

# FOSTERING SOCIAL DIALOGUE IN KENYA, NIGERIA AND SRI LANKA

## PROJECT SYNTHESIS REPORT

## Disclaimer note

The opinions expressed and arguments employed herein do not necessarily reflect the official views of the OECD or its Member countries, the ILO or its Member states, or Global Deal partners. This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over, any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

First published 2024

Global Deal (2024), Fostering social dialogue in Kenya, Nigeria and Sri Lanka

All queries on rights and licensing should be addressed to [GlobalDeal@oecd.org](mailto:GlobalDeal@oecd.org)

Photo credits: [Melissamn](#) / [Jen Watson](#) / [James Karuga](#) / [Shutterranger](#) / [Tolu Owoeye](#) / [David Nkwa](#) / [Melinda Nagy](#) / [OlegD](#) / [OMfotovideocontent](#) / [Jacob Kjeldsen](#)

# TABLE OF CONTENTS

---

<b>1. Introduction</b>	<b>5</b>
Project description	5
Main takeaways	6
<b>2. The Status of Social Dialogue and Industrial Relations in Kenya</b>	<b>7</b>
In focus: Outlook and potential future priorities	7
Decent work outlook	9
Implementation of International Labour Standards to promote social dialogue	11
Key institutions, including the National Labour Board	13
Building capacity of key institutions	15
Good practices	17
Areas for further improvement	20
<b>3. The Status of Social Dialogue and Industrial Relations in Nigeria</b>	<b>22</b>
In focus: Outlook and potential future priorities	23
Decent work outlook	23
Implementation of International Labour Standards to promote social dialogue	24
Key institutions, including the National Labour Advisory Council (NLAC) and the Industrial Arbitration Panel (IAP)	26
Building capacity of key institutions	28
Good practices	30
Areas for further improvement	33
<b>4. The Status of Social Dialogue and Industrial Relations in Sri Lanka</b>	<b>34</b>
In focus: Outlook and potential future priorities	34
Decent work outlook	35
Implementation of International Labour Standards to promote social dialogue	35
Key institutions, including the National Labour Advisory Council	38
Building capacity of key institutions	39
Good practices	40
Areas for further improvement	44

## ACKNOWLEDGEMENTS

This synthesis report was written by Glenda Quintini, Isabelle Kronisch and Adem Yesilyurt of the Global Deal Support Unit as part of a project funded by the European Commission to promote capacity building on social dialogue and collective bargaining. This report draws in part on the research carried out by Shyamali Perera Ranaraja, Professor Sola Fajana and Professor Mpfari Budeli-Nemakonde. Administrative support was provided by Anna Irvin (Global Deal Support Unit) and Javier Gonzalez (Global Deal Support Unit). The project also benefitted from valuable inputs from several colleagues at the International Labour Organisation.

The Global Deal Support Unit would like to thank the National Labour Board of Kenya, the National Institute of Labour Studies in Sri Lanka, the National Labour Advisory Council of Nigeria and the Industrial Arbitration Panel in Nigeria and the International Training Centre of the ILO for their participation and contributions.

# 1. INTRODUCTION

## 1.1 PROJECT DESCRIPTION

The present report summarises the findings of a project carried out by the Global Deal for Decent Work and Inclusive Growth to support social dialogue and sound industrial relations in three target countries. The project has been funded by the European Commission's Directorate-General for Employment, Social Affairs and Inclusion

Social dialogue is a key instrument for social cohesion and a well-functioning and productive economy. It includes all types of communication between, or among workers, employers and governments on issues related to economic and social policies. However, social dialogue may not function effectively because of a lack of strong democratic foundations, such as freedom of association and the right to collective bargaining (FACB). Governments may struggle to comply with, enforce and promote International Labour Standards (ILS). Workers' and employers' organisations should also have the technical capacity both to negotiate with the government and with each other on an equal basis, in an environment of mutual trust. Therefore, strengthening bipartite and tripartite social dialogue institutions helps to advance decent work and inclusive growth.

Against this backdrop, the Global Deal for Decent Work and Inclusive Growth partnered with the European Commission's Directorate-General for Employment, Social Affairs and Inclusion to promote social dialogue and decent work in Kenya, Nigeria and Sri Lanka. These countries were selected considering their potential to create a lasting impact and achieve the project's objectives, commitments to ratify and improve application in law and in practice of ILS, particularly those related

to social dialogue, the existence of ongoing initiatives and willingness to strengthen the legal and institutional environment for social dialogue, and their relevance for the EU trade policy.

The overall objective of the project was to strengthen compliance with ILS by strengthening social dialogue mechanisms and institutions and fostering an enabling environment for social dialogue, freedom of association and collective bargaining. More specifically the project aimed at:

- Increasing knowledge on key challenges and barriers to ratification and/or effective implementation of and compliance with ILS related to social dialogue.
- Increasing capacity of governments and social partners to improve compliance with ILS related to social dialogue.
- Fostering peer learning among and between target countries and Global Deal partners.

The project leveraged the Global Deal multi-stakeholder partnership, which includes 142 governments, businesses and employers' organisations, trade unions, civil society and other organisations. Global Deal partners are committed to advance decent work, quality jobs and increased productivity and, by extension, achieve greater equality and inclusive growth. The project also supports the implementation of the European Pillar of Social Rights Action Plan, and the approach set out in the European Commission's (EC) Communication on decent work worldwide for a global just transition and a sustainable recovery.

## 1.2 MAIN TAKEAWAYS

The project has yielded several important takeaways:

### **Careful analysis of the status of social dialogue**

The close analysis of the status of social dialogue was instrumental to the success of the project and to making the discussion at the high-level event relevant to the local context. The in-depth analysis covered several areas, including the overall situation of the labour market, decent work deficits, the legislative framework on social dialogue, relevant tripartite and bipartite labour market institutions, the implementation in law and in practice of ILS related to social dialogue (with a focus on the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).). The contextual studies for each country also highlighted remaining challenges and were backed by evidence supporting the benefits of social dialogue in addressing those challenges. The role played by FACB was singled out along with innovative approaches to respect, protect and fulfil FACB rights.

### **Building capacity for national tripartite institutions**

The capacity building courses organised as part of the project were instrumental in making the outcomes of the project sustainable over time. Training was provided to representatives

from the main tripartite consultative bodies that are responsible for ensuring consultations on matters listed in article 5 of Convention No. 144 on Tripartite Consultation. Where possible, training participants that can replicate the training and act as future trainers were selected (as in the example of Sri Lanka and training provided to the National Institute of Labour Studies). The capacity building activities also yielded action plans for future improvement of the trained institutions, as indicated below under the country-specific chapters.

### **Bringing tripartite partners together and enhancing tripartite discussions**

The project succeeded in bringing tripartite partners together to discuss and overcome relations that were at times qualified as adversarial. Bringing tripartite partners to the same table has helped to build relationships and to support future social dialogue.

### **Creating a forum for exchange on the role of social dialogue for decent work through high-level conferences**

The high-level events succeeded at showcasing the added value of social dialogue and underline how social dialogue can address labour market challenges. This has helped to give more prominence and draw attention to the role of each partner and the importance of cooperation and collaboration to address challenges.





## 2. THE STATUS OF SOCIAL DIALOGUE AND INDUSTRIAL RELATIONS IN KENYA

### 2.1 IN FOCUS: OUTLOOK AND POTENTIAL FUTURE PRIORITIES

Several areas for further improvement remain for Kenya to fulfil decent work objectives and reduce inequalities and social dialogue stands to play a crucial role. The three main areas where significant progress is needed are: reducing informality and improving the representation of informal workers; improving labour inspection; and preparing for the digital economy.

- There is a need to build opportunities for the formalisation of enterprises and jobs in the informal economy. Existing projects have underscored the importance of institutionalising local social dialogue processes; strengthening the organisational capacity of stakeholders to address informality and addressing cumbersome processes to obtain ID documents for nationals and refugees; enhancing access to social security for workers in small enterprises, in line with the ongoing efforts of the county government; developing incentives for micro and small enterprises encouraging them to formalise; and increasing the freedom of movement and settlement opportunities for refugee workers within the county.

- To ensure the application in law and in practice of International Labour Standards (ILS), working conditions should be monitored through the labour inspectorate. Notably, there is a need to increase the visibility of labour inspectorate through better structured and planned inspections; to increase capacity and resources for monitoring work environments; to broaden opportunities for remedial measures in labour related grievances to reduce the prevalence of unresolved labour related



disputes. Social dialogue can play a key role to support an effective labour inspection system.

- Social dialogue should be strengthened in discussions related to the digital economy. In the context of more digitalised labour markets and new forms of work, the collaboration among social partners is crucial to ensure that there is coordination between skilling policy and technological transformation. Current Kenyan labour laws do not provide for a regulatory framework on digital jobs, thus most workers in the digital space remain vulnerable to exploitation. Consultations and discussions among the social partners need to be seen as an opportunity to direct attention towards: establishing a formal and integrated framework to support growth of the digital economy; identification and formal recognition of online or digitally enabled jobs with clearly defined employment relationships; promoting employment among youth, persons with disabilities and other underserved groups; and promoting social protection and welfare



of employees working in the digital economy.

In its advisory capacity and through its tripartite composition, the National Labour Board stands to play a key role in addressing these challenges. The training received by the board members in the context of the current project has strengthened the board's commitment to improve its functioning and make its advice more impactful. Further, a clear commitment emerged to further work together to address current labour market challenges through stronger social dialogue, including responding to upskilling and

reskilling needs, reducing gender disparities, better representing associations of informal workers, and governing the digital economy. In 2020, the Covid-19 pandemic triggered a major economic crisis, resulting in many workers losing their jobs and livelihoods and pushing many in Kenya below the poverty line. Although the economy and employment rebounded in 2021, the start of Russia's war of aggression against Ukraine in 2022 led to a new global crisis leading to a reduction of Kenyan workers' purchasing power.



## 2. 2 DECENT WORK OUTLOOK

Generally, the country's economic growth has benefitted from a boost in the agricultural sector but is highly vulnerable to climate change impacts that are likely to challenge future job creation and just transition outcomes. Real GDP growth has averaged over 5 % over the last decade, however, economic growth has not been job-rich, resulting in high unemployment, affecting a labour force of close to 25 million workers. In this context, the informal economy grew faster than the formal sector (at 6 % and 5 % per year, respectively). In 2019, the informal economy accounts for 83 % of total employment, well short of the objective of 6 % that had been set for 2022.

The Kenyan labour market also witnessed a rise in non-standard forms of employment, such as part-time, piece-rate, outsourcing and subcontracting, which intensified in the context of COVID-19. Workers on casual contracts of service represented 23 % of total wage employment in 2019 up from 21 % in 2013. Women are over-represented in vulnerable employment which worsens the gender wage gap.

The incidence of poverty declined from 46.6 % in 2005 to 36 % in 2015. The Human Development Index – a summary composite measure of a country's average achievements in three basic aspects of human development (health, knowledge and standard of living) – increased between 1990 and 2018. However, significant inequalities remain, and women are more likely to be multidimensionally poor and monetary poor. Also, the Gender Development Index below 1 signifies the existence of inequalities<sup>1</sup> between men and

women in health, education and command over economic resources. The income distribution also confirms high levels of income inequality, with 60 % of total expenditure in Kenya controlled by the topmost quintile while the bottom quintile controls only 3.6 %.

On average, Kenya records 6.5 years of schooling per capita. However, female have fewer years of schooling on average than men – 6 years of schooling compared to 7.2 years of schooling. The gender gap tends to be narrower at lower levels of education than in the labour market. The transition rate from primary to secondary education was nearly equal among girls and boys. However, the gap in participation was very large in Vocational Education and Training undermining labour market success: women represent only 42 % of those enrolled in VET, with resulting bad outcomes after studying.

The labour market's legal framework was strengthened in recent years but the continuously growing employment in the informal economy translates into limited applicability in practice, often due to a lack of awareness or incentives. Industrial relations deteriorated at the end of the 2010s and the initial lockdown measures to curb the COVID-19 pandemic in 2020 complicated the negotiation for collective bargaining and caused trade unions to lose many members. On the positive side, social partners signed a Memorandum of Understanding (MoU) in April 2020 to ensure decent work in crisis response (see good practice below). The coverage of collective bargaining agreements rebounded in 2021, reaching 14 % of wage

---

1- The Gender Development Index is the ratio between the female Human Development Index and the male Human Development Index.

employees, mainly due to an upsurge in the education sector. Despite attempts by The Central Organisation of Trade Unions - Kenya (COTU-K) to bring informal workers associations on board, trade union coverage of informal economy workers remains very low at just 1 % of informal employment.

The MoU also supported a long-awaited adjustment of minimum wages in May 2022, raising it by 12 % on average. However, in real terms (deducted inflation), the minimum wage continues to be outpaced by the increasing cost of living. In addition, disparities in statutory minimum wages based on occupations, sectors and regions aggravates the gender wage gap. This is because most women are in low skilled occupations groups, are mostly found in agriculture and predominantly in the rural areas with relatively low statutory minimum wage rates.

Kenya has experienced a consistent decline in the number of work-related accidents. At the same time, dispute resolution mechanisms remain inefficient, with high numbers of disputes reported and slow dispute resolution, which impacts negatively on tripartism, social dialogue, labour productivity and the ability of enterprise to create decent jobs.

Demographic shifts are reflected to curb the youth bulge connected to urbanisation and waning fertility rate. Labour's share of national income is falling, standing at the lowest level among the neighbouring countries. It sticks to persistent inequality and the meagre poverty reduction track record during the last decade. The unemployment rate of around 6.2 % in 2023 appeared to be relatively low but was overshadowed by a high underutilisation rate of 35 %.

The considerable migration flow of Kenyan workers sparked a brain drain. Remittances are gaining more economic weight, even significantly higher than foreign direct investments. The Labour Migration and Management Bill, 2023, supports fair and effective labour migration governance and the new legal framework to protect refugees in Kenya made refugees' voices heard, but still, their job opportunities and income generation continue to be problematic.

Against this backdrop, over the past decade, the Kenyan government has undertaken several plans, both nationally and jointly with international bodies, underscoring the importance of creating quality jobs, decreasing inequalities and poverty, and empowering the most disadvantaged groups.

The Kenya Vision 2030<sup>2</sup> seeks to transform the country into an industrialised upper middle-income economy offering high quality of life to all its citizens by 2030. Its second to last phase, implemented through the Fourth Medium Term Plan (MPT 4, 2023-2027)<sup>3</sup> sets objectives that underpin the promotion of decent work in the country. Notably, it prioritises the implementation of economic recovery strategies to re-position the economy on a steady and sustainable growth trajectory and aims to revitalise performance in all economic sectors to foster growth, increase employment creation and reduce poverty.

In 2021, Kenya also embarked in its third Decent Work Country Programme (DWCP) for the period 2021-2024,<sup>4</sup> which provides a tripartite framework to channel ILO support in achieving the United Nations sustainable development goals. Previous programmes focused on enhancing social

2- See Kenya Vision 2030, <https://vision2030.go.ke/>.

3- See the Fourth Medium Term Plan concept note, <https://www.planning.go.ke/wp-content/uploads/2022/02/Final-MTP-2023-2027-Concept-Note-1-Final.pdf>

4- For more details, see the Decent Work Country Programme for Kenya, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_mas/---program/documents/genericdocument/wcms\\_829831.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_mas/---program/documents/genericdocument/wcms_829831.pdf)



protection, promoting employment creation and employability, and promoting tripartism and social dialogue. The 2021-2024 DWCP continues to underscore these priorities by building around four key priorities: Human Capital Development, Sustainable Economic Growth, Social Dialogue and Tripartism. As such, the DWCP is in line with national priorities, the priorities of COTU-K and of the Federation of Kenyan Employers (FKE). The hope of the Kenyan government and social partners is that the programme will lead to a further reduction in inequalities, empowerment of workers, including women, youth and other vulnerable groups, and to an enabling environment for business growth and sustainability. To oversee

the implementation of the DWCP, a National Tripartite Steering committee with government, COTU-K, FKE and the ILO was created in 2021.



## 2.3 IMPLEMENTATION OF INTERNATIONAL LABOUR STANDARDS TO PROMOTE SOCIAL DIALOGUE

The Constitution of Kenya states that every person has the right to fair labour practices, fair remuneration and reasonable working conditions. It also protects the rights to freedom of association and collective bargaining.<sup>5</sup> Kenya has ratified 52 ILO Conventions, of which 38 are in force. These include seven of the ten ILO Fundamental Conventions and three out of four Governance (Priority) Conventions.<sup>6</sup> Kenya has not ratified Convention No. 87 on Freedom of Association and Protection of the Right to Organise. The Kenya Vision 2030 recognises the importance of tripartism and social dialogue in promoting industrial harmony, organisational productivity and competitiveness, employment creation, and economic growth. The promotion of social dialogue and tripartism is also one of the three priority areas identified by the Decent Work

Country Programme (DWCP for Kenya – 2021-2024). Tripartite partners have committed to strengthening the country's social dialogue institutions, improving the capacity of workers' and employers' organisations to engage in inclusive social dialogue, and advancing the fundamental principles and rights at work.

The Trade Unions Act provides for the formation of staff associations, employees associations and employees' organisations for the registration and control of trade unions. The civil service was banned from unionisation by Presidential Decree. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly made requests to the Government to look into the question of the need for allowing establishment of a trade union to cater to the

5- Constitution of Kenya, art. 36-41, <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>

6- The remaining ILO Fundamental Conventions that have not been ratified by Kenya are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Occupational Safety and Health Convention, 1981 (No. 155), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and the Employment Policy Convention, 1964 (No. 122).

7- See for example: Kenya – CEACR, Convention No. 98, Direct Request, 2022 and 2023.

civil service on issues related to collective bargaining, wages, terms and conditions of service.<sup>7</sup> Similarly the Committee of Freedom of Association has persistently urged that the Government should take necessary steps to insure the right of civil servants, not engaged into the administration of the state, to establish or join organisations of their own choosing. As a result, a Civil Service Union was registered.

A key provision of the Trade Union Act is the competence of the registrar under section 16(1)(d)(i) of the Act, which allows the registrar to refuse registration of an application if there already exists a registered trade union whom he or she deems “sufficiently representative of the whole or of a substantial proportion of the interest in respect of which the applicants seek registration.” This provision is repeated in Article 14 (1) (d) of the Labour Relations Act regarding trade unions and Article 15 (1) (d) with regard to employers’ organisations. Hence the government decides whether the representation by one trade union in any given industrial sector is “sufficient” and can in effect bar registration of splinter groups or even new trade unions in sectors. The Registrar’s actions have been in breach of this rule from time to time, sometimes arising out of High Court Orders to register splinter unions or out of his or her own decision. The registration provisions – which historically go back to the Industrial Relation Charter, and which are still backed by this tripartite agreement – affect the freedom of association of employees, who should be free to join unions of their own choice. All in all, the Registrar has immense powers in matters of registration. He or she may defer, refuse and suspend registration of a trade union. Section 18(1) of the Trade Unions Act grant leave to parties aggrieved by the decisions of the Registrar to appeal to the High Court, whereupon he or she has the right to be heard. Further, the CEACR has reiterated

its expectation that the Government ensures the existence of legislative provisions expressly prohibiting acts of interference and allowing for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference.<sup>8</sup>

Part III of the Trade Disputes Act requires that collective agreements be lodged with the Minister fourteen days of its execution and thereafter furnishes it with the Industrial Court for purposes of registration.

A lawful strike takes place only when the procedure laid down in Part V of the Trade Disputes Act is exhausted. The complex regulations and requirements of the Trade Disputes Act and the jurisdiction of the Industrial Court and Employment and Labour Relations Court make it difficult to think of any situation that could justify a legal strike action in Kenya. The system has been voluntarily – based on the early, pre-independence, tripartite Industrial Relation Charter – been converted into a complex system of conciliation and arbitration, which basically tries to avoid any industrial conflict in Kenya. Workers engaged in essential services are excluded from the right to strike under sections 36 and 43 of the Trade Disputes Act.<sup>9</sup> The broad definition of essential services has been criticised several times by the CEACR, as it deprives a relevant number of Kenyan workers of their basic human rights at work.



8- See for example: Kenya – CEACR, Convention No. 98, Direct Request, 2023

9- For further information, see: National Labour Law Profile: Kenya, available at: National Labour Law Profile: Kenya (ilo.org).

## 2.4 KEY INSTITUTIONS, INCLUDING THE NATIONAL LABOUR BOARD

In the 1950s, labour market governance mechanisms and institutions were established, which paved the way to the organisation of workers and employers for sound industrial relations. An important milestone in the labour movement was achieved in 1958 with the recognition agreement between the Federation of Kenya Employers (FKE) and Kenya Federation of Labour (KFL). This led to the adoption of the Industrial Relations Charter (IRC), a tripartite agreement signed by the Government, employers' organisation (FKE) and workers' organisation (KFL) in October 1962 and which was revised in 1984 (see good practice below). Considered as a historic agreement without precedent in Africa, the Charter forms the basis of tripartite social dialogue. Appendix A of the Industrial Relations Charter offers a model parties recognition agreement, and it marks out collective claims and grievances as part of the negotiation procedure.

After its declaration of independence in 1963, the Government of Kenya established the Industrial Court in 1964 through the Trade Disputes Act (No. 9 of 1964) for the purpose of facilitating the peaceful settlement of trade disputes, which was replaced in 2011 by the Employment and Labour Relations Court.

The Labour Institutions Act (2007), as amended to date, sets out an industrial relations framework and establishes two main tripartite consultative bodies - the National Labour Board and the Wages Councils. Other labour market institutions that are key for the industrial relations landscape include the National Economic and Social Council (NESC), the Micro and Small Enterprises Authority (MSEA), the National Social Security Fund, the National Hospital Insurance Fund (NHIF),



the National Council for Occupational Safety and Health (NACOSH), as well as the above-mentioned Employment and Labour Relations Court.

The National Labour Board (NLB) was established under part II of the Labour Institutions Act (2007). It is the highest tripartite body in the country, which advises the Minister of Labour and Social Protection on matters related to employment and labour relations, as well as ILO conventions. However, the ILO supervisory body, the Committee of Experts on the Application of Conventions and Recommendations has highlighted that it still lacks updated detailed information on both the content and the outcome of tripartite consultations.<sup>10</sup> Members of the NLB are appointed by the Minister, and include a chairperson experienced on the subject, the General Secretary of the most representative workers' federation and the Chief Executive of the most representative employers' federation. Social partners have underlined the lack of independent legal personality of the NLB demanding amendments to the Labour Institutions Act for the empowerment of its

10- Kenya- CEACR, Convention No. 144, Direct Request, 2023.



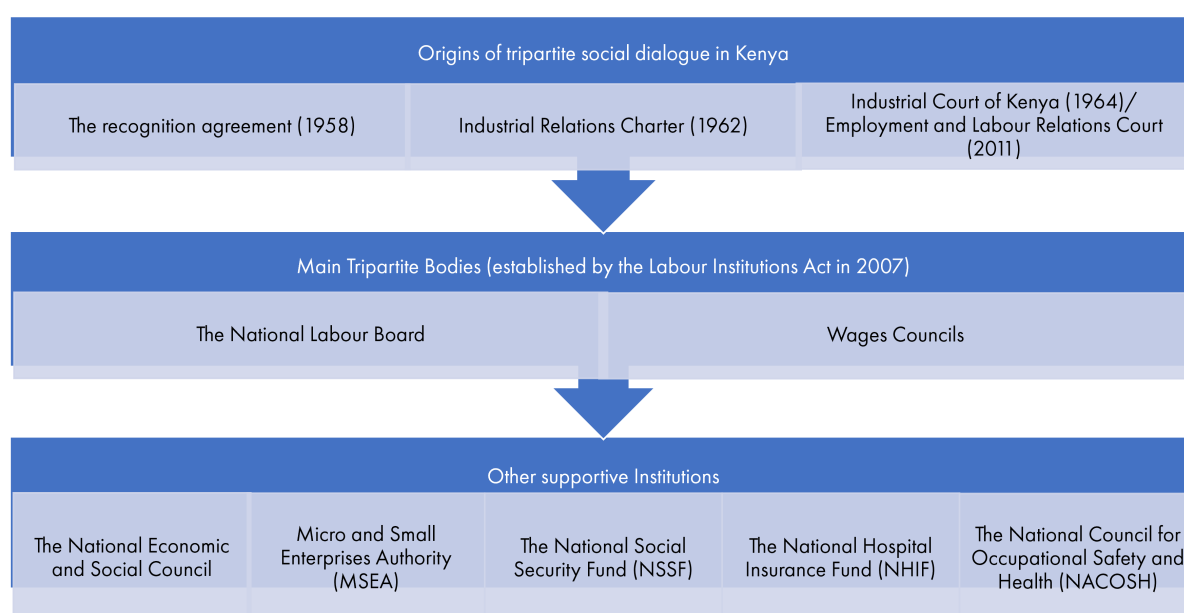
institutional and organisational framework.

Part VI of the Labour Institutions Act (2007) empowers the Minister of Labour to establish wage councils, notably a General Wages Council and an Agricultural Wages Council. The Minister is also empowered to establish, after consultation with the Board, Sectoral Wages Councils. Wages councils consist of tripartite members appointed by the Minister, whereas social partners appoint their representatives. Wage councils are set up to investigate remuneration and the conditions of employment and make recommendations to the Minister on minimum wage remuneration and conditions of employment.

In addition to these two tripartite bodies, there are other supportive institutions for effective social dialogue and industrial relations in Kenya. The National Economic and Social Council (NESC) is established under the Office of the President through Gazette Notice No. 7699 of September 2004. It is an advisory body to discuss and identify policy issues

and recommend their implementation to the Government, particularly related to economic growth, employment and social development. The Micro and Small Enterprises Authority (MSEA) was effectively established in March 2013 under MSEA Act (2012) to support and regulate the informal sector. The National Social Security Fund (NSSF) was established in 1965 and later transformed into a pension scheme by the NSSF Act (2013). The National Hospital Insurance Fund (NHIF) was initially created by workers and then formalised in 1966 as a department in the Ministry of Health to provide health insurance, including to self-employed and informal workers on a voluntary basis. The National Council for Occupational Safety and Health (NACOSH) was established under section 27 of the OSH Act, 2007 as a tripartite advisory body. The Employment and Labour Relations Court (ELRC) was then operationalised in 2011 with the status of High Court to hear and determine disputes related to employment and labour issues.

Figure 2.1. Key Social Dialogue Institutions in Kenya



## 2.5 BUILDING CAPACITY OF KEY INSTITUTIONS

### TRAINING SESSION ON ENHANCING THE FUNCTIONING OF THE NATIONAL LABOUR BOARD OF KENYA

A training session on enhancing the functioning of the National Labour Board in Kenya took place in person from 5 to 7 December 2023, with members of the Board attending in person. The key objectives of the training were:

- To improve the understanding of effective social dialogue and tripartism.
- To understand the legal and historical context of the National Labour Board.
- To improve decision making in the National Labour Board.
- To understand the state of the National Labour Board and extract key action steps to enhance the functioning of the NLB.

The training provided the context on National Tripartite Social Dialogue (NTSD) as well as an overview of the historical and legal context of the NLB. ILO Conventions ratified by Kenya were also presented and participants were encouraged to provide their views on the state of NTSD in Kenya.

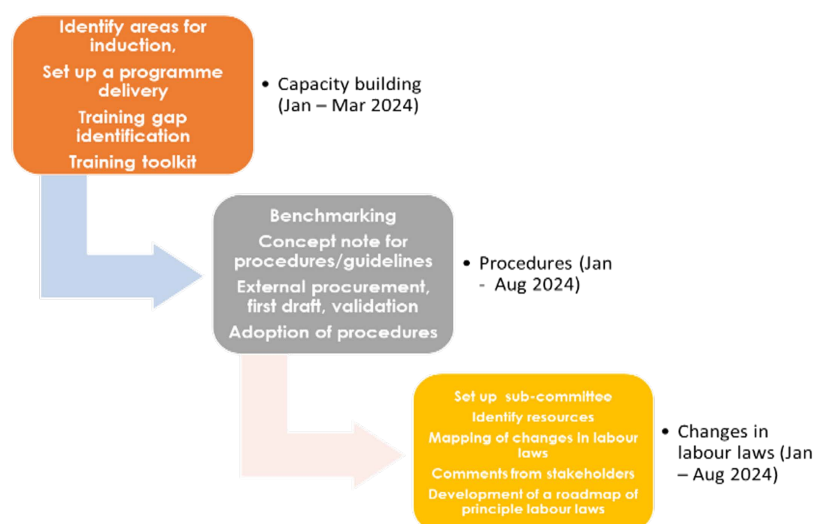
To improve the NLB decision making processes and outcomes, the training explained the

processes of negotiation, consultation and information exchange. It also covered different approaches to conflict management and their consequential results and outcomes within the context of the NLB. Finally, the training included a session on joint decision-making, listening and communication skills, managing emotions, ethics and values and how to overcome barriers to inclusion in engagement. Roles and responsibility of board members and their relationship with other stakeholders outside the board were also identified and discussed.

The training was delivered using a variety of methods, including learning by doing, drawing from participants' own knowledge and skills by engaging in exercises and case studies; working together to improve participants' relationships through practical engagements; highlighting good practices and referring to examples from other jurisdictions.

On the last day of the training, participants were asked to develop an action plan to improve the functioning of the NLB and make its advice more impactful. The NLB members set out key objectives to be achieved through the action plan.

Figure 2.2. Action plan to improve the functioning of the National Labour Board in Kenya



## HIGH-LEVEL CONFERENCE ON SOCIAL DIALOGUE

A high-level conference to present the outcomes of the training and discuss the broader challenges to decent work and inclusive growth in Kenya was held in Nairobi on 8 December 2023. At the event, there was a clear commitment from tripartite partners to enhance social dialogue. Workers' representatives (COTU-K); the representatives of employers (FKE); the Labour Commissioner Hellen Apiyo; the chair of the National Labour Board David Siele and the ILO country director Jealous Chirove congratulated training participants and recognised the importance of social dialogue to achieve decent work and reduce inequalities, particularly in the context of the twin transition.

The European Union Ambassador to Kenya, Henriette Geiger, spoke about the challenges Kenya is facing in terms of decent work and inclusivity – including access to education, VET and training policies, the challenges

brought about by the digital economy – and how social dialogue is crucial in addressing them. All stakeholders reiterated the value of the training they had received and committed to make social dialogue work better in Kenya. Ambassador Geiger underscored how social dialogue is instrumental to achieving the conditions underlying the Economic Partnership Agreement that was signed on 18 December 2023 between the EU and Kenya.

The second part of the event consisted of a roundtable discussion on the state of social dialogue in Kenya with the Labour Commissioner, a representative of FKE and a representative of COTU-K. The discussion was very engaging and animated on all the key issues – education and reskilling policies, digital economy and regulation of non-standard forms of employment, informality, labour inspection and dispute resolution. All participants reiterated their commitment to work together to address the key challenges facing the Kenyan labour market.



High-level conference held in Nairobi on 8 December 2023

## 2.6 GOOD PRACTICES

Over the past two decades, Kenya has seen a decrease of over 10 % in its poverty rate. However, the country faces significant challenges such as widening income inequality, a rising informality rate (currently standing at 83 %), an increase of non-standard forms of employment and substantial gender inequalities. Strengthening social dialogue and enhancing dispute resolution will be crucial to tackle these challenges effectively.

### THE ROLE OF SOCIAL DIALOGUE IN ADDRESSING THE IMPACTS OF COVID-19 ON THE LABOUR MARKET IN KENYA

A good example of how social dialogue can support workers, employers and economic activity more broadly is the Memorandum of Understanding (MoU) signed in April 2020 by COTU-K, FKE and the Ministry of Labour and Social Protection (MoLSP) to mitigate the impact of COVID-19.<sup>11</sup> All signatories expressed their resolution to foster harmonious labour relations in Kenya through social dialogue.

What does the MoU establish in terms of social dialogue?

- Employers and employees may agree on the terms and conditions of work-from-home arrangements, where possible.
- Employers and workers are encouraged to rely on the existing mechanisms for social dialogue in building resilience and making commitment to painful but necessary measures aimed at mitigating the effects of COVID-19. Through established platforms of social

dialogue, both employees and employers should commit to building resilience and implementing the necessary measures to alleviate the impact of COVID-19. These measures may include, but are not limited to:

- i. suspension of negotiation of Collective Bargaining Agreements (CBAs).
  - ii. suspension of implementation of concluded CBAs whose effective date falls within the COVID-19 period.
  - iii. review of some terms negotiated in the existing CBAs.
  - iv. freezing wage increments during the period of the pandemic.
- Employers' and workers' organisations are encouraged to actively participate in planning, implementing and monitoring measures for recovery from COVID-19 pandemic.
  - Employers and workers' unions are expected to dialogue to ensure they are well-informed on the measures being undertaken to mitigate the COVID-19 effects which have an impact on their terms and conditions of employment, and on how to protect themselves from COVID-19 infections.
  - Mutually agreed terms and conditions of employment entered into during the pandemic period must be in writing and may be filed with the Labour Commissioner through the nearest labour office.
  - If, upon review of the CBA, the parties mutually agree to have employees work on alternate days, reduction of pay for the normal period of work or to proceed on unpaid leave for any duration of time, this shall not be construed to be a break in employment service of the employee.

11 - See The Labour Relations Act (No. 14 of 2007)— Memorandum of Understanding Between the MOLSP, COTU-K and FKE on dealing with the impacts of the Covid-19 Pandemic, executed on the 30th of April 2020, in The Kenya Gazette, published by Authority of the Republic of Kenya (Registered as a Newspaper at the G.P.O.), Vol. CXXII —No. 122, Nairobi, 26th June 2020 (Gazette Notice No. 4246) pp. 2673-2674.



In addition, through the MoU, social partners agreed to several measures to protect workers, cushion employers and enhance economic activity. These measures include retaining the minimum wage levels; implementing safety and health protocols at the workplace; and

allowing migrant workers with a valid work permit to maintain the residence or work permit with no changes in the migration status in the case of loss of employment as a result of COVID-19.

### Box 1. Additional outcomes from the MoU

The tripartite dialogue process for agreeing and implementing the MoU yielded several additional positive outcomes:

- Both COTU-K and FKE acknowledged the pivotal role social dialogue played during the crisis to ensure decent work.<sup>12</sup>
- COTU-K and FKE proposed a new approach to the Ministry of Labour on how to speed up the settlement of labour disputes. They recommended using an Alternative Dispute Resolution (ADR) mechanism instead of going through the courts.
- The collaboration between FKE and the Kenyan Government led to tax incentives aimed at providing support to businesses and individuals who suffered the loss of livelihoods, such as freezing the PAYE tax, freezing of VAT on manufacturing companies, and the 2 % Tourism Levy on gross revenue (along with refund for those who had already paid it).<sup>13</sup>

### **SOCIAL DIALOGUE DRIVING CHANGE IN KENYA: ALIGNING THE INDUSTRIAL RELATIONS CHARTER (IRC) WITH EMERGING LABOUR TRENDS**

In 1962, the Government of Kenya, the Federation of Kenya Employers (FKE) and the Kenya Federation of Labour (forerunner of COTU-K) signed the Industrial Relations Charter (IRC), which was revised in 1984.<sup>14</sup> It is a voluntary agreement that sets out the principles and objectives of industrial relations

in Kenya and recognises the right of workers to form and join trade unions, and the right of employers to organize themselves into employers' associations. It also provides for the establishment of a tripartite National Joint Consultative council, which is composed of representatives of the government, employers, and workers to advise the Minister for Labour on general industrial relations (and which was later established in the form of the National Labour Board by the Labour Institutions Act in 2007).

12- Danish Trade Union Development Agency (DTDA) (2023), Labour Market Profile Kenya – 2022/2023, <http://www.ulussekretariatet.dk/wp-content/uploads/2022/12/Kenya-LMP-2022-final.pdf>

13- ILO (2020), The Federation of Kenya Employers Interventions during Covid-19, [https://www.ilo.org/global/docs/WCMS\\_750842/lang-en/index.htm](https://www.ilo.org/global/docs/WCMS_750842/lang-en/index.htm)

14- See ILO (2023), All Hands in Kenya supports tripartite to review industrial relations charter, [https://www.ilo.org/africa/media-centre/pr/WCMS\\_893699/lang-en/index.htm](https://www.ilo.org/africa/media-centre/pr/WCMS_893699/lang-en/index.htm)

## Box 2. The IRC: some key elements

- Social partners agree to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration and to respect one another's right of freedom of association.
- The Charter articulates, within the sphere of industrial relations, the mutually agreed responsibilities of the government, employers and workers. Moreover, it sets up a model recognition agreement model annexed to the Charter.
- The Government commits to enter into tripartite consultations on all matters affecting employment policy and labour administration and to promote industrial trade unionism.
- Employers' organisations commit to recognise trade unions as negotiating bodies, not to interfere with the rights of workers to enrol or continue as trade union members, and not to discriminate because of trade union activity.
- Trade unions commit to discourage any breach of peace, and a number of other practices, including negligence of duty, damage to property, careless operation of machinery, interference with or disturbance to normal work and insubordination.
- In accordance with ILO Convention No. 111, parties agree to abolish discrimination among workers on ground of race, colour, sex, belief, tribal association or trade union affiliation.
- The Charter establishes that in the case of a strike or lockout, the parties should strictly adhere to the provision of the parties Recognition Agreement and the Trade Disputes Act.

## IRC current tripartite review process

The IRC is currently undergoing a new review, based on a draft produced in 2001. From 13-15 September 2023, representatives of the Kenyan government, FKE and COTU-K came together to discuss a range of topics, including obstacles to effective industrial relations, evolving dynamics of the labour market, subcontracting and outsourcing of labour, labour migration and imbalances

in representation levels between workers and employers. The parties emphasized the need to revise the existing IRC to align it with both the 2010 Constitution of Kenya and the evolving labour landscape. The technical working group has drafted an updated charter, which will undergo further rigor and approvals before adoption. The review of the Industrial Relations Charter is an important step in improving industrial relations in Kenya.

15- See ILO, The Trade Disputes Act, [https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3\\_isn=28619&cs=1NsMOnLAEuEbwsio6zyMU2n0ro9nOk2yS4HaH7sZWbo\\_ibXSYBBD2DP1\\_q29y\\_Y3K9gpDziM-MO\\_6tqn5elAVJbQ](https://natlex.ilo.org/dyn/natlex2/r/natlex/fe/details?p3_isn=28619&cs=1NsMOnLAEuEbwsio6zyMU2n0ro9nOk2yS4HaH7sZWbo_ibXSYBBD2DP1_q29y_Y3K9gpDziM-MO_6tqn5elAVJbQ)

16- ILO (2023), All Hands in Kenya supports tripartite to review industrial relations charter, [https://www.ilo.org/africa/media-centre/pr/WCMS\\_893699/lang--en/index.htm](https://www.ilo.org/africa/media-centre/pr/WCMS_893699/lang--en/index.htm)



## 2.7 AREAS FOR FURTHER IMPROVEMENT

Several areas for further improvement remain for Kenya to fulfil decent work objectives and reduce inequalities. The three main areas where significant progress is needed are: reducing informality and improving the representation of informal workers; improving labour inspection; and preparing for the digital economy.

Overall, workers in the informal sector in Kenya are more vulnerable to decent work deficits, including restrictions regarding the right to freedom of association and collective bargaining; adequate working conditions, including regulated working hours and rest periods, access to social protection, as provided under the NSSF and the NHIF to workers in the formal economy.

Progress has been made, particularly in terms of improving the representation of informal workers associations in the NLB and the Wage Councils via COTU-K, which is becoming more organised into associations, cooperatives, and unions to negotiate wages and working conditions, matching the government's minimum wage guidelines. However, there is a lack of organisations that can advocate and lobby for workers' rights within the informal economy. Effective organisations are important because they have some influence on policies and issues affecting members' businesses, service provision to members and accumulation of social capital.

Under the PROSPECTS Partnership,<sup>17</sup> supported by the government of the Netherlands, the ILO has facilitated an evidence-based local dialogue process to assess how challenges of job and enterprise informality affect the creation of livelihood opportunities for refugee and host communities in Turkana County. A

first stakeholder dialogue forum on informality took place on 23 November 2022 in Lodwar, Turkana County, in order to validate an assessment which identified challenges related to informality and opportunities for the formalisation of enterprises and jobs in the informal economy in the county. Participants called for:

- Institutionalising local dialogue processes.
- Strengthening the organisational capacity of stakeholders to address informality and addressing cumbersome processes to obtain ID documents for nationals and refugees.
- Enhancing access to social security for workers in small enterprises, in line with the ongoing efforts of the county government.
- Developing incentives for micro and small enterprises encouraging them to formalise and
- Increasing the freedom of movement and settlement opportunities for refugee workers within the county.

An important aspect of ensuring application in law and in practice of ILS is monitoring working conditions through the labour inspectorate. This will ensure better alignment of national law with ILS thereby addressing decent work deficits, combatting labour rights abuses and promoting economic and social development more broadly.

The effectiveness of Kenya's labour legislation is dependent upon the efficiency of the Labour Inspectorate, which monitors and enforces compliance with ILS by employers at the workplace and provides advice to employers and workers on how to improve the implementation of national legislation in relation to working time, wages, occupational safety and health, gender discrimination

17- Partnership for improving prospects for forcibly displaced persons and host communities (PROSPECTS), <https://www.ilo.org/global/programmes-and-projects/prospects/lang-en/index.htm>

and child labour. The Government of Kenya has the potential to build effective labour administration and labour inspection systems through genuine and timely tripartite social dialogue.

The All Hands in Kenya project,<sup>18</sup> an ILO Project that advances labour standards through cooperative action, has unveiled key challenges for the labour administration and labour inspection systems and underscored the role that genuine and timely tripartite social dialogue could play in addressing them. Key findings of the project suggest that:

- The visibility of labour inspectorate is waning because inspections are neither structured nor planned for, with limited capacity and resources for monitoring work environments;
- Low budgetary allocation hinders inspectors' visits to various work sites.
- Due to a lack of harmony in the institutions and departments responsible for inspection, employers encounter harassment from inspectors whose authenticity they claim cannot be verified but whose intention is sometimes to solicit money from companies that do not adhere to labour laws.
- Remedial measures in labour related grievances are limited and inconsistent thus leading to a high prevalence of unresolved labour related disputes.<sup>19</sup>

A third area where social dialogue needs to play a central role are the discussions related to the digital economy. In the context of more digitalised labour markets and new forms of work, the collaboration among social partners is crucial to ensure that there is coordination between skilling policy and technological

transformation. Current Kenyan labour laws do not provide for a regulatory framework on digital jobs, thus most workers in the digital space remain vulnerable to exploitation.

Consultations and discussions among the social partners need to be seen as an opportunity to direct attention towards:

- Establishing a formal and integrated framework to support growth of the digital economy.
- Identification and formal recognition of online or digitally enabled jobs with clearly defined employment relationships.
- Promoting employment among youth, persons with disabilities and other underserved groups.
- Promoting social protection and welfare of employees working in the digital economy.

Enhanced social dialogue can play a central role in addressing the innovation potential of the digital economy, and in particular, the online platform economy. It can help tackle the challenges associated with governance, working conditions and labour market access for all, including for traditionally unserved groups, such as refugees.

With this aim in mind, Kenya's 2023 national dialogue on the digital economy<sup>20</sup> offered a convening space to find common ground and stimulate social dialogue on how to drive a digital transformation that is inclusive, tapping into existing opportunities, managing policy trade-offs and minimising risks specific to Kenya's policy enabling environment and socioeconomic realities.

18- All Hands in Kenya: Advancing Labour Standards Through Cooperative Action (ilo.org), [https://www.ilo.org/africa/countries-covered/kenya/WCMS\\_811841/lang--en/index.htm](https://www.ilo.org/africa/countries-covered/kenya/WCMS_811841/lang--en/index.htm)

19- For further information see: Enhancing decent employment in Kenya through effective labour inspection (ilo.org), [https://www.ilo.org/africa/countries-covered/kenya/WCMS\\_885729/lang--en/index.htm](https://www.ilo.org/africa/countries-covered/kenya/WCMS_885729/lang--en/index.htm)

20- See: Social dialogue promotes decent work in Kenya's digital economy (ilo.org), [https://www.ilo.org/global/programmes-and-projects/prospects/news/WCMS\\_876649/lang--en/index.htm](https://www.ilo.org/global/programmes-and-projects/prospects/news/WCMS_876649/lang--en/index.htm)

### 3. THE STATUS OF SOCIAL DIALOGUE AND INDUSTRIAL RELATIONS IN NIGERIA

#### 3.1 IN FOCUS: OUTLOOK AND POTENTIAL FUTURE PRIORITIES

Over the past few years, the COVID-19 pandemic, cost-of-living crisis, disruptions to supply chains, and drop in revenue have compounded existing national development challenges. Social dialogue stands to play a crucial role in addressing prevailing decent work deficits in Nigeria, including: limited job creation; underemployment, especially among youth and women; gaps in labour administration; as well as poor, unhealthy and unsafe working environments.

However, several gaps in social dialogue need to be addressed for it to play its full role in addressing existing challenges.

- Social partners should be actively involved in the National Employment Council set up in 2018 for the implementation of the National Employment Policy. The National Employment Council aims to come up with viable solutions to halt and reverse the current unemployment situation in Nigeria.

- The meetings of the National Labour Advisory Council should be more frequent for it to play a concrete role in the social dialogue landscape.

- Inefficiencies in the labour inspectorate system need to be addressed through adequate funding of factory and labour inspectorates, closing capacity gaps for training of factory and labour inspectors, adequate funding for monitoring and evaluation, better awareness of victimised groups to their rights, more power to inspectors to sanction offenders.

- Social partners should be actively involved in the design of measures to prepare Nigeria for the net-zero pathway and the digital economy. They stand to play a crucial role in supporting women and youth to benefit from the transitions; upgrading informal work-based learning systems and non-formal training; contributing to a better alignment of education to labour market needs.

- In the area of dispute resolutions, the information system should be improved and made accessible to social partners to increase the visibility of the system, raise awareness and increase trust in the system by the potential users. The system of dispute resolution also needs to be made more accessible to the informal sector and rural communities.

Moving forward, members of the National Labour Advisory Council and the Industrial Arbitration Panel committed to address shortcomings in the dispute resolution system as identified during the training session organised in the framework of this project, notably raising awareness about the dispute resolution system, improving the coverage of rural areas and the informal sector and improving the information system. In addition, there is a clear commitment to further strengthen social dialogue institutions and mechanisms with a focus on preparing for the green and digital transitions, improving labour market opportunities for women and youth and improving the relevance of education to labour market needs.

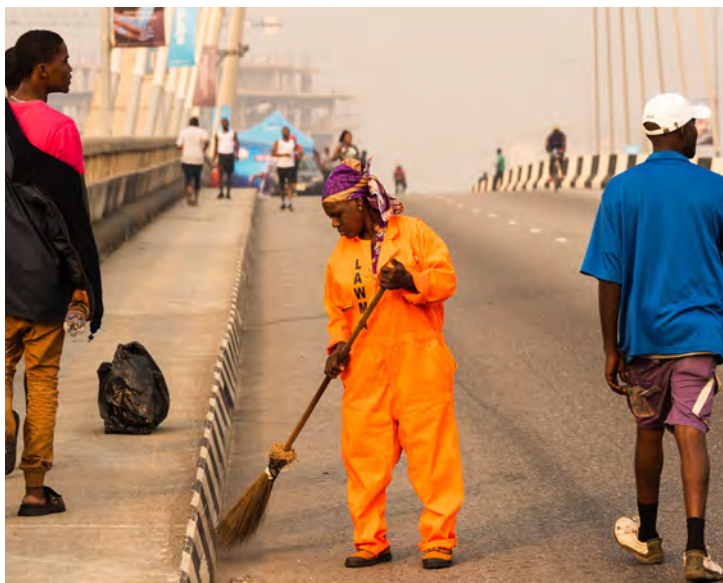


### 3.2 DECENT WORK OUTLOOK

Nigeria has the largest economy and is the most populous country in Africa. Despite being the largest crude oil producer in Africa, poverty (40% or 82.9 people million in 2019) and unemployment (33% in 2021) remains high. Nigeria ranks low in the Human Development Index (152 out of 189 countries in 2021). The COVID-19 pandemic, cost-of-living crisis, disruptions to supply chains, and drop in revenue all compounded national development challenges. The World Bank estimates the national poverty rate may have increased to 42.5 % in 2020. Moreover, Nigeria suffers from socio-economic deficits where close to 60 per cent of the rural population still lack access to electricity and only 5% of the population uses clean energy sources for cooking, with there being a disproportionate and negative impact on women and girls.<sup>21</sup>

Nigeria is vulnerable to conflict-related and environmental risks (desertification and natural disasters). Governance, peace, and security deficits constitute direct threats to development and citizen trust in Nigerian public institutions and policies.<sup>22</sup>

Prevailing decent work deficits in Nigeria include limited job creation and condition of underemployment; especially among youth and women; high prevalence of child labour, forced labour and human trafficking; gaps in labour administration, including existence of obsolete labour laws and regulations; insufficient manpower and capacity for labour inspections; poor, unhealthy and unsafe working environments as well as gaps in social



dialogue including anti-union stance of some employers.

Further, Nigeria scores particularly low on the gender development front. Female labour force participation is low at 48.4 % and the pandemic intensified an already high incidence of gender-based violence, including in the workplace.

With the launch of the Decent Work Country Programme III – signed in December 2023 – the Nigerian federal government and the social partners aim to ensure that existing and new jobs in both the public and private sectors are productive, provide opportunities for career progression and deliver a fair income and social security for workers and their families. It also aims to ensure that the tenets of decent work are mainstreamed into all employment generation activities. The key priorities, to be achieved by 2027, are:

- Promoting inclusive growth, decent jobs and adequate social protection for the poor and most vulnerable groups.

21 - National Bureau of Statistics: Poverty and Inequality in Nigeria 2019: Executive Summary, <https://nigerianstat.gov.ng/elibrary/read/1092#:~:text=In%20Nigeria%2040.1%20percent%20of,below%20137%2C430%20Naira%20per%20year>.

22 - For more details, see the UNDP Country Programme for Nigeria (2023), [https://www.undp.org/sites/g/files/zskgke326/files/2023-06/undp\\_nigeria\\_cpd\\_2023-2027.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2023-06/undp_nigeria_cpd_2023-2027.pdf)

- Fighting occupational segregation to achieve gender equality.
- Aligning education to labour market needs.

The DWCP supports implementation of Nigeria's National Development Plan (2021-2025) and was welcomed by the Nigeria Employers' Consultative Association (NECA), the Nigeria Labour Congress (NLC) and the Trade Union Congress of Nigeria (TUC).

In the context of Nigeria's National Development Plan, the Nigeria Energy Transition Plan (2021) and the Digital Transformation Agenda (2023), social dialogue is central to achieving many of the federal government targets. For instance, stronger social dialogue will be instrumental in achieving the National Development Plan, especially the objective on VET education, increasing participation from just 1500 men

and women today, including both formal and informal VET and apprenticeships, to at least 10,000. For the same plan, the meaningful involvement of social partners will be essential to fight occupational segregation and achieve gender equality at work and to better align education to labour market needs.

Social dialogue will also be key to achieve many of the targets in the Nigeria Energy Transition Plan, notably to manage the expected long-term job loss in the oil sector due to the reduced global fossil-fuel demand, and to deliver training that would make the benefits of the green transition more inclusive. Finally, the Digital Transformation Agenda, aims to have 70% of the population acquiring digital skills by 2027, which would require training adults who are already in work, not just youth, and cannot be achieved without the involvement of social partners.

### 3.3 IMPLEMENTATION OF INTERNATIONAL LABOUR STANDARDS TO PROMOTE SOCIAL DIALOGUE

Nigeria has ratified 40 ILO Conventions, of which 28 are in force. These include the ten ILO Fundamental Conventions, including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Constitution of the Federal Republic of Nigeria gives effect to freedom of association rights and states that: "Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests."<sup>23</sup>

The Nigerian Constitution provides the right to lawful association and for workers to form or belong to trade unions. This is to be found in section (40) of the 1999 Constitution (as amended). The Trade Union Ordinance of 1938 which became effective 1 April 1939 gives legal backing for the unionisation of workers in Nigeria. Labour laws and regulatory frameworks regulating industrial relations and collective bargaining in Nigeria are the Wages Boards and Industrial Councils Act, 1973; Labour Act, 1974 and all subsequent amendments; Trade Disputes Act, 1976 and all subsequent amendments; Trade Unions Act, 1973 and all subsequent amendments including the Trade Unions Amendment Act (2005); Pension Reforms Act, 2004 and 2014, National Minimum Wage

23- Constitution of the Federal Republic of Nigeria, Sec. 40, [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_lang=en&p\\_isn=54097](https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=54097)



Act, 2019; National Industrial Court Act, 2006, Workmen's Compensation Act, 1987, Employee Compensation Act, 2010; Factories Act, 1987 as well as ILO Conventions. To provide a more comprehensive framework for the contemporary issues, Government is currently making efforts to review some of the extant laws.<sup>24</sup>

Since 2004, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the ILO's supervisory body, has reminded the Government of Nigeria that it is important for employers' and workers' organisations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation. From 2nd to 4th March 2020, the Ministry of Labour had collaborated with NLC, TUC and NECA in reviewing the Draft National Labour Bills, which were withdrawn from the National Assembly for review and resubmission. The CEACR is now waiting for detailed information on the results of the reform and its impact on the improvement of consultations with representative organisations that enjoy freedom of association. At the same time, the CEACR has noted with interest that the National Labour Advisory Council (NLAC) held its first session from 23 to 24 March, which was the first session since its establishment in 2014.<sup>25</sup>

Further, allegations were made by the ITUC as well as NLC in 2015, 2016 and 2017, to which the Government has not replied yet, which was highlighted by the CEACR in its comment concerning Convention No. 87. According to these, denial of the right to join trade unions, massive dismissals for trying to join trade unions, mass persecution and arrests

of union members as well as allegations of arrests, reprisals and dismissals against union leaders and members took place. Since then, new serious allegations were made by ITUC in 2021, including massive dismissals for trying to join trade unions, acts of anti-union violence during strike actions, arrests of union members, suspensions of union leaders, and a general anti-union climate in the country. Further, the CEACR has requested further information regarding the automatic affiliation of teachers in federal educational institutions to the Association of Senior Civil Servants of Nigeria (ASCSN), freedom of association in export processing zones (EPZs), especially as it is difficult for workers to join trade unions in EPZs, as well as progress regarding revisions to the Trade Unions Act to bring it in conformity with the provisions of Convention No. 87.<sup>26</sup>

Anti-union discrimination as well as interference in trade union affairs have also been addressed by the CEACR under Convention No. 98, as well as limitations concerning the recognition of the right to collective bargaining for all public sector workers not engaged in the administration of the State, and limitations with regard to the observance of the principle of voluntary collective negotiations which is affected by the legal obligation to submit any collective agreements on wages to government approval. Finally, the CEACR noted the Government's intention to ensure that the reform of the labour legislation undertaken in consultation with the social partners was in conformity with international labour standards and trusted that the new Collective Labour Relations Act and any other texts adopted in the context of the reform of the Labour Law would be in full conformity with the requirements of the Convention.<sup>27</sup>

24- Notable among the revised bills before the National Assembly are: (i) National Labour Standards Bill; and (ii) National Industrial Relations Institutions Bill.

25- Nigeria – CEACR, Convention No. 144, Observation, 2022.

26- Nigeria – CEACR, Convention No. 87, Observation, 2021.

27- Nigeria – CEACR, Convention No. 98, Observation, 2021.



### 3.4 KEY INSTITUTIONS, INCLUDING NATIONAL LABOUR ADVISORY COUNCIL (NLAC) AND INDUSTRIAL ARBITRATION PANEL (IAP)

There are three key institutions relevant to the functioning of social dialogue in Nigeria: the National Labour Advisory Council (NLAC), the Industrial Arbitration Panel (IAP) and the

National Industrial Court (NICN) of Nigeria (see Figure 3 for a summary of the institutions). Training provided as part of the project targeted the first two.

Figure 3.1. Key social dialogue institutions in Nigeria

National Labour Advisory Council	Industrial Arbitration Panel	National Industrial Court of Nigeria
<ul style="list-style-type: none"> <li>• Tripartite</li> <li>• Ensures peaceful industrial relations</li> <li>• Promotes social dialogue</li> <li>• Ensures best practice of labour administration</li> </ul>	<ul style="list-style-type: none"> <li>• Tripartite</li> <li>• Provides arbitration services</li> <li>• It is expected that the IAP will be more actively involved in the settlement, monitoring and evaluation of industrial conflicts</li> </ul>	<ul style="list-style-type: none"> <li>• Combines rule of law applicable in conventional courts with speedy resolution of industrial disputes</li> <li>• Specialised knowledge of industrial relations; easy access; fast-track justice; power to enforce own judgments</li> <li>• Well positioned to partner with the social partners to adjudicate labour disputes</li> </ul>

NLAC, established in 1955, is the highest tripartite body on labour matters with the responsibility of promoting and ensuring best practice of labour administration in line with international standards as well as recommend to the parliament on the ratification of international labour standards. The resolutions and recommendations from the NLAC 2021 sessions include:

- The Government should demonstrate political will to honour and implement Collective Bargaining Agreements in order to sustain tripartism and social dialogue.
- Strengthen mechanisms for Collective Bargaining in both public and private sectors.
- Extend labour inspection and social protection to all sectors of the economy to curb

unfair labour practices.

- The Government should promote full and decent employment in all sectors.
- Ratify the four conventions discussed at the 2021 NLAC sessions (Convention Nos. 143, 181, 187 and 190) and the Government should set up a Technical Committee to look into critical issues relevant to the implementation of the conventions.
- Revive non-functional sectoral Employers' Association to promote social dialogue and tripartism.
- Review the composition of the Joint National Public Service Negotiating Council (JNPSNC) to accommodate other Trade Unions that are currently excluded.
- Ensure the regularity of NLAC meetings

in conformity with Convention No. 144 as a veritable platform towards promoting industrial peace and harmony as well as ensuring healthy Labour Administration in Nigeria.<sup>28</sup>

Arbitration services in Nigeria are provided by the Industrial Arbitration Panel (IAP) which was established by the Trade Disputes Act of 1976. The IAP is a court of original jurisdiction in Trade Dispute matters. The Panel is constituted of a Chairman, vice Chairman, and at least ten members appointed by the Minister of Labour and Employment. Out of the ten members, two are persons nominated by organisations representing the interests of employers and another two from organisations representing the interests of workers.

Currently, the IAP operates from 6 local offices in Nigeria. The list of concluded cases dealt with from 2018 to 2022 were 14, with an average duration of 14 months for each case brought before the Panel.<sup>29</sup> Generally cases are disposed faster in recent years than in the 2018-2020 period. In addition, a total of 11 cases are ongoing before the panel at the time of visit to the IAP website in November 2023. It is expected that the IAP will be more actively involved in the settlement, monitoring and evaluation of the conflict activities of the social partners in Nigeria.

The NICN combines the rule of law applicable in conventional courts with speedy resolution of industrial disputes. Its corporate strengths are: (i) specialised knowledge of the law and practice of industrial relations and employment conditions; (ii) easy access to justice with locations of many Court Divisions in all state capitals including Abuja; (iii) fast-track justice delivery process in tandem with the import of

time to socio-economic development; and (iv) power to enforce own judgments and awards.

As a result, the NICN is well positioned to partner with the social partners to adjudicate labour disputes in all sectors of the Nigerian economy. It has the potential to deliver equal access to a fair, affordable, reliable, flexible, and an effective system of justice for all without excess cost, inconvenience, or delay, with sensitivity to an increasingly diverse society; it offers complementary methods of dispute resolution while preserving the constitutional right to trial, and ensuring compliances with the results achieved through effective enforcement of court orders; and it guarantees the independence of the judiciary while strengthening relations with the public, the bar, and other branches of government.



28- See: ILO supports the 2021 Session of the Nigerian National Labour Advisory Council Meeting, [https://www.ilo.org/africa/about-us/offices/abuja/WCMS\\_777248/lang-en/index.htm](https://www.ilo.org/africa/about-us/offices/abuja/WCMS_777248/lang-en/index.htm)

29- The figures are calculated from the list of hearings posted at the website <https://iapanel.gov.ng/hearlist.php?page=2&keyword=input=Concluded>

### 3.5 BUILDING CAPACITY FOR KEY INSTITUTIONS

#### TRAINING SESSION ON DISPUTE RESOLUTION FOR THE NATIONAL LABOUR ADVISORY COUNCIL AND THE INDUSTRIAL ARBITRATION PANEL OF NIGERIA

In-person training on dispute resolution for 40 members of the National Labour Advisory Council and the Industrial Arbitration Panel was organised in Abuja on 20-22 February 2024.

The first part of the training consisted in a collective reflection to build knowledge on labour disputes. It explored labour disputes from different perspectives: psychological, legal and organisational. The training also explored issues of cognitive bias on dispute resolution to get a better grasp of what labour disputes are and what triggers them. In terms of labour dispute resolution, the training followed guidance from relevant ILO standards. Participants were exposed to possible approaches to dispute resolution and discussed how these approaches could be translated from a system approach aiming at reducing the level of conflict, preventing or resolving conflicts from the very start and allowing parties to determine their own outcomes of a dispute.

The second part of the training explored nation-wide labour dispute resolution bodies. Criteria for effective dispute resolution were assessed, including transparency, responsiveness, accountability, confidence and trust as well as a well-functioning data system. In addition, participants assessed good practices, from various jurisdictions and regions on possible answers from dispute resolution bodies.

Building on the knowledge consolidated in the

first two parts, the last part discussed the future of dispute resolution bodies and institutions and what possible roles and measures can be taken for increasing their visibility and their contribution to the governance of the world of work.

More specifically, the effectiveness of NECA and IAP was assessed by training participants using a questionnaire developed by the ITC-ILO. The questionnaire included several indicators grouped under five dimensions, namely:

- Transparency
- Responsiveness
- Accountability
- Confidence and trust
- Data

Gaps in effectiveness were identified, across all areas. Training participants underscored the need to improve the data system, notably by collecting data about disputes and their outcomes and by carrying out satisfaction surveys. An improved information system accessible to social partners would increase the visibility of the system, could be used to raise awareness and increase trust in the system by the potential users, and could also be used to convince relevant authorities to increase funding available for dispute resolution.

Better accessibility was also seen as essential to improve effectiveness. Participants highlighted that the extent to which the system is accessible to the informal sector and rural communities remains very limited.

Training participants called for more capacity building to reskill and upgrade the knowledge of NLAC and IAP members. Alignment to international standards in dispute resolutions

was identified as crucial for Nigeria to compete in the global economy.

Finally, both NLAC and IAP are functioning on very limited financial resources. More would be needed to make operations more flexible, faster and more effective.

Participants will retain access to the e-campus online platform and will have access to additional course, as for example the industrial relations toolkit.

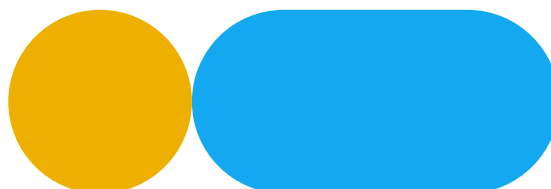
## HIGH-LEVEL CONFERENCE ON SOCIAL DIALOGUE

A high-level conference took place in Abuja on 23 February 2024. It was attended by government officials, representatives of NECA, NLC and TUC, many of which had attended the training as members of the NLAC and IAP. All speakers expressed gratitude to the Global Deal, the European Commission and the ILO for the training they had received. The head of cooperation at the European Union Delegation to Nigeria – Massimo De Luca – gave remarks praising the project and underscoring the importance of social dialogue as an enabler of key development objectives underlying trade agreements with Europe and for attracting foreign direct investment to the country. Other EU delegations (notably Portugal and France) also attended and showed a lot of interest in the initiative.

The second part of the event consisted of a roundtable discussion on the state of social dialogue in Nigeria, with a focus on the role of social dialogue in promoting decent



work, addressing institutional challenges and supporting the green and digital transitions. NECA, TUC, NLC and the Nigerian government were united and underlined that social dialogue is key to improve industrial peace and harmony, increase productivity, attract and retain talent, attract foreign direct investment and achieve social justice at the local level and in the informal sector. Many institutional challenges were highlighted and there was a general consensus that social partners should be more involved in reform plans that touch on the rights of workers and employers and that any negotiations between government and social partners should be conducted in a more transparent way.



### 3.6 GOOD PRACTICES

Over the last years, the Nigerian government has introduced several policies to revitalise labour markets:

- The National Employment Plan 2017 prioritizes skills development through mapping, engaging industries in education and training, and enhancing formal technical and vocational education.
- The Nigeria Youth Employment Action Plan and the Nigeria's National Development Plan (2021-2025) are focused on ensuring quality

employment opportunities for young people.

- The Decent Work Country Programme 2023-2027 aims to support the implementation of these policies by fostering inclusive growth, creating decent jobs, and providing sufficient social protection for vulnerable populations, addressing the various decent work challenges facing the workforce.

The success of these initiatives hinges largely on effective social dialogue.

#### Box 3. Memorandum of Understanding to mitigate the impact of COVID-19

In June 2020, a Memorandum of Understanding (MoU) was signed by the Nigeria Labour Congress (NLC), the Trade Union Congress (TUC) and the Nigeria Employers' Consultative Association (NECA). The overall aim of the agreement was to mitigate the impact of the pandemic on workers, employers and the broader economy.

Key elements from the MoU include:

- Collaborate with the government in the implementation of the health measures while advocating for the provision of more equipment, medicines, and food for the most vulnerable sectors.
- Identify joint actions aimed at both minimising the impact of COVID-19 and creating favourable conditions for the post-pandemic economic rebound.
- Urge the government to provide economic stimulus packages to businesses, particularly to the most affected sectors.
- Work together to propose job creation strategies to the government, prevent the loss of jobs in the private sector and encourage business to adopt a more employee-centric approach.
- Maintain the collaboration after the pandemic to promote the creation and protection of decent jobs, enhance enterprise competitiveness and foster overall economic prosperity.





## **DANGOTE GROUP: COLLECTIVE BARGAINING AND AN EFFECTIVE GRIEVANCE MECHANISM**

### **The Dangote Group**

There are various examples of companies that contribute through social dialogue at enterprise level, to the expansion of decent work and inclusive growth. One of them is the Dangote Group (DG), a Nigerian multinational conglomerate, one of the largest on the African continent. DG is present in several sectors – construction, packaging, energy, port operations and petrochemicals among others – and operates large-scale manufacturing facilities across Africa. Its core business is the provision of locally sourced and added-value products and services that meet the basic needs of communities.

### **Workplace cooperation mechanisms**

DG, a member of the United Nations Global Compact (UNGC), is committed to its ten sustainability principles for driving sustainable business and development goals, which are aligned with 'The Dangote Way' (values aimed at fostering best practices in environmental,

social and governance performance). Accordingly, it has implemented a series of policies related to human rights protection, the elimination of all forms of forced labour, the abolition of child labour, different initiatives in favour of the environment and anti-corruption practices.

Acknowledging the right of workers to freely associate and to bargain collectively for their wages and other benefits, the company promotes bipartite cooperation at the workplace. This includes maintaining an open line of communication with employee unions and leadership to address mutual concerns and ensure that decisions benefit both parties. Moreover, DG has established a grievance mechanism designed to address inquiries, claims, concerns, and complaints from internal and external stakeholders, including the communities where they operate. The company employs various methods to obtain feedback from stakeholders, including surveys, focus group discussions, town hall meetings, media communications, industry collaborations, public-private partnerships, and management retreats. By proactively receiving, reviewing, and addressing complaints, the company prevents them from escalating into conflicts.

#### **Box 4. Whistle-blowing mechanism at Dangote Cement**

Dangote Cement, part of Dangote Group, has created a whistle blowing mechanism enabling employees to voluntarily and confidentially report instances of fraud, bribery, financial misconduct, human rights issues, environmental issues, societal impact issues, discrimination, and any other form of workplace corruption without fear of retaliation.

The whistleblowing platform to report on malpractices is independently managed by a third-party provider (Deloitte) to ensure confidentiality and impartiality. The reports are then evaluated and investigated by the company Audit Committee who also decides on the corrective actions.

The number of reports filed by workers has seen a steady growth over the last years, from 30 in 2018 to 71 in 2022.



## SEPLAT WORKPLACE COOPERATION MECHANISM: A JOINT CONSULTATION SYSTEM

### Workplace cooperation within the company

Seplat Energy is Nigeria's leading independent and native energy provider. It operates with partners such as the Nigerian government and other oil producers and its core business focuses on hydrocarbon production in the Niger Delta. Through the export of oil and the gas delivery to homes and businesses Seplat supports the national economy.

Seplat Energy has established a Joint Consultative Council (JCC) to promote a constructive relationship between management and employees, deliberate on welfare issues and sustain industrial harmony. This initiative is further supplemented by other dialogue actions such as surveys, focused group sessions and employee-led forums. The JCC comprises both senior management and employees' representatives drawn from across the various business units. It

convenes to update employees' representatives on key management decisions and to address their concerns. In 2022, four JCC meetings were held covering a wide range of topics: calibration and reward system; regular compensation and benefit reviews; recognition bonuses; job security; women's representation in top management and the organisation of company-wide awareness sessions on topics such as diversity metrics and mental well-being.

Among other aspects, the joint consultation committee system has enabled Seplat Energy to:

- Engage all employees through their representatives, irrespective of their levels in the hierarchy of the organisation, which promotes higher level of inclusivity in employer-employee relationship.
- Speedily and effectively deal with issues and implement recommendations given the active involvement during the JCC discussions by very senior management members who would process recommendations for immediate approval and implementation.

### Box 5. A joint endeavour: employees and management facing the pandemic

In response to the COVID-19 crisis, the JCC and management worked closely together, recognising the pandemic as a shared challenge necessitating unified action. The company promptly adapted by transitioning to remote work, adjusting office hours, holidays, and tools. Emergency protocols were enacted, risks were assessed, and response efforts were continually monitored and evaluated. Seplat put in place the necessary actions to minimise infections and promote well-being. It established mandatory PCR tests for staff involved in company operations and ensured that over 90% of employees received full vaccination through the facilitation of boosters and the funding of follow-up treatments for positive cases. The company gradually reintroduced office activities in the first quarter of 2022, reaching full capacity by the end of the quarter, and suspended testing for vaccinated office-based employees. This controlled de-escalation of COVID-19 measures highlighted the effectiveness of the collaborative approach.

### 3.7 AREAS FOR FURTHER IMPROVEMENT

Several challenges need to be addressed at the system level for social dialogue to play an active role in promoting decent work and inclusive growth in Nigeria.

- Despite the accent put on improving the skills of the workforce to succeed in the twin transition and on aligning education more with labour market needs to improve school-to-work transitions, there is still limited involvement of the private sector in programmes focused on skills development and on youth.<sup>30</sup>

- Social partners are not involved in the National Employment Council set up in 2018 for the implementation of the National Employment Policy. The National Employment Council includes experts, practitioners, policy makers, and others in the field of development and employment to propose solutions that will ultimately halt and reverse the current unemployment situation in Nigeria.

- As indicated above, dispute resolution is extremely slow.

- Despite the potential for NLAC to play a key role in the social dialogue landscape, its meetings are very infrequent.

- The labour inspectorate remains highly inefficient due to inadequate funding of factory and labour inspectorates, capacity gaps for training of factory and labour inspectors, inadequate funding for monitoring and evaluation, lack of awareness of victimised groups to their rights, inspectors' lack of power to sanction offenders.

In addition to the issues relating to the functioning of existing institutions, several structural issues will need to be addressed to improve decent work outcomes. On the wage front, the coverage of minimum wages remains patchy and unequal and the gender pay gap is significant. Social dialogue in Nigeria is also essential to prepare for the net-zero pathway and the digital economy, including: through support for women and youth to benefit from the transitions; by upgrading informal work-based learning systems and non-formal training; by contributing to a better alignment of education to labour market needs.



30- Only 33% of 42 youth programmes in Nigeria involve employers (from the Nigerian Youth Employment Plan 2021-2024), [https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-abuja/documents/publication/wcms\\_819111.pdf](https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abidjan/---ilo-abuja/documents/publication/wcms_819111.pdf)

## 4 THE STATUS OF SOCIAL DIALOGUE AND INDUSTRIAL RELATIONS IN SRI LANKA

### 4.1 IN FOCUS: OUTLOOK AND POTENTIAL FUTURE PRIORITIES

Following several crises, including an economic crisis accentuated by the COVID-19 pandemic, the economy and labour market are slowly recovering in Sri Lanka. Social dialogue has a key role to play to ensure that labour market reforms are designed in a fair, inclusive and sustainable way; to support workers during transitions, including through inclusive skills policies and extension of social protection coverage; as well as to enhance quality job creation, especially by providing support to medium and small size enterprises (MSMEs). To strengthen social dialogue, some institutional as well as legal and practical challenges will have to be addressed, including:

- It will be key to strengthen the main tripartite consultative body, the National Labour Advisory Council, to further build its capacity and make it a statutory body. For example, building on positive past examples regarding the consultation of social partners, the new draft Employment Act should be discussed at the level of the National Labour Advisory Council.
- Collective bargaining will need to be strengthened, especially at the level of export processing zones, and workplace cooperation in private sector companies should be enhanced. Wages boards as well as the Association for Conflict and Dispute Resolution will need to be reanimated.

- Representativeness of trade unions is also a concern. According to ILO figures, only 9.5% of the workforce is covered by a trade union - 54.5% are in the public sector, 27.5% in public corporations and 18% in the private sector.<sup>31</sup>

During the high-level conference held in Colombo on 23 January 2024, there was a clear commitment from tripartite partners to enhance social dialogue. Tripartite partners recognised the value of social dialogue to overcome the economic crisis, strengthen skills policies, protect workers' rights, and support labour market transformations.

- There is a great potential to further strengthen sectoral social dialogue, the work of wages boards and dispute resolution mechanisms, the latter potentially extending to further countries in the region, building on the 2019 Labour Dispute Expert's Workshop for South Asia in 2019.
- The National Institute of Labour Studies (NILS) is now in a position to replicate a training programme on labour relations and social dialogue, including modules on international labour standards and national frameworks on social dialogue, collective bargaining, labour dispute resolution, workplace cooperation, as well as grievance handling.

31 - See: Workers and Employers Organisations in Sri Lanka and the Maldives, <https://www.ilo.org/colombo/areasofwork/workers-and-employers-organisations/lang-en/index.htm>

## 4.2. DECENT WORK OUTLOOK

After a severe economic crisis hit the country, signs of stabilization have been seen in Sri Lanka in 2023. The crisis, caused by macroeconomic imbalances and structural challenges, further accentuated by the COVID-19 pandemic, led to high inflation, forex shortages and restrictions on imports. This has in turn led to several shortages in goods and impacted the labour market, especially wage employment in services and industry, mainly affecting women and youth. Currently, structural macro-economic reforms are on-going as well as reforms to change the tax system and major policies of the country, following an IMF loan. There is now an urgent need to prevent a further rise of the working poor and to design reforms in a sustainable and inclusive way. For example, the poverty rate in Sri Lanka has almost doubled between 2021 and 2022 and is projected to increase before declining over the medium term.<sup>32</sup>

Sri Lanka's labour force consists of 8.5 million

workers. In 2021, 25.75% of the employees in Sri Lanka were active in the agricultural sector, 27.88 % in industry and 46.38% in the service sector.<sup>33</sup> Between 2019 and 2022 the labour force participation rate declined from 52.3% to 49.8%, whereas the labour force participation rate for women in 2022 was significantly lower standing at 32.1% compared to 70.5% for men.<sup>34</sup> The public sector employs 1.2 million workers – 21.3% among employed female and 11.9 % among employed male.<sup>35</sup> Major cuts are foreseen as a response to the crisis. Self-employed represent one third of the labour force. Major challenges include a poorly diversified economy with three quarter of businesses being MSMEs, limited job creation, rising unemployment, especially affecting women and youth, skills mismatches and rising emigration rates, especially of youth and the high-skilled. Informal employment is estimated to stand at more than 66.8%<sup>36</sup> increasing vulnerability to decent work deficits, and social protection coverage is limited.

## 4.3 IMPLEMENTATION OF INTERNATIONAL LABOUR STANDARDS TO PROMOTE SOCIAL DIALOGUE

Sri Lanka ratified 43 ILO Conventions and 1 Protocol, of which 31 are in force. These include eight of the ten ILO Fundamental Conventions, including the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Tripartite Consultation (International

Labour Standards) Convention, 1976 (No. 144) and the Workers' Representatives Convention, 1971 (No. 135). The most recent ratifications include amendments to the Maritime Labour Convention (MLC, 2006) and the Protocol of 2014 to the Forced Labour Protocol. Through the implementation of the Decent Work Country Programme (DWCP)

32- World Bank (2023): Sri Lanka Development Update 2023, <https://www.worldbank.org/en/country/srilanka/publication/sri-lanka-development-update-2023>

33- Statista, Sri Lanka - employment by economic sector 2009-2021.

34- Sri Lanka Labour Force Survey – Annual Report - 2022, Department of Census and Statistics, Sri Lanka, [http://www.statistics.gov.lk/Resource/en/LabourForce/Annual\\_Reports/LFS2022.pdf](http://www.statistics.gov.lk/Resource/en/LabourForce/Annual_Reports/LFS2022.pdf)

35- Sri Lanka Labour Force Survey – Annual Report - 2022, Department of Census and Statistics, Sri Lanka, [http://www.statistics.gov.lk/Resource/en/LabourForce/Annual\\_Reports/LFS2022.pdf](http://www.statistics.gov.lk/Resource/en/LabourForce/Annual_Reports/LFS2022.pdf)

36- ILOSTAT, [https://www.ilo.org/shinyapps/bulkexplorer49/?lang=en&segment=indicator&id=EMP\\_NIFL\\_SEX\\_RT\\_A](https://www.ilo.org/shinyapps/bulkexplorer49/?lang=en&segment=indicator&id=EMP_NIFL_SEX_RT_A)

for Sri Lanka (2018-2022),<sup>37</sup> the government and social partners have agreed to work together to improve the governance of the labour market, including by reinforcing the institutions for social dialogue and tripartism, as well as to promote decent work in the wider development and poverty alleviation context.

The National Framework for Social Dialogue was adopted in 2009, in which the government commits, amongst others, to ensure necessary preconditions for social dialogue exist, including respect for fundamental principles and rights at work, and to promote and enhance bipartism and tripartism, especially in sectors where they are absent or scarce. Tripartite partners agreed to the observance and application of employment related laws, the promotion of freedom of association and the right to collective bargaining, as means of achieving social justice and equality; to assist in the review of employment related laws; to respect the rights of workers and employers to organize themselves; to desist from any form of discrimination against any employer and worker organisation; and to introduce efficient and impartial dispute and grievance procedures and to ensure that employment related issues are resolved peacefully, amongst others.

Article 14 (1) of the Second Republican Constitution guarantees every citizen the freedom of association and the freedom to form and join a trade union. The Trade Union Ordinance No. 14 of 1935 provides for the registration, control and deregistration of unions and covers both the public and private sectors. 9.5 per cent of the workforce is covered by a trade union – four of them are affiliated to ITUC (Ceylon Workers Congress (CWC), Sri Lanka Nidahas Sevaka Sangamaya (SLNSS), National Trade Union Federation (NTUF) and

the National Workers Congress (NWC)). The Employers' Federation of Ceylon (EFC) is the main organisation of employers, aimed at promoting different business interests at national level. It also provides a wide range of direct services to its members – for example, trainings to promote better workplace relations.

One major challenge is the low unionisation rate and high number of workers' organisations – there are more than 2,000 organisations with low number of members, often enterprise-level trade unions as opposed to national level trade unions. The Trade Unions Ordinance (Amendment) Act No. 15 of 1948 provides public servants who were previously excluded under the Trade Unions Ordinance No. 14 with a limited right to organize. The amendment permits the registration of trade unions of public servants other than judicial officers, members of the police and armed forces, prison officers, and members of the agricultural corps. It, however, prohibits their affiliation, amalgamation and federation.<sup>38</sup>

The Industrial Disputes (ID) Act 43 of 1950 is the primary legislation that intends to promote stable industrial relations. It does this through providing a legislative framework for the resolution of rights and interests disputes and the enforcement of decisions. The most important amendment to this Act led to the setting up of the Labour Tribunals in 1957. Disputes are to be settled in four ways, by (a) conciliation by labour officials; (b) reference of disputes to determination by arbitrators and the industrial court; (c) entering into and registration of collective agreements; and (d) by Labour Tribunals (LTs) that may hear and determine applications by workmen against the termination of services. The ID Act is administered by the Commissioner General of Labour (CGL) and collective agreements need

37- Decent Work Country Programme (DWCP) for Sri Lanka (2018-2022), [https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-colombo/documents/genericdocument/wcms\\_632743.pdf](https://www.ilo.org/wcmsp5/groups/public/---asia/--ro-bangkok/---ilo-colombo/documents/genericdocument/wcms_632743.pdf)

38- Sri Lanka – CEACR, Convention No. 87, observation, 2022.



to be registered with the CGL, who must check the conditions and ensure that it is compliant with minimum statutory provisions. In 2021, there were 171 collective agreements in force, which supersede contractual provisions, and observe conditions not less favourable in the concerned industry.

There are some provisions under the ID Act that have been flagged by the CEACR under Convention No. 87. One important limitation is that despite the work carried out by the Ministry of Public Administration and technical assistance from the ILO, there is no information on the mechanism in place for dispute prevention and settlement in the public sector.<sup>39</sup> Further, penal sanctions can be imposed according to the Act for peaceful strikes, whereas the CEACR recalled that punitive measures during a strike can be envisaged only where violence against persons or property, or other serious infringements of penal law have been committed.<sup>40</sup> Another problematic issue is the possibility to have recourse to compulsory arbitration, which should only be admissible when the strike in question may be restricted, or even prohibited because (i) the dispute involves public servants exercising authority in the name of the State; (ii) in conflicts in essential services in the strict sense of the term; or (iii) in situations of acute national or local crisis; whereas it has to be noted that any service deemed essential to the life of the community in any applicable circumstances could be declared an essential service.<sup>41</sup>

The Industrial Disputes (Amendment) Act, No. 56 of 1999 gives legal recognition to unfair labour practices by making the non-recognition of a legitimate trade union by an employer a criminal offence. However, the Act

does not grant trade unions the right to bring anti-union discrimination cases directly before courts.

Further, under the amendment, any trade union with membership of not less than 40 per cent of the workforce in any workplace must be recognised for bargaining purposes by the employer. The CEACR has emphasized the need to ensure that the absence of unions that meet the requirements for representativeness to be designated as a bargaining agent does not impede the right of the existing unions to negotiate, either jointly or at least on behalf of their own members. This is especially a concern for workers employed in export processing zones (EPZ) and the CEACR has highlighted that the very low number and coverage of collective agreements previously noted in its comments on EPZs could appear to be related to the restrictive representativeness requirement, prescribed by the Industrial Disputes Act, to engage in collective bargaining.<sup>42</sup> In a similar vein, it was pointed out that where both trade unions and elected representatives (employees' councils) exist in an undertaking either within or outside the EPZs, the existence of employees' councils in EPZs should not be used to undermine the position of trade unions concerned in collective bargaining.<sup>43</sup>

Of concern were also restrictions for self-employed farmers: the CEACR noted that the Agrarian Services (Amendment) Act, No. 4 has not been amended to explicitly provide farmers' organisations with the same association rights as those enjoyed by industrial workers' organisations, in particular the right to represent members in disputes and to engage in strikes.

39- Sri Lanka – CEACR, Convention No. 87, observation, 2022.

40- Sri Lanka – CEACR, Convention No. 87, observation, 2022.

41- Sri Lanka – CEACR, Convention No. 87, observation, 2022.

42- Sri Lanka – CEACR, Convention No. 98, Observation, 2022.

43- Sri Lanka – CEACR, Convention No. 135, Direct request, 2022.

#### 4.4 KEY INSTITUTIONS, INCLUDING THE NATIONAL LABOUR ADVISORY COUNCIL

The National Labour Advisory Council was initially set up in 1989 with the objective of having a permanent consultative mechanism within the then Ministry of Labour. It is not a statutory body, and based on its constitution, its aim is to 'provide for consultation and cooperation between the government and the organisations of workers and employers at the national level on matters relating to social and labour policies and international labour standards.' More specifically, its objectives are to 1) promote social dialogue between the government and the organisations of workers and employers on social and labour issues; 2) provide a forum for the government to seek the views, advice and assistance of organisations of workers and employers on matters relating to social and labour policies, labour legislation, and matters concerning the ratification, application and implementation of international labour standards; 3) promote mutual understanding and good relations, and foster closer cooperation between the government and organisations of workers and employers with a view to developing the economy, improving conditions of work and raising living standards. Its functions include 1) the consultation and cooperation between the government and social partners on issues such as the establishment and functioning of national bodies (such as those responsible for the organisation of employment, vocational training and retraining, labour protection, industrial health and safety, productivity, social security and welfare, and prevention and settlement of industrial disputes); 2) the preparation and implementation of labour laws; 3) the consideration of matters concerning responses to requests for information from the ILO pertaining to compliance with international labour standards; 4) ratification implementation and review of international labour standards; 5) and other matters provided for under Convention No. 144. The Minister of Labour is the chairperson. One problematic issue is that neither the constitution nor the rules specify the basis of the appointment of members; in practice, they are selected by the Minister from among 'most representative' organisations' of employers and workers in the different sectors of the economy.



Under the Ministry of Labour and Foreign Employment, the Department of Labour includes a Social Dialogue and Workplace Cooperation Unit. The function of this unit is primarily to promote social dialogue generally within the country.

The Wages Boards Ordinance 27 of 1941 makes provisions for the establishment of wage boards for the regulation of wages and working conditions in any trade or industry in Sri Lanka. The wage boards function on a tripartite basis, and members are not elected but appointed by the Minister of Labour. Wages boards determine minimum wage rates, leave, weekly and public holidays, maximum working hours and overtime rates. However, the wages boards are currently not functioning, and the national minimum wage remains unchanged since 2016.

The Employees' Councils Act, 1979 (No. 32) makes provisions for the establishment of employees' councils in State enterprises to ensure effective participation of workers in the

affairs of the enterprise and enhance mutual cooperation for industrial peace. The number of members serving on an employees' council is determined by the number of regular workers in the enterprise and representatives are elected by workers to consult with employers on matters not regulated by legislation (for example on working conditions, dismissals, vocational training, or occupational safety and health). Employees' councils also exist in EPZ enterprises to promote employees' participation in decision-making that affects them, and as a mechanism for labour-management consultation and cooperation on matters of mutual concern at the enterprise level. Representatives are elected to represent employees in collective bargaining and industrial disputes in non-unionised enterprises. Guidelines for the establishment of workplace cooperation committees in private sector enterprises are yet to be piloted.

There is also an Association for Conflict and Dispute Resolution in place, however, it is currently not functioning.

## 4.5 BUILDING CAPACITY FOR KEY INSTITUTIONS

### DIPLOMA ON SOCIAL DIALOGUE AND INDUSTRIAL RELATIONS

Between 13 November to 15 December 2023, the International Training Centre (ITC) of the ILO together with the National Institute of Labour Studies (NILS) in Sri Lanka organized a training course in labour relations and social dialogue. During the first five weeks, tripartite training participants attended 9 training modules, consisting of live webinars and asynchronous training following self-guiding tools to further build knowledge and expertise. Participants focused on international labour standards for social dialogue, collective bargaining, labour dispute resolution, workplace cooperation, grievance handling, social dialogue and

global supply chains and decent work country programmes and sustainable development goals (SDGs). During the last week, a three-day face-to-face training was organized by NILS, in which participants built their knowledge on the national legal framework on social dialogue, freedom of association, collective bargaining, labour dispute resolution, workplace cooperation and grievance handling mechanisms. Bringing tripartite partners together to pursue training was seen as highly beneficial, especially to overcome a relationship that tends to be adversarial and to support workplace cooperation. Importantly, NILS was also able to build its capacities and is now in a position to reproduce the training.



## HIGH-LEVEL CONFERENCE ON SOCIAL DIALOGUE

During the high-level conference held in Colombo on 23 January 2024, there was a clear commitment from tripartite partners to enhance social dialogue. Workers' representatives (CWC, SLNSSNTUF), employers' representatives (EFC) as well as representatives from the Ministry of Labour and Foreign Employment congratulated training participants and recognised the importance of social dialogue for the resolution of conflicts and disputes and underlined how social dialogue is beneficial to both businesses and workers. The Secretary of the Ministry of Labour and Foreign Employment Mr R. P. A. Wimalaweera highlighted how constructive industrial relations can promote social justice and decent work to overcome the current economic crisis and for example, promote living wages and protect workers' rights.

After the presentation of the contextual study on the state of social dialogue in Sri Lanka, tripartite partners engaged in a roundtable discussion. The Senior Assistant Secretary from the Ministry of Labour and Foreign Employment, Mr B. Vasanthan committed to maintain bipartite and

tripartite social dialogue recognising that the recovery process cannot be successful without workers and employers. The Deputy Director General of EFC, Mr Adhil Khasim underlined that social dialogue represents an opportunity to have a common platform and support an integral approach towards formalisation and to design skills policies that are inclusive, especially for women and youth, and that address skills gaps. On the workers' side, Mr Ranawakarachchi, the Secretary General of NTUF insisted that social dialogue is key to ensure that labour market transformations are governed in a fair and effective way and to increase productivity; he further underlined the importance of strengthening the National Labour Advisory Council. He referred to a tripartite task force established during the COVID pandemic that managed to negotiate a tripartite agreement on wages and working arrangements applicable to all formal sector workers. Mr Devendra, the General Secretary of SLNSS, flagged that social dialogue is key to undertake reforms of the educational system and to support a skilled workforce; he highlighted that there is a need to recognise skills and talents to be able to reply to labour market needs.

## 4.6 GOOD PRACTICES

Sri Lanka is in the process of gradual recovery from several crises that have significantly affected the labour market. Unemployment rates are on the rise, particularly in the services and industrial sectors, leading to a shift of many workers towards lower-paid agricultural occupations. Moreover, there is a prevalence of skills mismatches, and

emigration rates are increasing, particularly among high-skilled workers. To address these challenges, the government is actively pursuing macroeconomic and labour reforms. Strengthening social dialogue will be vital for ensuring the sustainability and inclusivity of these reforms.

## SRI LANKAN PLANTATIONS: ENHANCING WORKING CONDITIONS FOR WOMEN THROUGH SOCIAL DIALOGUE

### Sri Lanka's tea industry challenges

Sri Lanka's tea plantations rely heavily on manual labour. Harvesting the tea leaves is difficult to mechanise due to the hilly cultivated terrains, as it happens in other areas of Malaysia and Kenya. The movement of young people from plantations to urban centres like Colombo has caused a shortage of workers, prompting the implementation of measures to enhance the productivity of current employees, improve workforce retention, and attract new workers.

For many years, workers and trade unions have expressed their concerns that harvesters, mostly female workers, are leaving the plantations. The primary reason behind the departures is the strenuous nature of the harvesting work. Plucking the tea leaves is an arduous process, workers carry the baskets by hanging them from a strap around their head and supporting them on their backs through each harvested field. Then, they need to carry up the leaves through hilly terrains and long distances to the weighing location. Moreover, despite being rewarded with premium rates for picking over the standard quantity, the overall physical and manual nature of this harvesting process makes it difficult to increase productivity.

In addition, workers have reported errors in the weighing of their harvested leaves. While these inaccuracies may result from incorrect recordings or unintentional errors, sometimes, they can also occur as a form of harassment. Accurate weight details are essential to workers, as they are entered into paper-based systems that are then used to calculate earnings, productivity payments and other disbursements such as social security benefits. These weighing errors also have an



impact on companies given that, among other aspects, it hinders their ability to calculate overall performance and track operational efficiency until the paper-based data from each plantation is transmitted to the head office. Despite attempts to address these issues through the introduction of mobile weighing platforms, measurement inconsistencies have persisted.

### The outcome of the bipartite dialogue: a digital solution

To address these challenges, improve the harvesting and boost productivity, Kelani Valley Plantations Ltd. (KVPL), a leading Regional Plantation Company (RPC) in Sri Lanka, has taken the initiative to digitise the process of both weighing and recording individual worker harvests. Despite a breakdown of the national level collective agreement between the RPCs and the main trade unions, this initiative is the result of an extensive bipartite dialogue. The discussions initially involved smaller groups such as productivity circles and assurance teams and their feedback were subsequently collected by plantation managers. The dialogue continued to evolve including workers' representatives from different plantation divisions that regularly engaged with management to address workplace issues, which ultimately resulted in improvements on productivity and occupational safety and health.



### Box 6. How does the digitalised weighing process work?

The consultations and discussions regarding the challenges in harvesting later continued at the management level and counted with technical inputs from relevant experts. As a result, workers were provided with barcodes or QR codes to be used with digital scales. When workers scan the code, the harvest weight is not only measured accurately and immediately but it is also automatically recorded in the system under their name. KVPL is the first plantation company to have invested in software and hardware to digitise green leaf weighing.

The replacement of manual weighing and data entry has not only enhanced operational level evaluations and rewards, but it has also enabled KVPL to make more informed decisions by providing instant access to accurate, real-time data. This digital approach, a tangible result of bipartite consultations, has greatly benefited female harvesters. It facilitates transparency and clarity in the recording of their daily performance, it grants instant access to up-to-date harvest records for a given period and allows them to estimate and verify their incomes.

### THE NEGOTIATION AROUND A BONUS PAYMENT DURING THE PANDEMIC

#### Forging a Path: precedent of the Memorandum of Understanding

A three-year collective agreement was signed in 2010 between the parent union Sri Lanka Nidahas Sevaka Sangamaya (SLNSS) and the company SriLankan Catering Pvt. Ltd. (SLC) – a subsidiary of SriLankan Airlines. SLC provides catering services to all airlines operating into Colombo's Bandaranaike International Airport and provides an array of services to the airport lounges and restaurants (including catering, laundry and restaurant management). The agreement, which included different beneficial terms and conditions for employees, was followed by a second accord signed in 2014. The collective agreement included the payment of a bonus – a benefit that is not mandatory across the private sector in Sri Lanka. Despite such progress, wage increases and monetary benefits have continued to be implemented under the terms of the initial agreement, as the accord has not been renegotiated since first signed.

#### A bonus for workers to moderate the impact of COVID-19

The outbreak of the COVID-19 pandemic caused substantial financial losses to SLC as air travel was severely interrupted. Workers felt the impact: the company cut back on wage spending by terminating fixed-term contracts and reducing shift and overtime work, which typically carried premium rates of pay. Consequently, workers' income was constrained to the basic salary, which many of them found insufficient, particularly in the face of the numerous financial pressures brought about by the pandemic.

Following a request from SLNSS branch in the company, the parent union leadership approached the firm's management to explore the possibility of paying a bonus to supplement the income of those employees affected by the reduction in operations. Initially, SLC was hesitant to discuss the measure. However, with the intervention of EFC, of which SLC was a member, negotiations proved fruitful: the company agreed to provide a month's bonus to all employees in the relevant grades

in April 2021. Additionally, they committed to considering the payment of a further bonus at the end of 2021, contingent upon the financial performance of SLC in the latter part of the year. The assurance from SLNSS to management that the bonus would not set a precedent for future demands for such incentives, regardless of profitability losses, contributed to the positive outcome.

The dialogue between the union and the company, with the involvement of EFC, proved

fruitful even amidst the challenging pandemic conditions. The agreement on the bonus payment, which later took the shape of a Memorandum of Understanding (MoU) rather than a new collective agreement, represented a significant benefit for workers, although against the company's standard practices. Subsequently, despite a net loss of over Rs. 900 million, SLC agreed to pay the additional bonus (equivalent to one month's salary) at the end of 2021.

### Box 7. The COVID-19 tripartite task force

During the COVID-19 pandemic, the Sri Lankan government established a tripartite task force chaired by the Minister of Labour. It served as a subcommittee operating within the National Labour Advisory Council (NLAC<sup>44</sup>), which plays a pivotal role in the country's labour tripartite structure. The task force, that aimed at minimising the impact of COVID-19 on workers and businesses, met regularly during the pandemic and helped to prevent potential disputes from escalating, promoting trust among the stakeholders.

The Task Force concluded an agreement on 5 May 2020, applicable to all sectors, to address the impact of COVID-19. Under the accord employers pay wages for worked days on the basis of basic salary scales. With respect to the non-worked days (such as those spent on the bench without any work), wages would be paid either at the rate of 50 per cent of the basic wage or 14,500 Sri Lankan rupees, whichever amount was higher.<sup>45</sup>

To facilitate the implementation of the agreement, the EFC urged its members to engage in bipartite social dialogue at the company levels. Furthermore, employers were prompted to establish relationships with trade unions or worker councils.<sup>46</sup>

44- Ministry of Labour and Foreign Employment of Sri Lanka, Service delivery during Covid-19 pandemic, <https://labourmin.gov.lk/special-activities/>

45- IndustriAll Global Union (2020), Tripartite agreement to protect Sri Lankan workers, <https://www.industriall-union.org/tripartite-agreement-to-protect-sri-lankan-workers>

46- ILO (2020), Towards resilient social dialogue in South Asia, [https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new\\_delhi/documents/publication/wcms\\_759282](https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/publication/wcms_759282)

#### 4.7. AREAS FOR FURTHER IMPROVEMENT

To allow reforms for an inclusive and sustainable recovery process, social dialogue will be key. It will be essential to support quality job creation through support for MSMEs and grow the stock of decent jobs, while enhancing inclusive access to jobs and supporting digital and green transitions through inclusive skills policies. Supporting a transition to the formal economy adopting an integral approach as well as extending coverage of the social protection system will be key to lift people out of poverty and protect workers during transitions. In addition, building on the recent National Policy and Action Plan on Migration for Employment adopted in October 2023, it will be important to harness the development potential of migration and form a labour force that can reply to skills demands on the national and international labour markets. The consultation of social partners should

ensure the recovery process is structured in an inclusive and sustainable manner, especially with regard to the currently on-going labour law reform.

To enhance social dialogue and ensure it can be used as a meaningful tool to address the economic crisis in a sustainable and inclusive way, it will be essential to address some persisting obstacles, including at the institutional level as well as tackling legal and practical challenges. At the institutional level, the National Labour Advisory Council will need streamlining and it will be important to make it a statutory body and to further build its capacities. Collective bargaining will need to be strengthened, especially at the level of export processing zones, and workplace cooperation in private sector companies should be enhanced. Wages boards as well



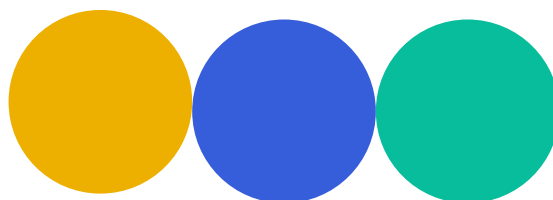
47- See: Workers and Employers Organisations in Sri Lanka and the Maldives, <https://www.ilo.org/colombo/areasofwork/workers-and-employers-organisations/lang-en/index.htm>

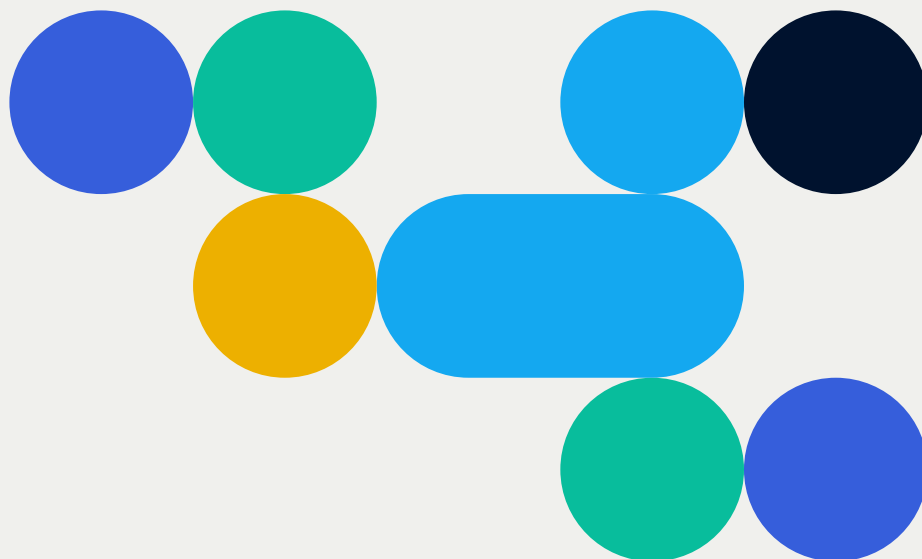
as the Association for Conflict and Dispute Resolution will need to be reanimated. Finally, representativeness of trade unions is also a concern: According to ILO figures, only 9.5% of the workforce is covered by a trade union - 54.5% are in the public sector, 27.5% in public corporations and 18% in the private sector.<sup>47</sup>

There have been positive developments to support social dialogue in the past when discussing key policies and promoting decent work. For example, social partners were consulted when the employment policy was developed, and they are also part of the national steering committee implementing the policy. Further, in 2018, a MoU was signed between the ILO, the Government and social partners, in which parties commit to collaborate to promote and advance decent work in Sri Lanka. However, currently, the new draft Employment Act has not been discussed at the National Labour Advisory Council. It was shared with NLAC on 6 July and members were given two weeks' time to respond, however, workers did reject the draft and employers also did not comment. Beforehand, social partners, experts and academics were invited

to present comments and live events were held to present those; however, it was unclear how these perspectives were taken onboard, and it was being criticized that the draft was being prepared internally by the Ministry of Labour and Foreign Employment.






Importantly, under the new draft Employment Act, there are concerns regarding the level of control granted to the Ministry. For example, the Act foresees that a lawful strike can be discontinued if it is in the public interest or affecting the provision of essential services (section 141 (1)). Also, if a strike is considered not to be in the public interest or to jeopardise the life or livelihood of the nation (which is not defined and therefore is open to the interpretation of each Minister), it can be referred to arbitration for resolution of the industrial dispute. Further, a written notice of the strike itself must be provided. These limitations should be discussed and social partners consulted to ensure the labour law reform in Sri Lanka helps to address current challenges without restricting fundamental principles and rights at work, including freedom of association and collective bargaining.





## THE GLOBAL DEAL FOR DECENT WORK AND INCLUSIVE GROWTH

The Global Deal is a multi-stakeholder partnership of governments, businesses and employers' organisations, trade unions, civil society and other organisations for the promotion of social dialogue and sound industrial relations as effective means for achieving decent work and inclusive growth. The Global Deal enables knowledge sharing, facilitates policy discussions, strengthens the capacity of partners to engage in dialogue, and produces evidence-based research. As a unique action-oriented platform, the Global Deal accelerates positive change by encouraging partners to make voluntary commitments to advance social dialogue.

-  [Website](#)
-  [Email](#)
-  [X \(Twitter\)](#)
-  [YouTube](#)
-  [Subscribe to newsletter](#)

[More information on how to join the partnership](#)