenchment clause.
British American Tobacco Co. (Thika Leaf branch Division)	700	0%	100%	- Incorporated the branch in the entire country's CBA as they had been excluded. - elected their own Shop Steward.
Thika Coffee Mills Ltd	1200	0%	100%	- signed Recognition Agreement - Signed CBA

Source: Developed by Author from Field Interviews and records from branch secretary – KUCFAW.

Increased awareness by members on their rights and how to defend them resulted into workers joining union's en-masse in the three sectors and also led to unionization in nearby companies. According to interviews with the shop and branch union officials of KPAWU, TTWU and KUCFAW, the situation was as follows; At DMK, membership rose from a 65 percent in 1999 to between 85 – 95 percent in 2001; In the EPZs, membership went up from 4800 before December 2002 to 18000 by February 2003 which was more than 100 percent increase although it has since declined. In the Cut Flower Sector, membership rose from 3400 to 15000 between 2001 and 2004 which represents nearly a third of the entire workforce⁵¹.

The impact of NGO campaigns in some of the sectors made workers to be more motivated to join the unions thus enabling the union to gain recognition in more companies and hence become stronger. This was particularly the case for the following companies which are near DMK in Thika as shown in table 3 above.

In the EPZs, successful recruitment campaigns led to the signing of recognition Agreements and CBA⁵² with seven companies in the Athi- River Zone thus significantly improving the freedom of association and conditions of workers.

The workers also became bolder and staked a claim in leadership positions of their respective unions during the 2001 union elections resulting in the election of officials who had a popular mandate from the workers. According to the Branch Secretary three quarters previous officials (KUCFAW) of the branch were replaced with new officials from the shop floor and three positions at the national level also taken by new officials from within the Branch. These posts were, union's National Chairman, Assistant-Secretary General and two members of the National Executive Committee thus underscoring the NGOs position that the struggle for workers rights could only be taken forward by the workers themselves (Mwamodo, 2003: 29).

At DMK, the chief shop steward and the Branch Secretary reported that long standing workers issues were resolved courtesy of the campaigns by the NGOs which included among others:

- The implementation of a job evaluation exercise which resulted into employees being paid according to their jobs rather than on a flat rate.
- Discrimination with respect to medical service for seasonal and casual workers abolished.
- The establishment of a health and safety committee to address concerns of workers.
- Service benefits for seasonal workers introduced
- Greater recognition was extended to the workers representatives at the shop floor (Oloo, 2004:172)

⁵¹ This figures for EPZs and the cut flower farms kept on fluctuating due to the flexible nature of the jobs.

⁵² The Secretary General of COTU claimed that this was the first CBA to be signed by with an EPZ enterprise in the world.

The improvement of terms and conditions at the processing section of DMK who are represented by KUCFAW resulted into an exodus of workers from the plantation section of the firm who are represented by KPAWU to KUCFAW sparking a demarcation dispute between the two unions which was however mutually resolved between the two Secretary Generals without consulting the very workers who had reported the case to them. This was out of fear that NGOs may get credit for the workers move.

5.4.2 Trade Unions

According to interviews from the branch officials of the three unions, the intervention of the NGOs strengthened the unions first and foremost, in terms of increased membership and secondly it also made them to be recognized and taken seriously by investors who had previously declined to accord them recognition as observed by the signed recognitions in Table 3 above.

Further, despite this positive impact associated with NGOs intervention in labour affairs, interviews from the branch level officers of the three unions revealed that, nationally the leadership of the unions remained opposed to the NGOs interventions as manifested by the statements of the secretary general – COTU, who while declining to attend an inspection tour of DMK called by the permanent secretary of the Ministry of Labour to ascertain the issues raised by the NGOs wrote to the Minister observing thus;

Box 10

In this respect we wish to hereby register our protest and dismay in the manner your officers are trying to destroy the well established and known industrial relations machinery which has lasted since the year 1962... the KHRC and Labour caucus are a group of individuals funded by the distractive NGOs, ... We wonder whether the Kenya Government has changed its mind in as far as the norms of tripartism are concerned (KHRC, 2001: 47)

The view at the national level of the unions contrasted sharply with the views at the branch and grassroots level where strong support for NGOs existed. They argued that 'NGOs had resources both in terms of know-how, networks and capacity' which would be helpful for advancing the workers cause⁵³. The officials further questioned the wisdom of the national official's reliance on the industrial relations charter and the Trade Disputes Act arguing that, the documents were limiting in as far as the workers freedom to associate including with NGOs was concerned. This was in their view contrary to section 80 of the Constitution of Kenya which is the supreme law in the land and Convention no.87 on Freedom of Association and Protection of the Right to Organize, which the Kenya government is committed to respect by virtue of her membership to the ILO.

⁵³ Field Interview from branch secretary KUCFAW and KPAWU

The branch officials particularly from KUCFAW and TTWU felt that to avoid confusing workers on the role of unions and that of NGOs in labour affairs; a framework needs to be worked in order to strengthen the areas of convergence and complementarity for maximum benefit of the workers.

The union further responded to the NGOs interventions by frustrating known union sympathizers – particularly the branch level officers and disrupting the activities organized by the NGOs with the support of government agencies. They also began schemes of undermining the branch leaders through sponsoring candidates against them during elections and prevailing upon workers to elect leaders ‘who can work with national officials’. Some of the leaders who endured these machinations were the shop steward DMK, whose re election 2001 was being opposed by the head office with workers being asked to elect ‘co-operative leaders’. Another was, the branch secretary TTWU Athi- branch, where the secretary general planted candidates to oppose him in the 2001 and 2005 elections due to his association with the NGOs.

Other incidents involved the disruption of workshops organized by KHRC involving workers representatives from the cut flower industry in 2004 by unknown people under the pay roll of the Secretary- General KPAWU who is also the Secretary General of COTU on the grounds that they were disrupting industrial peace (Mwamodo, 2003: 9).

Another example was the refusal by the KPAWU and COTU to participate in the HEBI initiative which sought to formulate a standard code of conduct to be applied by all cut flower investors and help stem the violations of workers rights as well as other production standards. The unions boycotted them because it involved NGOs and hence participation would have legitimized their involvement in labour affairs something which they could not countenance.

5.4.3 Employers

The response of the employers across the three sectors under study to the NGOs intervention was negative and they tried to use both formal and informal means to oppose it. The employers’ federation equally opposed the regulation relying heavily on the law and industrial relations practice. However, due to the persistence of the NGO campaigns, they gave in and started to accommodate the NGOs concerns but to varying degrees.

At DMK, the management employed threatening tactics against the workers representatives particularly its chief shop steward who they severally threatened with sacking as evidenced by this outburst from the acting managing director who was taking over in Jan 1st 2000, ‘if you don’t change your aggressive behaviour towards the company, you are going to see the back of gate 2’. On other occasion he was forced to apply for an off-day in order to attend official meeting called in the Ministry of Labour to address the dispute.

In the EPZs just like in the cut flower industry, interviews from the respective branch secretaries revealed intimidation and threats of sackings for workers who associated with the NGOs or had joined the unions as a result of NGO campaign. A manager of Alltex –an EPZ factory interviewed was categorical when asked about whether NGOs had helped to improve working relations in the company noting that, ‘they helped to destroy the name of the country as a reliable source of products for the American market’, thus confirming their well known goal of putting profits before people (KHRC,2004 :11).

5.4.4 Employers' Federations

The FKE opposed the NGOs intervention citing the industrial relations machinery which did not recognize the NGOs. They demonstrated their position by boycotting conciliation meetings arranged by the Ministry of Labour to resolve the disputes at DMK. Their position was made clear in remarks by the Chief Executive regarding the presence of the solidarity committee⁵⁴, where he dismissed the meeting as 'one with aliens' as it did not comply with the tripartite requirements. He followed up with a complaint letter to the Registrar of Trade Unions observing that, 'practically all their demands (NGOs), except a few outrageous ones like the removal of some senior managers, fell within the purview of a trade dispute'. In his opinion, members of the KHRC and labour caucus⁵⁵ should have been charged for purporting to act like trade unions contrary to the Trade Unions Act section 29A, noting that the same 'amorphous bodies' were now harassing the cut flower industries. He asked, 'why should trade unions be subject to the rigorous application of the law when social interlopers are permitted by the government to usurp their role?' He concluded by stating his organizations view that, the government's role in giving audience to the NGOs was inconsistent with the law and likely to undermine the industrial relations machinery and thus 'sought guidance' from the government so that he could advise the Federations members 'on how to deal with these disruptive elements' (KHRC, 2001:46).

However, when it came to resolving the labour problems highlighted by NGOs in the cut flower sector, the Federation's position was conciliatory as indicated by their acceptance to participate in the HEBI initiative⁵⁶ whose stakeholders included among others the NGOs involved in the campaign for labour rights within the flower sector.

5.4.5 Government's position

The government's position as represented by the Ministry of Labour, the Ministry of Trade and Industry and the EPZA seemed to favour the investor's position and incidentally the trade unions thus confirming its longstanding policy of encouraging investments through the creation of an enabling environment devoid of industrial instability (Apiyo, 2000: 21, KHRC, 2004:32). The support it lends to the investors was manifest in the way it reacted initially to the NGO campaigns at DMK and in the EPZs during the Jan 2003, although it also seemed to be cognizant of the need for the social partners⁵⁷ to ensure that they also fulfilled their respective mandates.

At DMK, this position was represented in a letter from the Registrar of Trade Unions responding to complaints of interference by NGOs in the labour affairs by the executive director FKE, where he observed thus,

⁵⁴ A body consisting of a coalition of NGOs together with branch and shop floor officials of KUCFAW which was monitoring and campaign against workers rights violation at DMK.

⁵⁵ NGO involved in Campaigns for improvement of labour rights in the Country.

⁵⁶ A body set up in 2003 to address mounting complaints of worker rights violations in the flower sector and quality standards which threatened to damage the image of the sector in the destination markets.

⁵⁷ Term used to refer to the three tripartite partners in industrial relations system in Kenya namely, the government, FKE and COTU K.

Box 11

... I would like to inform you that, in this age of globalization in all sectors of human Endeavour, issues such as child labour, conditions in the working place, health of the worker and generally, the workers environment if not attended by relevant bodies and organizations can easily attract the attention of civil society such as KHRC and Labour Caucus. Such bodies are bound to use their foreign correspondents to give our country a negative image and our products may be blacklisted and boycotted by foreign consumers if it is established that our farmers do not pay attention to the factors I have mentioned above (KHRC,2001;47).

The letter concluded by terming the activities of the solidarity committee as an 'invasion of the labour movement by various types of interlopers and busy bodies' and urged that it be 'stopped at all costs for the sake of peace in the industry and the labour movement in the country'. (KHRC, 2001: 47).

At the EPZs, the same initial hard-line position was seen in the way the government reacted to the outbreak of industrial strikes in the sector in Jan 2003 where they dismissed them as being the handiwork of the NGOs with the Minister for Trade and Industry describing the strikes as, 'barbaric and an act of hooliganism', thus clearly trashing the issues which the NGOs were raising on behalf of the workers.

At DMK, this hard-line position was manifested by subtle threats issued to the Chief Shop Steward who was instrumental in organizing the NGO campaigns at the shop floor, by the Minister for Labour and Minister for Internal Security in late march 2000⁵⁸, that 'they could not guarantee his security if he persisted in his struggles for the rights of workers',. This position confirms the government's obsession of protecting capital at the expense of labour (KHRC, 2004:32).

However, this position changed when it became clear that the issues they were raising were pertinent and urgent, the government changed tack and started to give audience to NGOs and their agents. Within the EPZs it clarified to the investors that the sector was expected to facilitate the exercise of freedom of association among the workers and that it was not exempt from the same as had been previously thought. It further urged compliance with the labour laws through enhancing the regularity and thoroughness of the labour inspections in the zones. It facilitated the negotiation of a CBA involving seven companies where the unions had managed to garner the 51 percent membership to qualify for recognition by the companies⁵⁹.

At DMK, the government's accommodation of the NGOs demands was manifested by the acceptance of the Permanent Secretary to organize a joint tour of DMK factory on 10th November, 2000, where the NGOs and the tripartite partners including the workers were expected to articulate their concerns. This signalled the recognition of NGOs as important actors in the labour movement in spite of the absence of any formalized structures to facilitate the same. The tour went on as

⁵⁸ The threats were issued during a visit to DMK by the two Ministers.

⁵⁹ Interview with the Deputy labour Commissioner during field work.

planned although the trade unions led by the Secretary General COTU marched out of the meeting because of the presence of the NGO officials (KHRC, 2001: 47).

In the cut flower sector, the government showed its accommodation for the NGO driven issues by accepting to participate in the HEBI initiative where the NGOs were key stakeholders having been responsible for the advocacy campaigns which prompted the formation of the initiative. This was a further demonstration of the government's willingness to work with them.

5.5 Conclusions

It has been shown that unions are weak and unable to effectively defend their members. The interests of their leadership override those of the membership due to their privileged position conferred upon them by the industrial relations machinery and practices. This is what has created a gap between the leadership and the membership which the NGOs have moved to fill.

In opposing NGOs intervention, unions have claimed that they lack mandate, democratic and accountable structures and have questionable operational approach among others. On their side, NGOs have contended that labour rights are human rights, a contention which seems to have legitimized their intervention leading to the adoption of an accommodative approach by employers and government.

It has also been shown that although unions continue to oppose NGOs intervention despite the positive impacts it has had some of which include the strengthening of the membership base and recognition by more employers, the rank and file welcome the NGOs because they have helped to resolve long standing issues and enhanced their freedom to associate and defend their rights. It is the top leadership who continues with the opposition because NGOs intervention threatens their continued hold of their aristocratic positions. Further, there is no consensus view among the unions on how they should relate with NGOs.

In conclusion, unions as well as employers however foresee chances of smooth cooperation with NGOs provided that an enabling framework is put in place and NGOs adopt an approach that is sensitive to their concerns. This optimism is reinforced by the NGOs stand that, they are out to complement unions work and not take over their roles.

CHAPTER 6: FINDINGS AND CONCLUSIONS

The paper began by asking whether a case for cooperation between unions and NGOs is feasible. Evidence suggests that it is possible although some challenges exist. First, unions as currently constituted are incapable of cooperation because they are a creation of state policy and agenda and are bound by the obligations inherent in state incorporation

Through state recognition, granting of monopolistic status, and attribution of public status, unions have shifted their loyalties to the service of selfish concerns (Hashim, 1994:71). The leadership is thus alienated from the rank and file. And as shown in our analysis using the identity model (Hyman, 1994), Kenyan unions are weak, undemocratic and lacking in power to push the workers agenda. They are interested with perpetuating themselves in power using state patronage. Cooperation under these circumstances threatens their privileged status and will continue to be resisted even when prospects for the membership appear promising.

Secondly, though the government is cognizant of the need for existence of fair labour conditions, it prefers the status quo because it guarantees and encourages increased FDI necessary for economic development.

Thirdly, NGOs abrasive interventionist approach creates suspicion among unions which fuels continued resistance to cooperation.

But is there hope for cooperation? , Yes, the political and economic framework under which the current industrial relations machinery was contrived has changed. Political pluralism of 90s has created space for a questioning workers force led by mid level union officials who demand a voice for the workers. They have allied themselves with NGOs who see their vocation as going beyond the traditional humanitarian agenda into the arena of human rights of which labour rights are one of them

Further, contrary to unions fears, NGOs are not out to usurp their responsibilities but to complement them in a globalizing world. They also recognize their historic role of championing the struggle for workers rights and besides, the governments accommodative approach points to the relevance of having an inclusive strategy where the interests of all the stakeholders are taken into account.

This is informed by the government's realization that, corporatist model of the 1960s and 70s is inadequate and unsustainable in a globalized workplace with heightened surveillance by human rights NGOs and labour rights advocates. An accommodative approach applied on ad-hoc basis where NGOs contributions are recognised could still guarantee its long term economic objectives while avoiding adverse publicity that may come with locking out the NGOs.

However and as suggested by union leadership and employers organizations, this needs to be carried within a well established framework that outlines the *rules of engagement* in order to; obviate the monopolistic hold on labour affairs by the

social partners, regularize NGOs partnership, and cultivate an atmosphere of mutual trust⁶⁰ and respect between the stakeholders.

⁶⁰ The case of COVERCO (Commission for Verification of Codes of Conduct) in Guatemala is an example of how trust, patience and understanding can help foster sustainable collaboration between unions and NGOs (Braun & Gearhart, 2005:219).

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ANNEXES

Annexes A. List of interviewees

No.	Name	Organization	Position
1	George Muchai	COTU (K)	Deputy Secretary – General
2	Wilfred Wambua	KUCFAW	Branch Secretary
3	Francis Muthuri	TTWU	Branch Secretary
4	Wilfred Ndolo	TTWU	Branch Secretary
5	Otieno Bunde	KPAWU	Branch Secretary
6	Daniel Kyule	Del Monte Ltd	Chief Shop-Steward
7	Steve Ouma	KHRC	Deputy Executive-Director
8	Caroline Kasina	LARC	Program Officer
9	Alex Mwathi	Alltex EPZ Ltd	Administration Manager
10	Ludovick Kezzah	Del Monte	Human Resource Manager
11	Jane Ngige	KFC	Chief Executive Officer
12	Linus Kariuki	FKE	Principal Executive Officer
13	M. Waweru	EPZA	Zone Manager
14	I.B Kirigua	MLHRD	Deputy Labour Commissioner

Source: Interviews, 2007

Appendix G

INDUSTRIAL RELATIONS CHARTER

NAIROBI

Date: 30th April 1980

A PREAMBLE

The Government of the Republic of Kenya, the Federation of Kenya Employers and the Central Organisation of Trade Unions (K):

1. Considering that at their Tripartite Meeting held in Nairobi, on 4th May, 1976 convened by and under the chairmanship of the Minister for Labour, they agreed to endeavour to prepare a Revised Industrial Relations Charter, based on the spirit of the Original Charter of 1962.
2. Realising that it is in the national interest for the Government, Employers and Workers to recognise the importance of consultation and co-operation to the efficiency and productivity of an undertaking and that progress can only be made on foundation of good terms and conditions of employment, which include security of employment and income, and the improvement of workers' conditions of service.
3. Desiring to make the greatest possible contribution to the success and prosperity of Kenya, agreed upon the following Revised Industrial Relations Charter.

B AGREED RESPONSIBILITIES OF GOVERNMENT, EMPLOYERS AND WORKERS:

I All Parties Agree

- 1 That affirming their faith in democratic principles, they agree to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration in accordance with the laid down machinery;
- 2 That in case there should be a strike or a lockout the provisions of the Parties agreement and those of the Trade Disputes Act shall be strictly adhered to;
- 3 That they undertake to promote maximum co-operation to abide by the agreement mutually entered into;
- 4 That they undertake to observe strictly the grievance procedure outlined in the Recognition Agreements which will ensure a speedy and full investigation leading to settlement;
- 5 That they will educate the Labour Officers, the Management Personnel and Employees regarding their obligations to one another for the purpose of good industrial relations;
- 6 That there shall be constituted the National Joint Consultative Council consisting of representatives of the Federation of Kenya Employers and the Central Organisation of Trade Unions (Kenya) to advise the Minister for Labour on general Industrial Relations matters. Such Council shall have the power to set up a Demarcation Committee to adjudicate on demarcation disputes. Appeals of the Council's demarcation decisions shall lie with the Industrial Court through the established machinery;
- 7 That they respect one another's right of freedom of association;
- 8 That they will deal promptly with all correspondence between them, co-operate fully with the conciliators and investigators; facilitate the signing of Form A as a means of speeding up the final settlement of disputes; and avoid the use of abusive and derogatory language;
- 9 That they will not engage in any activities which are contrary to the spirit of this Charter;
- 10 That there shall also be constituted a Tripartite Consultative Council under the Chairmanship

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ship of the Minister for the time being responsible for Labour on matters affecting the economy in general and employment matters in particular. The Council shall determine its own rules and procedures;

II The following will be excluded from union representation:

- 1 Persons who are formulating, administering, co-ordinating, and/or controlling any aspects of the organisation's POLICY.
- 2 Staff who perform work of a confidential nature as shall be defined by a Tripartite Committee.
- 3 Any other category of staff who may in the case of any particular undertaking, be excluded from Union representation by mutual agreement.

III Government Responsibilities

- 1 That the Government shall ensure speedy settlement of disputes at all stages;
- 2 That the Government undertakes to enter into joint consultation with both the Federation of Kenya Employers and the Central Organisation of Trade Unions (Kenya) on tripartite basis on all matters affecting employment policy, Labour Administration through the established statutory boards or other established organs;
- 3 That the Government will, as a matter of policy, promote Industrial trade Unionism; that is trade unions organised on the basis of a broadly defined industry irrespective of the craft, occupation or trade in which the workers are engaged. In this connection, it will, in co-operation with the Federation of Kenya Employers and the Central Organisation of Trade Unions (Kenya), encourage conditions which would progressively achieve industrial trade unionism. A list of Industrial groupings will be established and attached to this Charter as an appendix.
- 4 That the Registrar of Trade Unions shall ensure that the definition of membership coverage provided for in each union's constitution shall be defined as clearly as possible to avoid overlapping of such Trade Unions' spheres of activity. In this connection, before a trade union is registered the following procedure shall be adopted:
 - (a) The recommendation from the Permanent Secretary to the Registrar of Trade Unions must state that the Minister for Labour has been personally consulted and has approved the recommendation.
 - (b) The recommendation from the Central Organisation of Trade Unions (K) must be accompanied by a resolution of a properly constituted Executive Board of COTU supporting that recommendation.
 - (c) The recommendation from the FKE must be accompanied by a resolution of the FKE Management Board.
- 5 The Government shall display in conspicuous places in Government offices the provisions of this Charter and shall impress upon its officers the contents of the Charter and shall take appropriate action where enquiries reveal that the spirit or the contents of this Charter have been contravened.

III Employers' Responsibilities

- 1 That each employers' organisation, group of employers or individual undertakings, shall accord recognition to trade unions appropriate to their industries as negotiating bodies for the employees of such organisations, groups or undertakings in respect of terms and conditions of employment.
- 2 That employers shall not engage in such practices as
 - (a) Interference with the rights of employees to enrol or continue as Union Members;
 - (b) Discrimination, restraint or coercion against any employee because of recognised activity of trade unions;

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- (c) Vicimisation of any employee and abuse of authority in any form;
 - (d) Abusive or intemperate language;
 - (e) Shall generally respect the provision of the ILO Convention No. 98 concerning application of the Principles of the Right to Organise and to Bargain Collectively.
- 3 That employers shall take action for:
 - (a) Settlement of grievances and
 - (b) Implementation of settlements, awards, agreements, decisions and orders, as speedily as possible.
 - 4 That in cases of misconduct employers shall distinguish between misconduct justifying immediate dismissal and those where discharge must be preceded by a warning, reprimand, suspension or some other form of disciplinary action and shall arrange that all such disciplinary action shall be subject to appeals in accordance with the parties Agreements or the Law.
 - 5 That every employee has the right to approach Management on personal problems and employers shall agree always to make accredited representatives available to listen to the day to day problems of employees.
 - 6 That employers shall impress upon their staff the contents of this Charter and take appropriate action where Management inquiries reveal that the spirit and/or contents of this Charter have been contravened. Management should give full publicity on their Notice Boards to this Charter.
- IV Union's Responsibilities**
- 1 That the Unions shall discourage any breach of the peace or civil commotion by Union members.
 - 2 That the Unions' representatives shall not engage or cause employees to engage in any Union activity during working hours, unless as provided for by law or by agreement.
 - 3 That the Union shall discourage such practices as:
 - (a) Negligence of duty;
 - (b) Careless operation;
 - (c) Damage to property;
 - (d) Interference with or disturbance to normal work;
 - (e) Insubordination;
 - (f) Abusive or intemperate language; and generally shall respect the provisions of the ILO Convention No. 98 (that is the Right to Organise and Collective Bargaining).
 - 4 That the Unions shall display in conspicuous places in the Unions' offices, the provisions of the Charter and shall impress upon their officers and members the contents of the Charter and shall take appropriate action where Unions' inquiries reveal that the spirit or contents of this Charter have been contravened.
 - 5 That the Unions shall maintain at all times a high degree of Union Membership in enterprises.

C Recognition

It is agreed in principle that the Model Recognition Agreement attached to this Charter as Appendix "A" is hereby accepted as a guide to parties in all future agreements and that negotiations shall commence on the basis of the Model Recognition Agreement and a Joint Machinery shall be set up as may be appropriate to the particular Industry or undertaking; such machinery shall ensure expeditious settlement of trade disputes.

D Employment Policy

The provisions of the ILO Convention No. 111 concerning Basic Aims and Standards of Social Policy adopted in June, 1962 Article 14, shall apply as follows:-

- 1 All parties to this agreement shall aim at abolishing all discrimination among workers on

grounds of race, colour, sex, belief, tribal association or trade union affiliation including discrimination in respect of:

- (a) Admission to Public or Private employment;
 - (b) Labour legislation and agreements which shall afford equitable economic treatment to all those lawfully resident or working in the country;
 - (c) Conditions of engagement and promotions;
 - (d) Opportunities for vocational training;
 - (e) Conditions of work;
 - (f) Health, safety and welfare measures;
 - (g) Discipline;
 - (h) Participation in the negotiation of collective agreements;
 - (i) Wage rates; which shall be fixed according to the principle of equal pay for work of equal value in the same operation and undertaking.
- 2 The foregoing provisions of this article shall be without prejudice to such measures as the Kenya Government may deem necessary or desirable for the safe-guarding of motherhood and for ensuring the health, safety and welfare of women workers and working children.

E Strikes and Lockouts

It is agreed that the Government, the Federation of Kenya Employers and the Central Organisation of Trade Unions (Kenya) shall seek to bring to an end such strikes or lockouts which may arise from, or be caused by any questions, difference or dispute, contention, grievance or complaint with respect to work, wages or any other matter. Machinery established in accordance with provisions of the Parties Recognition Agreements and/or of the Trade Disputes Act, should be strictly adhered to.

F Intimidation

It is hereby agreed that employees and management shall enjoy adequate protection against any acts of interference by each other or each other's agents or members. Such protection shall apply more particularly in respect of such acts as:-

- (a) Would make the employment of an individual employee subject to the condition that he shall or shall not join a union;
- (b) Would cause the dismissal of an employee by reason of union membership or acts of participation in union activities outside working hours or with the consent of the employer, within working hours;
- (c) The drawing up, issuing or publication of discriminatory lists or any action which will prevent a supervisor or shop stewards from carrying out his normal functions.

G Joint Consultation

The parties recognise that consultation and co-operation on the basis of mutual confidence are essential contributions to the efficiency and productivity of an undertaking and also contribute to the social economic well being of all.

It is therefore, agreed that:-

- 1 Full support will be given by the parties to the constitution and the regulations of the National Joint Consultative Council, Works Councils and to all other joint machinery or boards set up under the law or Recognition Agreements in the various industries throughout Kenya;
- 2 Encouragement shall be given to voluntary agreements between the parties;
- 3 Management shall take appropriate measures to facilitate the proper functioning of joint machinery by making available facilities for meetings and in appropriate cases, the staff essential thereto including allowing representatives of the employees the necessary time,

- within reason, to attend such meetings without loss of pay.
- 4 It is clearly understood, however, that the employees' representatives, not being full time paid officials of the unions, are first and foremost employees of industry and as such their first and prime responsibility is to carry out the duties assigned to them by the employer;
 - 5 (a) Means should be readily available whereby any questions which may arise affecting all employees covered by the Agreement can be fully and promptly considered with a view to a satisfactory settlement;
 - (b) The recognised procedure covering negotiations and discussions between the parties should be, so far as is practicable, fully known and understood by the employees and by all members of management as well as by the Ministry of Labour Conciliators and Investigators;
 - (c) All parties shall conduct their negotiations in good faith and at a representative level.

H Press Statements

The Federation of Kenya Employers and the Central Organisation of Trade Unions (Kenya) agree to recommend to their affiliates that, during negotiations on a trade dispute, statements to the News Media should be avoided as far as possible. Such statements may be made after the conclusion of the negotiations.

The parties also agreed that letters on Trade Disputes shall not normally be copied to Ministries or parties not concerned with such disputes other than the Ministry of Labour.

Conclusion

The Government, the Federation of Kenya Employers and the Central Organisation of Trade Unions (Kenya) agree to observe and abide by the Industrial Relations Charter. The principles of this Charter shall be brought also to the notice of parties who are not affiliated to the Federation of Kenya Employers or the Central Organisation of Trade Unions by the Government.

SIGNED:

By the Minister for Labour for and on behalf of the Government of Republic of Kenya.
For and on behalf of the Federation of Kenya Employers.
For and on behalf of the Central Organisation of Trade Unions (Kenya).

Appendix H

WAGES GUIDELINES

15th February 1979

The Presidential announcement of 12th December, 1978 that wage employment will be increased by 10% in 1979 and the appeal to the trade unions to exercise restraint in their wage demands have made it necessary to modify the guidelines set forth in my letter dated 2nd August, 1977.

In 1977, wage employment increased by 5.3% while the gross domestic product increased by 7.3% at constant prices. During the same period, the terms of trade shifted for the first time in Kenya's favour. Much of the advantage, however, was short-term since the improvement in the terms of trade was mainly the result of temporary increases in the prices of coffee and tea. These have since dropped drastically. Available information for 1978 indicates that the gross domestic product increased by 5.5% while employment increased by about 5.0%.

In the coming months our economic performance will be adversely affected by the proposed increase in the oil prices and the unfavourable balance of payment. As a result, per capita income is unlikely to increase in 1979. Again, any increase in productivity is likely to be absorbed by the new employees engaged under the current tripartite arrangement on employment. Since wages are likely to absorb the full increase in productivity, there will be little scope for reducing consumer prices and rewarding the investment of additional capital. Therefore, in the event there is an increase in productivity this will be used to compensate for the adverse movement in terms of trade and for export promotion.

In the previous two tripartite agreements on employment, wage increases were frozen. However, in the present situation a total wage freeze is not possible especially when account is taken of inflation. Therefore, some wage compensation will be made to offset inflation, and in the months ahead, the compensation for cost of living increases should average about one half of the rise in the cost of living.

The following modifications to the wage guidelines are for the purpose of assisting the Court in the interpretation of Guidelines contained in my letter of 29th August, 1973. They replace those specified in my letters of 20th March, 1974, 31st January, 1975, 3rd February, 1976 and 2nd August, 1977 and will be effective retroactively from 1st January, 1979.

- Guideline (i) Productivity increases in 1979 and beyond cannot be used to justify wage increases.
- Guideline (iv) (a) Overall wage increases shall average no more than one half of the rise in the cost of living. However, higher increases should be allowed for the lower paid groups.
- (b) The compensation for price increases will be spread in equal instalments so that later year(s) of the contract period are not left without any increase.
- Guideline (x) Voluntary revisions after one year of the two year agreement will be allowed only if the wage increase stipulated in agreement fail to compensate for price increase to the extent permitted in Guideline (iv) above.

Mwai Kibaki
VICE-PRESIDENT AND MINISTER FOR FINANCE

Annexe C – Agreement between NGOs and Del Monte Kenya

VI JOINT STATEMENT TO CALL OFF THE BOYCOTT CAMPAIGN ON DEL MONTE LIMITED PRODUCTS 3rd March 2001

December 2000, the Solidarity Committee with Del Monte Workers and Del Monte Kenya limited management held a press conference in which we announced the suspension of the campaign to boycott the Del Monte Kenya Products. This position had been adopted following the negotiations that started between the parties involved, namely Solidarity Committee with Del Monte Workers, Centro Nuovo Modello di Sviluppo, Del Monte Management and the Del Monte workers. Since then we have had a further series of discussions to address all the issues which had been left pending.

We are happy to announce that our discussions have now yielded recommendations on how to attend to the issues which had been raised by the campaign. This has led to the development of an improvement plan that is acceptable to all the workers and the management.

The plan addresses the following issues:

1. **Social development:** Within which the company undertakes to invest in the social facilities like the schools, health, education and many other investments that shall benefit the workers and those living in the company neighbourhood. The unique approach in this is that the company shall establish common working structures with the neighbourhood communities. This innovative initiative has already started in the Ndula Settlement scheme.
2. **Workers Rights and Trade Union Rights:** Within this initiative, Del Monte Kenya Limited management repeats its commitment to respect and to support the workers right to organise. The company shall therefore continue providing the appropriate operational infrastructure for union officials.
3. **Environmental Rights, Health and Safety:** Del Monte has always appreciated the importance of sustainable use of land and other resources. The company has therefore undertaken to have integrated farming methods that shall ensure sustainable use.

Page 1 of 3

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COMMISSION

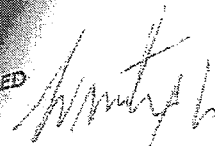
4. **Wages and Benefits:** Del Monte has undertaken to give all workers remuneration that is just and compensate them for their work. Restructuring has since then been done to compensate those who had been underpaid or placed in categories that are below their real job groups. The process of Job Evaluation has also commenced which defines all jobs for the company and assigns the correct grades.

The Solidarity Committee with Del Monte Workers and Centro Nuovo Modello di Sviluppo, welcomes the improvement plan embarked upon by DMKL as an innovative and timely initiative. This plan is a clear sign of the commitment by Del Monte to be a responsible corporate citizen and sets an example that should be emulated by other companies.

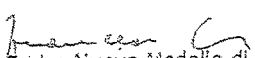
There are several key lessons that emerge from this development, namely:

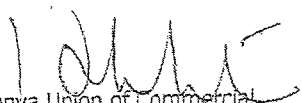
- In addition to the essential contributions of the tripartite members in ensuring the workers rights at the work place, the involvement of the civil society is crucial to root the benefits to the workers and other constituencies not represented by the Trade Unions.
- It is important for the corporate managers to ensure a more representative method of management and one that encourages industrial democracy.
- The international labour standards like the International Labour Organization Conventions, and Social Accountability Standards among others, are important in ensuring adherence to acceptable labour standards.

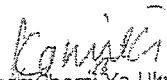
While the Solidarity Committee and the Centro Nuovo Modello di Sviluppo are calling off the boycott, we recognise that the dialogue between the workers and the management is an ongoing exercise. We have, therefore, referred several issues that emerged in this discussion to the Collective Bargaining Agreements between the company and the unions. We shall, however, do a monitoring role at the company as we are doing in other work places. We shall also facilitate the discussions between Del Monte and the neighbourhood in establishing common working structures. The social dialogue parties involved in the campaign have also undertaken to have an annual review meeting to ensure adherence to the improvement plan. We also highly recommend that Del Monte Kenya Limited pursues certification for the Social Accountability 8000 standards.



Kenya Human Rights
Commission

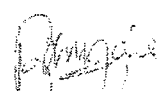

Del Monte Kenya Limited
Management


Centro Nuovo Modello di
Sviluppo



Kenya Union of Commercial
Food and Allied Workers


Chem Chemi Ya Ukweli


Kenya Plantation and
Agricultural Workers Union


Kenya Women Workers'
Organization



Shop Stewards Del Monte
Factory

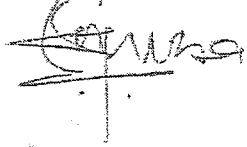

Kimathi Movement


Shop Stewards Del Monte
Plantation

Kituo Cha Sheria

Labour Awareness And
Resource Program


4C's Labour Caucus



Annexes D – Extracts of objectives of the Unions

<p>ASSISTANT REGISTRAR GENERAL TRADE UNIONS</p> <p>REGISTERED HARVEST ASSISTANT REGISTRAR GENERAL TRADE UNIONS 27/10/07</p> <p>REGISTERED CONSTITUTION AND RULES OF KENYA PLANTATION AND AGRICULTURAL WORKERS UNION</p> <hr/> <p><i>Rule No.1 Name and Registered Office</i></p> <p>a) The trade union constituted by these rules shall be known as Kenya Plantation and Agricultural Workers' Union herein referred to as the union.</p> <p>b) The registered office of the union shall be situated at the Nakuru District, Co-operative Union Building, Kenyatta Avenue which shall be the place of meeting for conducting the business of the union or any other place as may be decided by the Executive Committee.</p> <p>The postal address of the union shall be:- P.O. Box 1161, NAKURU.</p> <p><i>Rule No.2 Objectives</i></p> <p>The objectives of the union shall be:-</p> <p>a) To regulate and improve relations between employees and employers engaged in trades and industries as specified in Rule No.3 (a) of these rules.</p> <p>b) To completely secure organization within the union of all persons employed in the trade and industries as specified in Rule No. 3 (a) of these rules.</p> <p>c) To make every endeavour to obtain just and proper rates of wage, working hours and other conditions of employment, to negotiate and promote the settlement of disputes arising between employees and employers and between employees and employees by conciliation or otherwise and generally to safeguard the interests of the members.</p> <p style="text-align: center;">- 1 -</p>

Source: KPAWU Constitution, 2007: 1

CONSTITUTION AND RULES
OF THE
KENYA UNION OF COMMERCIAL FOOD AND ALLIED WORKERS.

RULE NO. 1: NAME AND REGISTERED OFFICE:

- a) The Trade Union Constituted by these rules shall be known as the KENYA UNION OF COMMERCIAL, FOOD AND ALLIED WORKERS (hereinafter referred to as the Union).
- b) The registered office of the Union shall be situated at Kilome Road, Comfood Building, Nairobi, which shall be the place of meeting for conducting the business of the Union. The postal address of the Union shall be P.O. BOX 46818, Nairobi.

RULE NO. 2: OBJECTS:

The objects of the Union shall be:-

- (a) To regulate and improve relations between Employers and employees and employees and employees engaged in the Trade and Industries as specified in Rule 3 (a) of these Rules.
- (b) To secure complete organisation within the Union of all persons employed in the trades and industries as specified in Rules 3(a) of these Rules.
- (c) To make every endeavour to obtain just and proper rates of wages, working hours and other conditions of employment, to negotiate and promote the settlement of disputes arising between Employees and Employers and between employees and employees by conciliation, arbitration or otherwise, and generally to safeguard the interests of the members.

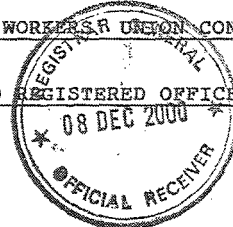
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REGISTERED

REGISTRAR
ASSOCIATION
OF TRADE UNIONS
11/12/2000

TAILORS & TEXTILE WORKERS UNION CONSTITUTION

NAME AND REGISTERED OFFICE



RULE 1.

The name of the Union shall be Tailors & Textiles Workers Union hereinafter referred to as the UNION and the address of registered office of the Union shall be Consulate Chambers Buildings, Race Course Road, P.O. Box 72076, NAIROBI. The Registered Office shall be the place at which the business of the Union shall be conducted.

RULE 2. OBJECTS

(a) To secure the complete organisation in the Union of all workers employed in the following Industries:-

- (1) Tailoring, Garment and Dressmaking
- (2) Tent, Canvas goods and sailmaking
- (3) Gunny Bags Cordage and Jute
- (4) Matting and Carpets
- (5) Mattress, Cushion and Upholstery
- (6) Knitting, Weaving and Spinning
- (7) Cotton Ginneries
- (8) Ropes and Twines
- (9) Textiles
- (10) Sewing Machine
- (11) Fishnet and Mosquito Net
- (12) Lamp Shade
- (13) Synthetic Fibres and Cotton yarn and
- (14) Allied Industries.

(b) To make every endeavour to obtain just and proper rates of wages, working hours and all other terms and conditions of employment and generally to protect the interest of members.

Source: TTWU, 2000:1

Annexe E – Union collaboration with NGOs

LABOUR AWARENESS AND RESOURCE CENTRE

Kenya Commercial Bank Building, Block B/5E & B5F
P.O. Box 22812-00100, Nairobi, Tel/Fax 251-020 551106
Email: adm@larc.co.ke



26/09/06

INTRODUCTION LETTER

To whom It may concern,

Dear Sir/Madam,

RE: WILFRED NDOLO

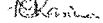
The above named is a Civic educator in Labour awareness and Resource centre (Athi River/ Kitengela region). Labour Awareness and Resource programme (LARC) is a Non Governmental Organization based in Nairobi. LARC is a national entity whose objective is to enhance the capacity of Kenyan labour force by equipping them with relevant information so that they can fully be integrated in the mainstream decision making process of the country. Likewise, LARC endeavors to provide a baseline and a forum from which workers can articulate and advocate for their individual and group rights as Kenyan citizens.

LARC is implementing The National Civic Education Programme Phase II (NCEP), otherwise known as Uraia Programme. Uraia programme focuses on five major themes:-

- i. Nation-building,
- ii. Democracy,
- iii. Good governance,
- iv. Constitutionalism
- v. Human rights.
- vi. And crosscutting issues such as rights issues related to gender, the environment and HIV/AIDS.

Any assistance accorded to our officer will be highly appreciated by the organization.

Thank you in advance


George Mwamodo
Executive Director

Source: Branch office, TTWU – Athi-River.2007

Annexe F- Intimidation of Union Branch officials

TAILORS AND TEXTILES WORKERS UNION

Affiliated to:
Central Organization of Trade Unions (K)
International Textiles, Garments & Leathers
Work's Federation
8 Rue Joseph Stevens, Bruxelles, 1000 Belgium

GENERAL SECRETARY
WILLIAM M. AKECH
T. T. W. U. (Kenya)

Head Office
Consulate Chambers
Racecourse Road,
P.O. Box 72076
Nairobi
Telephone: 020-243877

National Chairman
REV. JOEL K. CHEBI
National Treasurer
CORNEL OGUTU NYANGUN

Address all correspondence to the Secretary General
Founders: Institute of Tailoring and Cutting

Your ref.
Our ref.

Date 23rd June, 2005

The Branch Secretary,
Tailors & Textile Workers Union,
P.O. Box 240,
MACHAKOS.

Dear Sir,

REF: BRANCH MEETING.

This is to inform you that we have received information that you are planning to hold a demonstration on Saturday 25th June, 2005 at your branch office.

Be informed that there is procedure under our constitution on how such meetings should be held.

We have also received information that the said meeting is funded by Non Governmental Organizations to incite workers whose objectives you have not made clearly known to this office. You should also take note that members from that branch are from factories where we have Recognition and Collective Bargaining Agreement in place and anything administrative is suppose to be dealt with according to procedures under the Constitution of this Union. For that reason therefore, be informed that this union is not ready for a repeat of what took place in January, 2003.

Please note that I am in capacity from the Head Office advising you that the meeting should remain cancelled and should you go ahead and have the meeting then be prepared for the consequences to follow because this office will not be ready to mix their affairs with NGO'S in areas where they have established Industrial Machinery for handling workers' grievances.

Yours faithfully,


William Muga Aketch
GENERAL SECRETARY

Deputy Secretary General: EZRA OJUKA assistant Secretary General: ELIZABETH BONYONTE, National Organizing Secretary: MUSA OKANGA

Source : Branch office, TTWU – Athi-River, 2007.

Annexe G – Unions alliance with Employers

TAILORS AND TEXTILES WORKERS UNION

Affiliated to
Central Organization of Trade Union (K)
International Textiles, Garments & Leathers
Work's Federation
8 Rue Joseph Stevens, Bruxelles, 1000 Belgium

GENERAL SECRETARY
WILLIAM AKETCH
TTWU (Kenya)

Head Office
Consulate Chambers
Race Course Road
P.O. Box 10000
City Square
Nairobi
Tel: 011

National Chairman
REV. JOEL K. CHEBBI
National Treasurer
CORNEL OGUPTU NYANGUN

Address all correspondence to the Secretary General
Founders' Institute of Tailoring and Cutting

Date:

Your Ref:

24th June 2005

Our Ref:

The Managing Directors,
EPZ Companies
Athi-River,

Dear Sirs,

RE: INFORMATION OF THE CURRENT AFFAIRS

It has come to our notice that some shop stewards in the zone are colluding with NGOs and Human right activist to disrupted industrial peace that prevails in the zone.


They have been organizing secret meetings and seminars with some of the shop stewards in African Hotel in Kitengela. We have information on their plan to hold a demonstration on 25th June, 2005. This demonstration has no support of this union because the agenda is not known to anyone.

We therefore ask you not give permission to any employee to participate in that illegal demonstration. If they have any genuine reason let them raise the issue with the union.

Be warned that NGOs and Human right Activist are out to cause industrial unrest for the peace that prevails. We do not want to go back to what happened in January 2003

Your cooperation will be appreciated.

Yours faithfully,


William Mugh Aketch
GENERAL SECRETARY

c.c CEO & EXECUTIVE, EPZA

Deputy Secretary General EPZA OLUCA ASSIEN; Secretary General EPZA BANYONTE; National Secretaries: MUSA OUSANGA

Source: Branch office- TTWU, Athi-River, 2007

