

**Report on the National Workshop
on Social Dialogue in the Water Sector in Kenya**

(Nairobi, 26– 27 November 2007)

**Sectoral Activities Branch
ILO Geneva**

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Acronyms

CBO	community-based organizations
COTU	Central Organization of Trade Unions
CSR	corporate social responsibility
FKE	Federation of Kenya Employers
G/E/W	Government, Employers, Workers
ILC	International Labour Conference
ILO	International Labour Organization
KETAWU	Kenya Electrical Trade & Allied Workers Union
KLGWU	Kenya Local Government Workers Union
KUCFAW	Kenya Union of Commercial, Food and Allied Workers
MDG	Millennium Development Goals
MLHRD	Ministry of Labour and Human Resource Development
MNEs	multinational enterprises
MWI	Ministry of Water and Irrigation
NGO	non-governmental organizations
NUWSE	National Union of Water and Sewerage Employees
PSI	Public Services International
UFW	unaccounted for water
UKCS	Union of Kenya Civil Servants
C. 87	Freedom of Association and Protection of the Right to Organise Convention, 1948
C. 98	Right to Organise and Collective Bargaining Convention, 1949

1. Introduction

Under the aegis of ILO, a two-day national workshop on Social Dialogue in the Water Sector in Kenya was held in Nairobi on 26–27 November 2007. It was organized by the Sectoral Activities Branch, ILO Geneva, in cooperation with ILO Offices or representatives in Addis Ababa, Ethiopia, Dar Es Salaam, Tanzania and Nairobi, Public Services International (PSI), and representatives of the Government and the social partners in Kenya. The workshop was organized in response to conclusions and resolutions adopted by the Tripartite Meeting on Challenges and Opportunities Facing Public Utilities (Geneva, 19–23 May 2003) and , and as part of the ILO’s Sectoral Activities Programme.

The workshop was preceded by a national study on Improved Social Dialogue for Sustainable Quality Service in the Kenya Water Sector, undertaken by a national consultant in consultation with the ILO. The objective of the study was to highlight the reforms undertaken in the water sector since 2002; gauge planned targets for the Millennium Development Goals (MDGs); assess the state of social dialogue in the sector and highlight appropriate policy options for consideration by the workshop.

1.1. Objectives

The broad objective of the workshop was to promote effective social dialogue in the water sector in Kenya for decent working conditions through the application of the relevant ILO Conventions. In this context, the workshop sought to promote recognition and respect of the rights and principles of the ILO Declaration on Fundamental Principles and Rights at Work to ensure effective provision of water services in Kenya. Specific objectives included:

- To discuss the role of social partners in delivering quality public services in the water sector.
- To arrive at some strategies/recommendations for improved social dialogue in the water sector in Kenya.

1.2. Workshop programme

The workshop programme (see Appendix I) started with the presentations made by the ILO resource persons. Ms Nona Iliukhina, ILO sectoral specialist on the utilities (water, gas and electricity) sector made a presentation on the workshop background and objectives, in relation to the ILO’s 2003 Tripartite Meeting on Challenges and Opportunities Facing Public Utilities. Mr Rainer Pritzer, regional Social Dialogue specialist and Mr Kumbwaeli Salewi, ILO Subregional Office in Dar Es Salaam, presented ILO principles and instruments relevant to social dialogue in the water sector of Kenya – participants were taken through the ILO Declaration on Fundamental Principles and Right at Work with emphasis on social dialogue, key international labour standards, notably the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the ILO Tripartite Declaration on Multinational Enterprises. Ms Alice Tabu, the Ministry of Labour & Human Resource Development (MLHRD) representative, briefed the participants on the key aspects of labour law reforms in Kenya.

The workshop programme centered around the presentation made by Mr Leopold Mureithi, national consultant, on the workshop background study used as a basis for the discussions.

The participants also undertook group work in two sessions on issues highlighted in the presentations. The outcomes of each group's discussions were presented at the plenary where further discussion led to consolidated workshop conclusions and recommendations for improved social dialogue in the water sector in Kenya.

1.3. Participants

In addition to ILO representatives and consultants, the workshop was attended by 37 participants (see the list in Appendix II), representing the Government of Kenya, Employers' and Workers' organizations with an interest in the water sector and PSI.

The government participants included officials from the MLHRD and the Ministry of Local Government, as well as managers from the Water Resources Management Authority and the Water Services Regulatory Boards representing the Ministry of Water and Irrigation (MWI).

The private-sector employers were represented by several participants from the Kenyan Water Companies.

The participants nominated by the Kenya Local Government Workers Union (KLGWU), Union of Kenya Civil Servants (UKCS), Kenya Electrical Trade & Allied Workers Union (KETAWU) and Kenya Union of Commercial, Food and Allied Workers (KUCFAW) represented the workers in the water sector in Kenya.

2. Opening remarks

Keynote address by Mr Mark K. Bor, EBS Permanent Secretary, Ministry of Labour and Human Resource Development

The Permanent Secretary noted that it was an honour to open this timely workshop on social dialogue in the water sector and expressed his gratitude on behalf of the Government and social partners to the ILO for funding the workshop and its continuous support and cooperation.

Noting that water is life and that the right to safe drinking water is an inalienable right and in line with the UN Millennium Development Goal No. 7, he pointed out that the Government has initiated major reforms in the water sector since 2002 that separated the management and development of water resources from water delivery services. This posed challenges to all the stakeholders, hence the need for continued dialogue to ensure harmonious relations are maintained.

Remarking that the workshop would be discussing the ILO Declaration on Fundamental Principles and Rights at Work as well as the findings of the background study, the Permanent Secretary urged the participants to explore avenues of harnessing opportunities posed by the reforms undertaken, taking into account the challenges and threats of development in the global economy.

Fundamental principles and rights at work seek to enable people to claim freely and on the basis of equality of opportunity their fair share of the wealth, which they have helped to create, and to fully achieve their human potential. In the process of social dialogue, different interests could be reconciled. Workers are able to join together to have a more balanced relationship with their employer, while freedom of association enables

employers to ensure that competition is constructive, fair and based on collaborative effort to raise productivity, thus improving working conditions and standards of living. Engaging in collective bargaining entails coming to terms with the reality of the market in which the enterprise competes, and in the case of public service, fiscal constraints on the government.

In the recent past the public sector has been characterized by reforms in terms of staff cuts, outsourcing and privatization. These trends reflect heavy pressure on the government to cut spending. This has also given rise to a growing number of unions representing workers and their interests. The need to achieve a culture of social dialogue can therefore not be over emphasized, as it is a sure way of attaining a collective vision and shared values, which are crucial to productivity and efficiency.

The Permanent Secretary hoped that the ILO would facilitate more forums where the best way of mainstreaming social dialogue in the water sector would be found. This is so due to the challenges posed by the reforms undertaken so far, transferring public services to commercial enterprises. Social dialogue would promote industrial peace needed to accelerate economic growth and full employment as a strategy of poverty reduction and developing concrete principles for conflict resolution and labour relations in the water sector.

Welcome address by Ms Elizabeth Tinoco, Chief, Sectoral Activities Branch, ILO

While welcoming the participants to the Workshop, Ms Tinoco indicated that it was organized as part of ILO's Sectoral Activities Programme as a follow-up to the Tripartite Meeting on Challenges and Opportunities Facing Public Utilities held by the ILO in Geneva in May 2003.

Ms Tinoco highlighted some salient points discussed at the Meeting of 2003. It was agreed that public utilities were essential services that played vital roles in the economic and social development of any nation, since they had an extensive impact on people's survival and the productivity of the economy. There was therefore need to facilitate access to these services by the largest segment of the population.

The 2003 Meeting also noted that public utilities must serve the public interest whether services were provided publicly or privately and that the government was ultimately responsible for ensuring the delivery of sustainable and affordable services to all its citizens under transparent and accountable regulatory frameworks. This is particularly important since access to water has been declared a human right by the United Nations.

In the set of conclusions adopted by the 2003 Meeting, the ILO was requested to facilitate capacity building for social dialogue of the tripartite constituents of this sector, particularly in developing countries.

To facilitate discussions at the Workshop, the ILO had commissioned the background study to review and analyse the situation, issues and challenges in the Kenyan water service sector resulting from new developments linked to the reform and restructuring of these services, including legal reforms relating to water service delivery and how these processes have impacted social dialogue in the sector.

When examining employment and labour related issues including the status of social dialogue in the sector, the study addresses the issues contained in Articles 2–8 in ILO C. 87 and Articles 1–4 in C. 98.

Ms Tinoco pointed out that one of the objectives of the meeting was to discuss the role of social partners in delivering quality public services in the water sector, as well as development and adoption of workshop strategies for improved social dialogue in the Kenya water sector. The overall aim of the workshop was to promote effective social dialogue in the sector to help ensure decent working conditions, notably through the application of the relevant ILO Conventions and the recognition and respect for the rights and principles of the ILO Declaration on Fundamental Principles and Rights at Work so as to ensure effective provision of water services in Kenya.

Ms Tinoco stressed that the ILO has played the unique role of assisting its member states to shape national policies through its tripartite social dialogue mechanism and a consensual approach to vital socio-economic and labour issues. She was convinced that the discussions during the two days of the workshop would be helpful to the Kenyan stakeholders and the social partners in the water sector in their efforts to ensure sustainable development of the sector's services in Kenya.

Address by Mr Elijah Otieno Omedo – Employer representative

On behalf of Nakuru Water and Sanitation Services Company Ltd, as well as on behalf of all other companies, Mr Omedo noted that the water companies were formed with specific objectives.

First, they were formed in order to improve water service delivery through a reduction in high operational costs, optimal use of resources, as well as provide technically sound management practices.

The companies also had the mandate to reduce the light unaccounted for water (UFW), non-revenue water, arising from both technical and commercial water losses. This would increase service coverage levels by expanding capacities to meet demand.

The water companies should also enhance corporate social responsibilities of the councils, which are the owners of the water companies, towards both internal and external players and stakeholders.

They would further enhance partnerships for sustainable development with regard to both internal and external partners, while also improving organizational structures for efficient service delivery.

In order to meet the above objectives greater social dialogue was needed. Thus, the water companies expected that the forum would be used to set in motion a system of enhancing dialogue among all the stakeholders, i.e. the various unions involved, water companies, government services and regulatory boards, etc.

The companies are however facing various challenges that need to be addressed. First and foremost would be the integration of systems and procedures with communal and customer orientation.

A second challenge is harmonization of the terms and conditions of service of the employees in the water sector. On conversion from public to private commercial enterprises, employees' terms and conditions of service were different, hence creating disharmony.

The other challenge would be reconciling the conflicting roles and mandates of the various water sectors. In facing these challenges, social dialogue would be inevitable.

Address by Mr Maero Tindi – Worker representative (COTU)

While appreciating the important role that ILO continues to play towards enhancement of social dialogue across the globe, Mr Tindi noted that the water sector remains one of the key sectors the world over due to the importance everyone attached to the provision of this lifesaving commodity.

Whereas it is our duty to ensure timely provision of water to all, the recent reforms spearheaded by the government within the water sector did not adequately address the subsequent transfer of workers from public to private services in terms of their terms and conditions of service.

Reforms paved the way for outsourcing and subcontracting of employment within the sector, leaving workers vulnerable to losing their seniority, as their former employers, particularly the local government authorities, reneged on their previous agreements with the unions.

Social dialogue was oriented towards the peaceful reconciliation of varying interests of individuals and groups participating in the work process and the regulation and settlement of work related disputes by means of diverse forms of information, consultations and negotiations.

Noting that the most significant forms of social dialogue are pay negotiations and tripartite consultations between employees and employers and governments at national and sub national levels, it is at this point that the workers in the water subsector strongly feel shortchanged as there has been no meaningful dialogue.

Mr Tindi has concluded that while focusing on effective provision of water and subsequent reforms, reforms should also focus on the terms and conditions of the persons who worked so hard to sustain this vital service. It was his belief that the workshop would provide tangible resolutions towards enhancing social dialogue within the water sector in Kenya.

Address by Ms Khadija Mohamed – Public Services International (PSI)

In her address Ms Khadija Mohamed gave an overview of PSI, which is a global union federation for public sector unions. It represents 650 affiliated trade unions in 150 countries with more than 20 million public sector workers. It provides services in central government, health and social care, municipal and community services and public utilities.

PSI represents public sector workers at the ILO as well as other international bodies like the World Bank, IMF, WTO, Organization for Economic Cooperation and Development (OECD) and others.

PSI has campaigned for the interests of public sector workers since its inception in 1907, coordinating the public sector struggles for workers rights, social and economic justice and efficient and accessible public services. This work entails working closely with international organizations, national governments, consumer lobbies, community organizations and NGOs.

PSI solidarity and union development projects helps affiliated unions by providing training and capacity building support on the ground especially in countries where unions are fighting for recognition.

PSI has regional offices in all continents, working closely with the International Trade Union Confederation (ITUC), Education International (EI) and the European Federation of Public Service Unions. PSI advocated for:

- Quality public service for all.
- Union rights for all public service workers.
- Gender equality and employment equity for all.
- Public alternatives to privatization of services.
- A strong and united trade union movement.
- Social justice in the workplace.
- Poverty reduction and debt relief.

3. Presentations by the ILO resource persons

3.1. Workshop background and objectives: ILO Tripartite Meeting on Challenges and Opportunities Facing Public Utilities

Ms Nona Iliukhina provided background information on previous ILO meetings in the public utilities and notably the Tripartite Meeting on Challenges and Opportunities Facing Public Utilities held in 2003 in Geneva, which constituted a starting part for the present national workshop. She highlighted the conclusions and general considerations agreed on public utilities which entailed the following:

- Public utilities are essential services playing a vital role in national development.
- Access to services is a human right, must serve the public interest and the Government is responsible in ensuring reliable delivery.
- Changes in ownership impact employment conditions; issues are best resolved through dialogue.

Other points in the conclusions regarding employment in the utilities sector were:

- Governments, Employers and Workers shared an interest in stable and sustainable supply of skilled/productive labour (concerns in some countries – ageing workforce, gender imbalance). The tripartite partners shared a mutual responsibility for making the industry attractive (e.g. by investing in sector-specific training programmes for young men/women).

Regarding governance, corporate social responsibility and efficiency in utilities, it was recognized that:

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- Good governance and CSR can provide strategies and initiatives for best practice – efficiency, profitability, pay and good work conditions are compatible.
 - All service providers have to meet social, ethical and environmental standards.
 - Government and employers should respect for ILO Fundamental Principles and Rights at Work and there should be full compliance with national labour laws.

On social dialogue in the provision of utility services it was concluded:

- Social dialogue is essential for developing mutually beneficial solutions to challenges faced by governments, employers and workers (mechanism and capacity to engage in social dialogue should be developed).
- There is no one-size-fits-all approach to social dialogue; there is need to share information for future policy decisions for public and private enterprises.
- The ILO's MNE Declaration and the rights and principles contained in the ILO's Fundamental Principles and Rights at Work Declaration should be respected in the sector since they help to promote democracy, equity and development.

ILO was tasked to address issues in the sector through national and regional activities and to facilitate capacity building for the social dialogue of tripartite constituents, particularly in developing countries, in response to challenges in the sector and to meet the goals of UN Millennium Declaration regarding water and energy.

Ms Iliukhina pointed out that the expected output of the workshop was to formulate and adopt recommendations in the form of a common strategy for improved social dialogue in Kenya's water sector, and to forward these proposals to the Government and the social partners, along with proposals for follow-up activities at national level aimed at strengthening social dialogue in the utilities sector.

In the next two years, an ILO Sectoral Activities Action Programme in Public Services and Utilities will be implemented for the utilities sector with the objective of assisting governments and the social partners in developing joint strategies and actions to extend and improve the efficiency of basic public utility services, in particular through facilitating capacity building to strengthen social dialogue mechanisms at the enterprise level.

3.2. From fundamental principles and rights at work to social dialogue

Mr Rainer Pritzer gave a historical perspective on the ILO Declaration on Fundamental Principles and Rights at Work. Adopted in 1998, the Declaration commits member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant Conventions. These categories/principles are: freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment and occupation. Respect for these principles is gaining worldwide recognition, and is being promoted by the UN Global Compact, OECD, governments, national and multinational enterprises and the private sector.

These four principles are expressed in the form of specific rights and obligations in the eight "fundamental ILO Conventions", related to the world of work:

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

Participants were also informed that the fundamental rights have the endorsement and commitment of the ILO tripartite constituency: governments, employers' and workers' organizations, and recognize that economic growth alone is not enough to ensure social progress, equity and to eradicate poverty.

The Declaration subjects countries that have ratified the eight core Conventions to the ILO "supervisory mechanism" for the application of standards. Countries that have not ratified (all) the core Conventions, are still obliged to 'respect, promote and realize' these principles. This commitment is laid down in the Declaration and arises from the very fact of membership in the ILO (Article 2). The Declaration also offers a "promotional follow-up", i.e. a reporting obligation by the member State on its efforts to respect, promote and realize these principles, combined with assistance given by the ILO to attain these objectives. Finally, assistance can be given through technical cooperation and/or advisory services for ratification of the fundamental Conventions, for implementation of their principles, or for creating a climate for economic and social development.

Emphasis was however laid on C. 87 and C. 98, which cover one of the four fundamental principles and rights at work namely freedom of association and collective bargaining.

Social dialogue according to the ILO was defined to "include all types of negotiation, consultation or simply exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest relating to economic and social policy". The definition and concept of social dialogue varies from country to country and from region to region.

It was further emphasized that in order to have functioning social dialogue, there should be strong and independent workers' and employers' representation, political will and commitment to engage in social dialogue on the part of all parties, respect for the fundamental rights of freedom of association and collective bargaining and the appropriate institutional support.

Mr Pritzer concluded that the more economies embrace modern forms of management, the more consultation and dialogue is applied.

3.3. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

Mr Kumbweli Salewi gave a presentation on this subject, which broadly focused on the definition, evolution of the MNE Declaration, recommendations and corporate social responsibility. A multinational enterprise was defined as an enterprise that controls and manages production establishments – plants – located in at least two countries and the term “production establishment” extends to the production of service products as well.

Participants were informed that the Declaration provides recommendations in five areas to MNEs and social policy namely: general policies; employment; training; conditions of work and life; and industrial relations.

Implementation and adoption of the principles concerning MNEs and social policy will go a long way towards harnessing the benefits of globalization in a positive way as globalization has both negative and positive aspects. The principles are bound to increase motivation of the workers which in turn will translate into increased productivity and innovation leading to wealth creation and economic growth, with more employment opportunities created in home and host countries. They would hence contribute to poverty reduction and global peace.

4. Presentation of the national study on Improved Social Dialogue for Sustainable Quality Service in the Kenya Water Sector

The author, Mr Leopold Mureithi, presented the study on Improved Social Dialogue for Sustainable Quality Service in the Kenya Water Sector. The study focused on the institutions in the Kenya water sector, challenges facing these institutions as results of new developments linked to the reform, and processes of restructuring water services in the country, including legal reform related to water service delivery during the last few years, and how these processes have impacted social dialogue in the sector. The study also examined the issues concerning the application of the principles contained in the two ILO Conventions Nos 87 and 98, and how these principles can contribute to making the water sector sustainable and effective.

Primary data and information was gathered through interviews with stakeholders in the water sector namely government, workers’ and employers’ representatives and water companies. The secondary sources were mainly the publications by the institutions in the water sector.

The study indicated that prior to 2002, a range of governmental and non-governmental bodies were involved in water supply in Kenya. However they were supplying water to only 18 out of 33 million people. The remainder of Kenyans relied on other sources. The local authorities on the other hand covered only 14 per cent of the 215 urban centers and offered poor services. In response to these crises the government promulgated the Water Act of 2002 and separated the management and development of water resources from water service delivery. This has seen the Ministry of Water and Irrigation concentrate on policy matters, leaving detailed regulation to parastatal bodies that report to boards representing various stakeholders’ interests.

The study pointed out that there are many employers in the sector, namely the Water Resource Management Authority (WRMA), the Water Services Regulatory Board (WSRB), Water Service Providers (WSPs), the National Water Conservation and Pipeline

Corporation (NWCPC) and the Kenya Water Institute (KWI). There are also several unions seeking to represent water sector workers. Though initially it was only the Kenya Local Government Union (KLGWU) that represented the workers in the sector, a second union – the National Union of Water and Sewerage Employees (NUWSE) has also emerged.

It was also pointed out that though the Constitution guarantees freedom of association, KLGWU had objected to the registration of NUWSE, although the court overruled this objection. Nevertheless, WASPA assisted their employees to form a union contrary to the provisions of C. 98.

A survey on the application of Conventions Nos 98 and 87, which are fundamental in facilitating effective social dialogue, drew mixed reactions from employer and workers representatives in the sector. The respondents were all aware of the existence of trade unions in the sector, however 25 per cent of employees desired dual membership.

It emerged that the water sector is in the process of transformation in which improvements are sought in efficiency and effectiveness. The overarching objective is to provide clean and safe water to the population of Kenya. Though the majority of the service providers are facing major challenges, there could be greater attempts to strengthen social dialogue and collective bargaining to make decent work a reality in the Kenya water sector.

5. Commentaries on the national study on Improved Social Dialogue for Sustainable Quality Service in the Kenya Water Sector

Participants made commentaries in plenary after the presentation of the background study in the following areas:

Union representation

The participants felt that the bulk of the report was on policy, with which they had little involvement in the formulation. After discussions it became clear that some unions were indeed involved in the privatization of water service since, for instance, KUCFAW represents employees of the National Water Corporation.

Further, the water sector reforms have inbuilt forums for stakeholders to dialogue, for instance on best practices, stakeholders' sewerage and customer enhancement, etc. The unions should play a more proactive role, join efforts to improve services and not be involved only in their traditional role of negotiating terms and conditions of employment. For this to happen, capacity building for all stakeholders is needed.

Multiplicity of unions

Some participants were of the view that the emergent water companies had gone to the extent of sponsoring a rival union namely NUWSE. This is not conducive to social dialogue and infringes on ILO Conventions Nos 87 and 98.

It was however the view of the majority that if the principles of Conventions Nos 87 and 98 are to be respected one cannot avoid multiplicity of unions and in any case each is dealing with a different body.

Terms and conditions of employment

Some participants pointed out that there were salary differentials of employees working in the same company and doing the same work.

Participants were of the view that this arose out of the different salary structures and schemes of service that came when the provision of water services was privatized. There was therefore need for social dialogue between all the stakeholders in order to harmonize the same and also remove ambiguity on membership.

Safe drinking water

Some participants had reservations on the quality of drinking water served by the various water companies. They gave the example of proliferation of bottled drinking water.

Participants from the water companies, while conceding bottled water was expensive, said that they do strive to give as wholesome water as possible. This however differs with the different companies, hence the need to keep pace with the quality of water and ensuring standardized quality.

They further averred that lack of confidence in quality of safe drinking water need not necessarily be so. Bottled water is simply business market segmentation with the bottling companies targeting specific markets, e.g. star hotels. Business motives aside there is a need for policy makers to ensure that proper provisions are put in place for normal standardization of the water treatment process.

6. Key aspects of labour law reform

Mrs Alice O. Tabu, Chief Industrial Relations Officer of the MLHRD, gave a presentation on the labour reforms undertaken by the government. She stated that the review of the national labour laws had been a great concern to the government, workers, employers, and the general public for a very long time. The need for reforms arose out of the tremendous changes experienced in the local labour market such as:

- structural adjustment;
- liberalization of the economy;
- technological innovations;
- privatization of public utilities.

There was therefore need to change the existing labour laws which pre-dated the colonial times to suit the above changes. There was also need for the laws to conform with the core principles enshrined in the Conventions of the ILO.

In keeping with the tripartite tradition in Kenyan social dialogue, all stakeholders were involved in the process and the following existing acts had had to be repealed:

1. The Employment Act Cap. 226.
2. The Regulation of Wages and Conditions of Employment Act Cap. 239.
3. The Trade Unions Act Cap. 233.

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4. The Trade Disputes Act Cap. 234.
 5. The Factories and Other Places of Work Act. Cap. 512.
 6. The Workmen's Compensation Act Cap. 236.

In their place, the following five pieces of legislation have been enacted:

(1) The Labour Institutions Act 2007

Establishes and strengthens institutions that deal with labour administration and the management of labour relations. These include the National Labour Board, Labour Courts, Wages Councils and Employment Agencies.

(2) The Employment Act 2007

Strengthens minimum terms and conditions of employment while prohibiting forced and child labour, discrimination and sexual harassment.

(3) The Labour Relations Act 2007

Promotes protection of freedom of association for employees and employers as well as strengthening their respective organizations. It also streamlines the pre-industrial dispute resolution machinery while providing for alternative dispute resolution machinery.

(4) The Work Injuries Benefits Act 2007

Modernizes legislation relating to work related injuries while providing insurance cover and adequate compensation for injury and work related diseases.

(5) The Occupational Health and Safety Act 2007

Secures safety and health for people legally in all workplaces.

Each of the above Acts incorporates the principles of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, thus ensuring basic human values that are vital to socio-economic development.

However, the above Acts have not been operationalized, since such issues as the rules for the institutions and other questions have to be resolved. In any case, the Minister for Labour and Human Resource Development has to gazette the same. It is hoped that the acts will encourage social dialogue among the stakeholders especially as regards the privatization of public utilities like electricity generation and supply, as well as water and sewerage services.

7. Group discussions on topics addressed by the study and the synthesized responses

Group Work 1

The participants were divided into two groups, namely worker representatives and the government/employer representatives. The discussion issues were the following:

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- Key challenges in the Kenyan water sector (e.g. reform/restructuring of water service, including legal reform relating to water service delivery) and their impact on social dialogue in the sector.
 - Status of social dialogue in the water sector with regard to the application of the principles guaranteed in ILO Conventions Nos 87 and 98 in the workplaces to contribute to the effective provision of water services in the country.

After the group discussions, each of the two groups presented their results and recommendations, which were then consolidated into synthesized responses. The synthesized responses in turn were incorporated into a set of workshop conclusions/recommendations, which were finally adopted by the workshop participants. These consolidated conclusions, given at the end of this report, reflect the vision of the government, employers and workers for the improvement of social dialogue for quality service delivery in the water sector in Kenya.

Responses from the groups

Group 1 – Workers’ representatives

(1) Challenges in the water sector

- Classification of water as a basic human right and not commodity.
- Inadequate human resource capacity.
- Inadequate and dilapidated infrastructure that was developed in the 1950s.
- Lack of a legal framework.
- Too many institutions resulting in conflict.
- High unaccounted for water, sometimes up to 70 per cent of overall volume.
- Interference by employers in workers’ organizations contrary to C. 98.
- Inadequate funding.
- Need for provision of water in the informal settlement.
- Low tariffs that do not cover the cost of water provision.
- Partial involvement of trade unions in the reform process.
- A huge gap between supply and demand of water services.
- Inequality in salaries among workers in different organizations.
- Proliferation of trade unions in the sector, resulting in workers being badly represented.

(2) Recommendations

- Water should be made a public function and availed to all.

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- Capacity building should be undertaken as a matter of urgency.
 - There is need to invest more in the infrastructure in order to meet the water demands.
 - The Water Act 2002 should be amended to remove ambiguity.
 - Employers should adhere to the provisions of C. 98.
 - The Government should prioritize the provision of water to the urban poor.
 - There is need to develop proper tariffs to reflect the actual cost of water provision.
 - There should be greater involvement of the workers and Ministry of Labour in the reform process.
 - There was a need for the Government to ratify C. 87 on freedom of association.
 - There was a need to undertake research and training.
 - There is also a need to institutionalize governance and good management practices in the water sector.

Group 2 – Government/Employer representatives

(1) Challenges in the water sector

- There is a general lack of public awareness on the ongoing reform process.
- The reform process may disadvantage the poor.
- There is need to support and strengthen the water institutions.
- Transfer of service caused anxiety and job security was not guaranteed.
- There was a lack of social dialogue in the sector.
- There was a lack of capacity among unions and employers.
- Poor governance hampered delivery, especially in the new companies.
- Sustainability of the water institutions was not guaranteed.

(2) Recommendations

- There is need to re-examine the viability of commercialization of the sector with a view to addressing sustainability.
- There is need for capacity building among all staff.
- The Government should reinforce all existing structures.
- There is need for provision of working tools and equipment.
- The Government should provide clean water since water is a basic right.
- Transfers of service should be handled with a human face and all parties should be involved.

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- Corporate governance to be institutionalized.

Synthesized responses from Group Work 1

(1) Challenges in the water sector

- The ongoing reforms may disadvantage the poor as they were undertaken without adequate consultation.
- There is no legal and institutional framework in place leading to uncoordinated implementation.
- There is no funding to the various Boards which inherited dilapidated infrastructure thus hindering service delivery.
- There is inadequate human capacity – most managers lack the requisite skills to effectively run the institutions.
- The infrastructure is inadequate as demand for water services outweigh the supply.
- There is general lack of awareness on the reforms being undertaken among the public.
- There is high unaccounted for water.
- There was poor governance in the management of the sector.
- There is need to review the Water Act to conform with the present realities.

(2) Challenges facing workers

- Transfer of services from one organization to the other has led to salary differentials.
- Proliferation of trade unions in the sector caused anxiety .
- Lack of social dialogue in the sector.
- Interference by employers in workers organization.
- Lack of capacity among staff.
- Job security no longer guaranteed.
- Failure by employers to implement collective bargaining agreements.
- Occupational health and safety concerns.
- Research and training not undertaken.
- Non-involvement of workers in the reform process.

Group Work 2

The participants were divided into three groups comprising Government, Employers' and Workers' representatives and addressed the following issues which ensued from the discussions:

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1. What strategy (immediate steps) should the Government undertake in order to achieve improved access to water and sewage services for the community?
 2. After today's discussions, what role can social dialogue play in the water sector?
 3. What type of research/data collection do you think would be required?
 4. What kind of capacity building/training would be required to improve efficiency in the water sector services?

Responses from the groups

Government group

(1) Strategies to improve access to water

- Enact an appropriate legal framework for effective water management concerning harvesting, storing, distribution, strategic reserves etc.
- Bring aboard all stakeholders including CBOs, NGOs, unions, employers and relevant Government agencies/parastatals.
- Review current water policies.
- Identify key players in the sector.
- Raise public awareness.
- Set up effective monitoring and evaluation system.

(2) Role of social dialogue

- Minimize discontent between workers and employers.
- Contribute to equitable distribution of incomes and improved terms and conditions of service through collective bargaining.
- Reduce and promote conflict resolution.
- Promote social accountability by stakeholders.
- Promote sense of ownership by all parties.

(3) Type of research/data required

- Baseline survey.
- Improved data on water catchments, collection of revenue, etc.
- Database on number of employees/union density.
- Data on spatial population densities.
- Data on land utilization.

(4) Type of capacity building required

- Creating professionals in the provision of services and management of institutions.
- Developing financial, human resource and relevant technical skills.
- Training of stakeholders on relevant ILO Conventions.
- Training trade unions on their rights and responsibilities.

Workers' group

(1) Strategies to improve access to water

- Adequate funding.
- Workers' and their trade unions' involvement.
- Rehabilitation of the existing water/sewerage system.
- Involvement of local communities to set out priorities.
- Promotion of partnerships offering water/sewerage services.
- Government to remove/reduce tax on water equipments.

(2) Role of social dialogue

- Promote industrial harmony.
- Enhance efficiency and effectiveness in the sector.
- Improve productivity.
- Enhance sustainability of systems.

(3) Type of research/data required

- Baseline survey on number of workers, skills, union representation, etc.

(4) Type of capacity building required

- Management skills.
- Financial, human resource, industrial relations, and other skills.
- More knowledge of ILO Conventions.

Employers' group

(1) Strategies to improve access to water

- Implementation of investment plan: short, medium and long-term.
- Capacity building of the various institutions (systems) to be able to expedite project implementation based on strategic plans.

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- Rehabilitation of existing water schemes for optimum utilization.
 - Enhanced commercial consideration at every level especially on reduction of unaccounted for water.
 - Develop and implement pro poor policy on provision of water services.

(2) Role of social dialogue

- Harnesses ideas from all stakeholders.
- Allows understanding of the needs and expectations of both customers and workers.
- Enhances industrial relations.
- Reduces mistrust and resolves conflicts among stakeholders.
- Enhances sharing of resources/benefits (CSR).
- Encourages knowledge sharing.

(3) Type of research/data required

- Baseline information to evaluate performance.
- Water demand, population data, water resources, infrastructure data, human resource, emerging technologies, etc.

(4) Type of capacity building required

- Financial management, technical training, change management, project planning and implementation, corporate governance, customer care, awareness creation on the reforms, industrial relations, etc.

Synthesized responses from Group Work 2

(1) Strategies to improve water and sewerage services

- Adequate funding.
- Review current water policies.
- Identify key players' i.e. workers', employers', stakeholders' involvement.
- Harmonization of terms and conditions.
- Rehabilitation of existing systems.
- Promotion of partnerships.
- Improvement of governance.
- Capacity building across the board.
- Enact an appropriate legal framework for effective water management.

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- Raise awareness among the public.
 - Set up appropriate monitoring and evaluation mechanism.
- (2) Role of social dialogue in water sector
- Promote industrial harmony and reduce conflict.
 - Contribute to equitable distribution of incomes and improved terms and conditions.
 - Promote social accountability by the stakeholders.
 - Promote sense of ownership by parties, thus increasing commitment.
 - Enhance knowledge.
 - Enhance sharing of resources.
- (3) Type of research/data required
- Baseline surveys on water demand, resources, emerging technologies.
 - Skills survey among workers.
- (4) Type of capacity building required
- Human resource management skills.
 - Industrial relations/labour legislation, ILO Conventions.
 - Corporate governance.
 - Financial skills.
 - Change management.
 - Research, customer care.
 - Project management among others.

Plenary discussions

- (1) Type of mechanism to be set up to facilitate dialogue
- Joint staff committee at the enterprise level.
 - Joint industrial council at the sectoral level (national), using/reviving the existing mechanisms.
- (2) Functions/mandate of the mechanism
- To resolve issues at the workplace level.
 - Improve the flow of information (policies, challenges) among the stakeholders.
 - Find common understanding and solutions.

(3) Composition

- It was recommended that a mechanism should be set up composed of eight representatives as follows: two from the unions, WASPA, local government, MWI, MLHRD, WRMA, Athi Water Services Board.
- Terms of references for this mechanism will have to be developed.

At the end of the workshop, synthesized responses from the Group Work 1 and 2 and the plenary discussion were consolidated into the *Conclusions of the Workshop on Social Dialogue in the Water Sector* in Kenya, reproduced below.

8. Conclusions of the Workshop on Social Dialogue in the Water Sector in Kenya

Within the framework of the ILO Action Programme 2006–07 in Public Services and Utilities,

As a follow-up to the Tripartite Meeting on Challenges and Opportunities Facing Public Utilities, held in Geneva on 19–23 May 2003, and its resolution calling upon the International Labour Office to facilitate social dialogue through national and regional activities,

Highlighting the relevance of decent work in the water sector,

Recognizing the need of tripartite consultations in the water sector to discuss current challenges and ongoing reform, and recognizing that this meeting constitutes the first opportunity to do so,

A National Tripartite Workshop on Social Dialogue in the Water Sector was held in Nairobi, Kenya, on 26–27 November 2007.

The Workshop convened representatives from the Ministry of Labour and Human Resource Development, the Ministry of Local Government, the Water Resources Management Authority, the Water Services Regulatory Board, the Association of Local Government Employers, water organizations' and water companies' management, the Central Organization of Trade Unions, and workers' representatives from the Kenya Local Government Workers' Union, the Union of Kenya Civil Servants and the Kenya Electrical Trade & Allied Workers Union.

The aim of the workshop was to promote social dialogue in the water sector in Kenya in order to assist in implementing the Decent Work Country Programme in Kenya and to improve effective delivery of the services.

In striving to achieve the UN Millennium Development Goals regarding water, and stressing that water is a basic human right,

Emphasizing the importance of access to clean water for all,

Highlighting the need for full respect for the ILO Declaration on Fundamental Principles and Rights at Work,

Pointing out that the value of good governance in the water sector includes accountability and transparency for good water management,

Recalling that social dialogue is a crucial means to manage change in the context of the reforms and restructuring in the water sector in Kenya, one which requires active participation of all stakeholders in the sector,

The workshop highlighted the following challenges:

1. Recent reforms faced problems due to a lack of general information and a lack of involvement of all stakeholders in the process.
2. Too many institutions have roles that are not always clearly distinguished.
3. Inadequate capacity (systems), infrastructure and funding in the water sector resulted in inefficient services and limited coverage.
4. Tariffs do not cover the production costs, thus jeopardizing the sustainability of the sector.
5. Poor governance exists in many institutions.
6. A lack of social dialogue among all partners results in a lack of clarity concerning transfers and job security.
7. A lack of compliance with the principles of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).
8. A lack of accurate data and research in the water sector.
9. A lack of capacity building and training for all stakeholders and at all levels.

Facing these challenges the workshop agreed on the following recommendations:

1. Increase public awareness of the reform process in the water sector, as well as clear information for the actors involved.
2. Clarify the legal framework on the role and responsibilities of all stakeholders.
3. Ensure adequate funding, disbursement and investment in the water sector.
4. Involve the local community in order to improve services.
5. Improve governance by introducing a check and balance system and a monitoring system.
6. Improve social dialogue mechanism by promoting ownership by all parties, in particular through the establishment of:
 - a joint staff committee at the enterprise level;
 - a joint industrial council at the sectoral level (national), using/reviving the existing mechanisms.

The functions of the above should be to resolve issues at the workplace level, to improve the flow of information (policies, challenges) among the stakeholders, and to find common understanding and solutions.

It is recommended that a mechanism should be set up composed of eight representatives as follows: two from the unions and one each from WASPA, local governments, MoW&I, MoL, WRMA, ATHI, and terms of reference to be developed.

7. Undertake systematic data collection and research (e.g. number of employees, rate of unionization, available skills, water demand, water resources).
8. Undertake capacity building for all staff, including on managerial skills, financing, human resource development, labour relations, etc.
9. Create a task force to follow up on the above recommendations, to be composed of Mr J. Banda, UKCS, Mr B. Munyao, KLGWU, Mr H. Kagundu, KUCFAW, Mrs S. Kiuluku, Nairobi Water Company, Mr G. Misigo, Athi Water Services Board, Ms Rosemary Lekesi, Water Resource Management Authority, and Mr J. Ndiho, Ministry of Labour.

The above recommendations are made with the recognition that a priority highlighted in the ILO Decent Work Country Programme in Kenya is to enhance the capacity of social partners to participate in and contribute to economic and social policy making.

It has been agreed unanimously to submit the conclusions and recommendations of this workshop to all stakeholders in the water sector, and to the Ministry of Labour and Human Resource Development and the Ministry of Water & Irrigation in particular, for their information and appropriate follow-up.

Appendix I



INTERNATIONAL LABOUR ORGANIZATION

National Workshop on Social Dialogue in the Water Sector in Kenya

(Nairobi, 26–27 November 2007)

Programme

Day 1 – Monday, 26 November 2007

08.30 Registration

09.00 Opening

- Keynote address by Mr Mark Bor EBS, Permanent Secretary, Ministry of Labour and Human Resource Development
- Welcome address by Ms Elizabeth Tinoco, Chief Sectoral Activities Branch, ILO
- Address by Employer representative, Mr Elijah Otieno Omendo
- Address by Worker representative (COTU), Mr Maero Tindi
- Address by PSI representative, Mrs Khadija Mohammed

09.30 Coffee/Tea Break

10.00 Background and objectives of the workshop:

- Highlights from the ILO's Tripartite Meeting on Challenges and Opportunities Facing Public Utilities, Geneva, 19–23 May 2003 (Ms Nona Iliukhina)

Presentation of the ILO principles and instruments relevant to social dialogue in the water sector of Kenya and discussion:

- ILO Declaration on Fundamental Principles and Rights at Work with the special emphasis on social dialogue and Conventions Nos 87 and 98 (Mr Rainer Pritzer)
- ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (Mr Kumbwaeli Salewi)

11.30 Presentation and discussion of the case study "Improved Social Dialogue for Sustainable Quality Service in the Kenya Water Sector" (Mr Leopold Mureithi)

12.30 Lunch

14.00 Commentaries on the national study

15.00 Key aspects of Labour Law Reform (Ms Alice O. Tabu)

15.30 Coffee/Tea Break

16.00 Group discussions on topics addressed by the study and the synthesized responses

Group Work 1: Discussion on the following topics:

- Key challenges in the Kenyan water sector (e.g. reform/restructuring of water service, including legal reform relating to water service delivery) and their impact on social dialogue in the sector
- Status of social dialogue in the water sector with regard to the application of the principles guaranteed in the ILO Conventions Nos 87 and 98 in the workplaces to contribute to the effective provision of water services in the country

18.00 Workshop adjourned for the day

Day 2 – Tuesday, 27 November 2007

9.00 Recap from Day 1 and presentation of recommendations by each group (Group Work 1)

10.30 **Coffee/Tea Break**

11.00 **Group Work 2:** Discussion on the following topics ensued from the previous discussions:

1. What strategy (immediate steps) should the Government undertake in order to achieve improved access to water and sewage services for the community?
2. After yesterday's discussions, what role can social dialogue play in the water sector?
3. What type of research/data collection do you think would be required?
4. What kind of capacity building/training would be required to improve efficiency in the water sector services?

12.30 **Lunch**

14.00 Presentation of recommendations by each group (Group Work 2)

15.30 Consolidating group recommendations into the common strategies among the workshop participants

16.00 **Coffee/Tea Break**

16.30 Adoption of the Workshop Conclusions for Improved Social Dialogue in Water Sector in Kenya to be forwarded to the Government of Kenya and the social partners

17.00 **Evaluation and Closing**

Appendix II



International Labour Organization

National Workshop on Social Dialogue in the Water Sector in Kenya Nairobi Safari Club Hotel, 26–27 November 2007

LIST OF PARTICIPANTS

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