



COUNTRY BASELINES UNDER THE 1998 ILO DECLARATION ANNUAL REVIEW (2000-2008)¹: KENYA

FREEDOM OF ASSOCIATION AND THE EFFECTIVE RECOGNITION OF THE RIGHT TO COLLECTIVE BARGAINING (FACB)

REPORTING	Fulfillment of Government's reporting obligations	YES, since the start of the Annual Review (AR) in 2000.
	Involvement of Employers' and Workers' organizations in the reporting process	YES, according to the Government: Involvement of the Federation of Kenya Employers (FKE) and the Central Organization of Trade Unions (COTU-KENYA) through communication of Government reports and tripartite meetings on reporting issues.
OBSERVATIONS BY THE SOCIAL PARTNERS	Employers' organizations	<p>2008 AR: Observations by the FKE.</p> <p>2007 AR: Observations by the FKE.</p> <p>2006 AR: Observations by the FKE.</p> <p>2005 AR: Observations by the FKE.</p>
	Workers' organizations	<p>2008 AR: Observations by the COTU-KENYA. Observations by the International Trade Union Confederation (ITUC).</p> <p>2007 AR: Observations by the COTU-KENYA. Observations by the International Confederation of Free Trade Unions (ICFTU).</p> <p>2006 AR: Observations by the ICFTU.</p> <p>2005 AR: Observations by the COTU-KENYA.</p> <p>2002 AR: Observations by the ICFTU.</p> <p>2001 AR: Observations by the ICFTU.</p> <p>2000 AR: Observations by the ICFTU.</p>
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Ratification	<p>Ratification status</p> <p><i>Kenya ratified in 1964 the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (C.98). However, it has not yet ratified the Freedom of Association and the Protection of the Right to Collective Bargaining Convention, 1948 (No. 87) (C. 87).</i></p>
		<p>Ratification intention</p> <p>YES, since 2001, for C.87.</p> <p>2008 AR: According to the Government: the labour law bills are currently before Parliament. Once they are adopted, the process of ratification will be finalized in cooperation with the social partners. The FKE expressed its support to the ratification of C.87 by Kenya.</p>

¹ Country baselines under the ILO Declaration Annual Review are based on the following elements to the extent they are available: information provided by the Government under the Declaration Annual Review, observations by employers' and workers' organizations, case studies prepared under the auspices of the country and the ILO, and observations/recommendations by the ILO Declaration Expert-Advisers and by the ILO Governing Body. For any further information on the realization of this principle and right in a given country, in relation with a ratified Convention or possible cases that have been submitted to the ILO Committee on Freedom of Association, please see: <http://webfusion.ilo.org/public/db/standards/normes/libsynd>

			<p>The COTU-KENYA also expressed its support to the ratification of C.87 by Kenya and stated that it was actively participating in the consultation process.</p> <p>2007 AR: The Government indicated that the ratification of C.87 would be considered after the enactment of the revised labour laws. The FKE and COTU-Kenya indicated that they were still participating in the ratification process for C.87.</p> <p>2006 AR: According to the Government: Ratification of C. 87 will depend on the outcome of the revision of the Constitutional and Labour Law. The FKE and the COTU- KENYA indicated that there are actively participating in the consultation process on the ratification of C. 87 by Kenya.</p> <p>2005 AR: According to the Government: C. 87 has not yet been ratified because labour legislations in Kenya are obsolete. However, the new labour laws will pave the way for ratification of this instrument.</p> <p>2001 AR: According to the Government: While considering the ratification of C. 87 in consultation with the social partners, the Government reported that it will soon embark on a review of all labour laws, especially with regards to the provisions of the Trade Unions Act CAP 233 that are not in conformity with various Articles of the Convention. It further mentioned that ILO technical assistance would certainly strengthen ratification prospects for this Convention.</p>
<p>EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT</p>	<p>Recognition of the principle and right (prospect(s), means of action, basic legal provisions)</p>	<p>Constitution</p>	<p>YES</p> <p>2008 AR: According to the COTU-KENYA: The draft of the Constitutional Bill has been rejected by referendum but Article 80 of the current Constitution respects the provisions of C. 87.</p> <p>2007 AR: The Constitution (article 80) provides for freedom of assembly and association. Moreover, a draft Constitutional Bill is under consideration by the Parliament.</p>
		<p>Policy/ legislation and/or regulations</p>	<ul style="list-style-type: none"> • Legislation: <p>The Trade Unions Act CAP 233, the Trade Disputes Act CAP 234 and the Industrial Relations Charter (Revised) 1984 relate to the principle and right (PR). However, a labour law review process is currently being carried out by the Government in cooperation with the employers’ and workers’ organizations.</p> <p>2008 AR: According to COTU-KENYA, the Labour Relations Bill regrouping the Trade Disputes Act and the Trade Unions Act is currently being debated before Parliament to be enacted into law. This Bill covers most of the principles entrusted in C.87.</p> <p>2007 AR: According to the FKE: The labour law revision is still being carried out, in cooperation with the social partners and the ILO in order to take better consideration of freedom of association.</p> <p>2006 AR: According to the Government: The Draft Labour Law is being reviewed by the Attorney General.</p> <p>2004-2005 ARs: Thanks to ILO funding, the Task Force to review national labour laws completed its process and handed over the proposed Bills to the Attorney General for onward transmission to Parliament.</p> <p>2003 AR: According to the Government: A Task Force to review labour laws and harmonize them with the</p>

			<p>provisions of ratified Conventions and ILO fundamental Conventions was established in May 2001 with the support of the ILO/SLAREA (Strengthening Labour Administration and Labour Relations in East Africa) Declaration Programme.</p> <p>2002 AR: According to the Government: National labour laws need to be reviewed to incorporate the provisions of ratified Conventions and those of the fundamental principles and rights at work.</p>	
		Basic legal provisions	(i) The Constitution (article 80); (ii) Trade Unions Act CAP 233; (iii) Trade Disputes Act CAP 234; and (iv) the Industrial Relations Charter (Revised) 1984.	
		Judicial decisions	NIL	
	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	For Employers	2002-2005 ARs: All categories of employers can set up their organizations. Prior government authorization is necessary to operate employers' organizations, namely through compulsory registration by the Registrar of Trade Unions (Trade Unions Act CAP 233, Section 9(1)).
			For Workers	2002-2005 ARs: According to the Government: Prior government authorization is necessary to operate workers' organizations, namely through compulsory registration by the Registrar of Trade Unions (Trade Unions Act CAP 233, section 9(1)). FOA can be exercised by medical professionals, teachers, agricultural workers, workers engaged in domestic work, workers in export processing zones (EPZs) or enterprises/industries with EPZ status, migrant workers, workers of all ages and workers in the informal economy. However, it cannot be exercised by workers engaged in the administration of State, workers in uniformed services (armed forces, prison forces and their services or reserved forces) and workers in the National Youth Service. Furthermore, the Industrial Relations Charter (Revised) 1984 provides for the categories of employees in an organization who are excluded from belonging to any workers' organizations. These include managerial, secretarial and security staff and their assistants or understudies.
EFFORTS AND PROGRESS MADE IN REALIZING THE PRINCIPLE AND RIGHT	Exercise of the principle and right	At national level (enterprise, sector/industry, national)	Special attention to particular situations	2003-2005 ARs: According to the Government: A special attention is envisaged for religious minorities, women workers, child workers, disabled workers, migrant workers and refugees. 2000 AR: According to the Government: Agricultural workers, domestic workers, workers in EPZs, workers in the informal economy and migrant workers are given special attention with respect to the PR.
			Information/ Data collection and dissemination	According to the Government: There is a lack of information and data.
		At international level	According to the Government: There are no particular restrictions for the international affiliation of employers' and workers' organizations.	
	Monitoring, enforcement	2000-2005 ARs: According to the Government: The Registrar of Trade Unions can require financial information and inspect books of		

	and/or sanction mechanisms	<p>accounts of trade unions (Trade Unions Act CAP 233, section 48). S/he can also cancel or suspend the registration of a trade union under certain conditions (Trade Unions Act CAP 233, section 17 (1)). Inspection/monitoring mechanisms are envisaged to ensure the implementation of the PR, and there is a need for further ILO cooperation in terms of capacity building and reporting.</p> <p>The PR is enforced through law, collective agreements, free dispute settlement procedures and tripartite consultations at all levels.</p> <p>In instances where the PR has not been respected, the Minister of Labour has the power to order any employer or person to respect workers' rights, namely by recognizing a union for the purpose of collective bargaining (CB) in accordance with legal prescriptions (Trade Union Disputes Act CAP 234, Section 5). Furthermore, the Government reports that the issue of penal, civil and administrative sanctions for the violation of the PR is addressed by Task Force to draft the new labour laws and under the ongoing reform of the public service.</p>
	Involvement of the social partners	<p>2006 AR: The FKE and COTU-KENYA stated that they participated actively in the national labour law revision process.</p> <p>2002-2003 ARs: According to the Government: Employers' and workers' organizations have been involved in: (i) the elaboration of the Industrial Relations Charter (Revised) 1984; (ii) the National Advisory Board; (iii) the conclusion of collective agreements; (iv) the Industrial Courts; and (v) the Task Force to review national labour laws and harmonize them with the provisions of ratified Conventions and ILO fundamental Conventions. Moreover, a panel appointed by the Government and consisting of trade union representatives, government officials and independent members has been deliberating on the disputes concerning the Kenya National Union of Teachers since 2002.</p>
	Promotional activities	<p>2008 AR: According to the Government: A tripartite workshop on International Labour Standards (ILS) and national laws was held between 17th to 21st July 2006 in order to sensitize officers on ILS. Moreover, two industrial Court Judges will be attending the ILS course for judges, lawyers and legal educators in September 2007 in Turin. Finally, the Government indicated that tripartite discussions are held in the Labour Advisory Board on how to respect, promote and realize the principle and right (PR). The FKE organized several workshops in February and regularly carries out training programmes under its Management Consulting Group (MCG).</p> <p>According to the COTU-KENYA: several unions have been established namely in the teaching, transport, security sectors.</p> <p>2007 AR: The FKE and the COTU-KENYA indicated that they had actively participated in the SLAREA programme and the labour law review process. Following the development of the SLAREA Programme, tripartite institutions and social dialogue had been considerably strengthened in Kenya and has strengthen collaboration between the Government, employers and workers organizations.</p> <p>2002 AR: According to the Government: Training of government officials and social partners in the labour field has been carried out.</p>
	Special initiatives/Progress	<p>2008 AR: According to the Government: the issue of lack of resources and staffing has been improved which will undoubtedly strengthen the Government's capacity.</p> <p>2006 AR: According to the Government: As a successful/special initiative, continuous consultations are being held with the social partners concerning the PR and the new constitutional and legislative provisions.</p> <p>According to the FKE: As a successful/special initiative, the training of managers was carried out on general management, including the FPRW.</p> <p>2005 AR: According to the Government: Successful example(s): the union elections held in 2002, which involved all registered trade unions and the COTU-KENYA.</p>

CHALLENGES IN REALIZING THE PRINCIPLE AND RIGHT	According to the social partners	Employers' organizations	<p>2008 AR: The FKE indicated the following challenges: (i) lack of financial resources and oversubscription for training programmes and (ii) lack of capacity of employers and workers in terms of training and consciousness.</p> <p>2006 and 2007 ARs: According to the FKE: the following challenges are as follows: (i) lack of capacity of labour officers in terms of staffing and training in conflict resolution.</p>
		Workers' organizations	<p>2008 AR: According to the COTU-KENYA, the main challenge is the lack of sensitization of workers on their right to freedom of association. It also reiterates the same challenges mentioned in the 2007 AR that are: (i) lack of capacity of labour officers in terms of staffing and (ii) training on dispute settlement. Moreover, trade unions are not receiving sufficient assistance from the Ministry of Labour. Finally, it indicated that only 10-15% of the workers are unionized.</p> <p>The ITUC indicated the following challenges: (i) workers in the armed forces, in prison services, in the National Youth Service as well as those under the Teachers' Service Commission are neither allowed to bargain collectively nor to go on strike; (ii) the right to strike is subject to major restrictions and obstructions; (iii) workers from EPZs can now enjoy effective freedom of association but is strongly restricted.</p> <p>2007 AR: According to the COTU-KENYA, the main difficulties encountered in realizing the PR in Kenya are: (i) lack of capacity of labour officers in terms of staffing and (ii) training on dispute settlement. The ICFTU raised the following challenges: (i) workers' complaints about the delays on finalizing the labour law review to incorporate ILO core labour standards; (ii) obstruction on the right to strike; and (iii) workers from EPZs cannot enjoy effective freedom of association.</p> <p>2000, 2001, 2002 and 2006 ARs: According to the ICFTU: the challenges are as follows: (i) excessive power of the Registrar of Trade Unions in refusing registration of trade unions or deregistering them; (ii) denial of trade union rights to civil servants, university academic staff, doctors and dentists; (iii) infrequent respect for FOA, especially in small-sized companies and EPZs; (iii) restrictions on the right to strike (21 to 28 day notice (in essential services) prior to strike, no strikes are permitted during the arbitration and dispute settlement procedure; and (iv) discretionary power of the Minister of Labour to decide whether a strike is legal or not.</p>
	According to the Government	<p>2008 AR: The Government supported the COTU-KENYA's observations concerning labour instruction in Kenya. It indicated furthermore that the tripartite partners have agreed on the need to undertake a comprehensive research on the implication of the ratification of C.87 but there are still financial constraints. It added that institutional capacity among social partners for better appreciation of the principles should be strengthened.</p> <p>2007 AR: The Government indicated its support to the FKE's views regarding the lack of staff and capacity building on FOA.</p> <p>2001-2005 ARs: According to the Government: The main difficulties encountered in realizing the PR in Kenya are as follows (i) lack of public awareness and/or legal support; (ii) lack of information and data; (iii) social and economic circumstances; (iv) political situation; (v) legal provisions and non-conformity of the Trade Unions Act CAP 233 with the provisions of C.87; (vi) prevailing employment practices; (vii) lack of capacity of responsible government institutions; (viii) lack of employers' organizations; (ix) lack of capacity of workers' organizations; and (x) lack of social dialogue on the PR.</p> <p>In response to the ICFTU's observations, the Government made the following comments: If a prospective trade union does not meet the conditions for registration set out under the Trade Unions Act CAP 233, the Registrar of Trade Unions has no choice but to deny registration to that particular union. However, this decision is subject to appeal to the High Court of Kenya, as this right has been</p>	

		<p>exercised in the past. The ban on the Civil Servants Union, imposed in 1980 due to security reasons, was lifted by the Head of State in November 2001. This allowed public employees to organize themselves. In this regard, two unions represent teachers: the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post Primary Teachers (KUPPET). The law fully protects the enjoyment of trade union activities in all workplaces, irrespective of the size of the enterprise and including the EPZs. If it is established that an employee has been sacked or victimized because of his/her trade union activities, the law grants a compensation of a maximum of 12 months salary. As regards the right to strike, the Ministry of Labour has no discretionary power to declare a strike illegal, given that s/he can declare a strike unlawful only if the machinery put in place has not been complied with, and there is room for appeal against such ministerial orders (Sections 26 and 30 of the Trade Dispute Act).</p>
<p>TECHNICAL COOPERATION</p>	<p>Request</p>	<p>2008 AR: According to the Government: technical cooperation should be provided to strengthen the capacity of tripartite partners on ILS as only few officers have undertaken the training. ILO technical assistance is also needed to organize awareness-raising programmes in order to train more labour officers and other social partners on democratic principles and social dialogue. It should furthermore consider funding research on the effects of ratification of C.87 on the industrial relations system in the country. Lastly, Kenya volunteered for a case study and workshops on the FPRW and on Declaration follow-up in the country. According to the FKE and the COTU-KENYA, ILO technical assistance is needed for capacity building mainly.</p> <p>2007 AR: The Government, the FKE and the COTU indicated their regret that the ILO/SLAREA (Strengthening Labour Administration and Relations in East Africa) Declaration Programme was not extended and added that ILO technical cooperation was still needed on awareness raising and capacity building in the areas of freedom of association and social dialogue, but also in respect of research and data collection on the PR. The Government also volunteered for the preparation of a case study followed by a national tripartite workshop on ratification of C.87, with the participation of members of Parliament.</p> <p>2006 AR: According to the Government: ILO technical cooperation should be provided to Kenya with a view to sensitizing the social partners and stakeholders on the draft Constitution and laws and strengthening the institutional capacity of the Government and the social partners for the realization the PR. In this respect, the ILO/SLAREA Programme should be extended. According to the FKE: There is a need for ILO technical and material support to train managers in the promotion of productivity through collective bargaining process. The FKE and the COTU-KENYA wished the extension of the ILO/SLAREA Declaration Programme, in particular for the implementation process of the new labour laws at regional level, so as to strengthen the realization of the 1998 ILO Declaration in Kenya.</p> <p>2005 AR: According to the Government: Needs for technical cooperation project to facilitate the realization of the PR in Kenya exists in the following areas, in order of priority: (1) strengthening data collection and capacity for statistical analysis; (2) strengthening social dialogue; (3) sharing of experiences across countries/regions; (4) capacity building of responsible government institutions; (5) strengthening capacity of employers' organizations; (6) strengthening capacity of workers' organizations; (7) awareness-raising, legal literacy and advocacy; and (8) assessment in collaboration with the ILO of the difficulties identified and their implications for realizing the PR. The Government hoped that the ILO/SLAREA Declaration Programme would be extended so as to sustain the capacity building of labour administration and employers' and workers' organizations in promoting the PR as well as other FPRW in Kenya, especially in the area of collective bargaining and social dialogue.</p> <p>This request is supported by the FKE, which hoped that the ILO would be in a position to offer further technical assistance in order to allow the Government to finalize the ratification of C.87.</p>

TECHNICAL COOPERATION	Offer	2000-2006 ARs: ILO advisory services and the ILO SLAREA Declaration Programme.
EXPERT-ADVISERS' OBSERVATIONS/ RECOMMENDATIONS	<p>2008 AR: The ILO Declaration Expert-Advisers (IDEAs) encouraged Kenya (and few other governments) to complete its legal review process to remove the obstacles to ratification of C.87. They also acknowledged the high number of promotional activities concerning the realization of the PR in Kenya (and some other countries), and encouraged the Office to maintain its support to these activities. However, the IDEAs noted that restrictions on the right to organise of certain categories of workers in Kenya (and some other countries), such as workers in the export processing zones (EPZs) and workers in the public service, were not compatible with the realization of this principle and right (Cf. Paragraphs 32, 35 and 38 of the 2008 Annual Review Introduction – ILO: GB.301/3).</p> <p>2007 AR: The IDEAs observed that with a view to giving full effect to this principle and right, the Government should be able to offer to all workers the opportunity to exercise their rights, and not have restrictions on the right to organize for workers in the export processing zones (Cf. Paragraph 37 of the 2007 Annual Review Introduction – ILO: GB.298/3).</p> <p>2005 AR: The IDEAs listed Kenya among the countries where some efforts were being made in terms of research, advocacy, activities, social dialogue, national policy formulation, labour law reform, preventive, enforcement and sanctions mechanisms and/or ratification (Cf. Paragraph 13 of the 2005 Annual Review Introduction – ILO: GB.292/4).</p> <p>2003 AR: The IDEAs were encouraged to see the Government of Kenya pointing out the needs in this country to strengthen the capacity building of workers' and employers' organizations and that it turned to the ILO for help. In light of requests by Kenya for ILO cooperation in assessing the difficulties and implications for realizing the principle and right, they called upon the Governing Body to request that high-level contacts be made straight away between the Office and two or three countries not yet served by ILO technical projects in this field (Cf. Paragraphs 73 and 74 of the 2003 Annual Review Introduction – ILO: GB.286/4).</p>	
GOVERNING BODY OBSERVATIONS/ RECOMMENDATIONS	NIL	