

Trade Union Power and the Process of Economic Development : The Kenyan Example

La puissance syndicale et le processus de développement économique : l'exemple du Kenya

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Article abstract

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The Kenyan Example

J. Douglas Muir and John L. Brown

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INTRODUCTION

All Governments restrict the activities of unions, but the degree of restriction and the form it takes varies widely from country to country. One factor which has been considered of prime importance in determining the restrictions placed upon unions is the level of economic development a country has attained. It has been argued that a strong trade union movement will retard the growth of developing countries and, therefore, severe

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controls should be placed upon wages, the right to strike, freedom to organize and the use of collective bargaining.¹ This point of view has been strongly criticized, and others argue that unions can have a positive effect because they may assist in the formation of a stable and effective labour force.² However, even proponents of this point of view do not argue for a total absence of restrictions on unions. Thus the question of the degree and form of restrictions that should be placed upon unions in developing countries still remains.

In this paper we shall discuss some of the policy alternatives available to a Government and a union movement and consider in detail the alternative chosen by one African country — Kenya. We shall examine how the Government has sought to reconcile its economic development objectives with granting unions such traditional freedoms as the right to strike, the right to bargain collectively and the right of free association. In doing so we discuss the development of labour legislation in Kenya and examine its effect upon the strike weapon as a source of union power and the effect of strikes on the Kenya economy. Finally, we will offer some speculations on future trends in industrial relations in Kenya.

Kenya provides an excellent opportunity for the study of trade unionism in a developing economy. It has a well established union movement and is attempting to develop a modern industrial sector as rapidly as possible. After more than half a century of British colonial rule, Kenya is politically stable and has now been independent for a decade. This offers a sufficient period to examine the effects of Government policy on the union movement. Therefore, in this paper we shall concentrate upon the decade since Independence achieved in 1963.

Alternative Roles for Trade Unions in Development

In any country the role or function of trade unions and their relationship with the government is usually closely related. The degree to which trade unions decide to function in opposition to the policies of government determines, to a large extent, the nature of the relationship between the unions and the government. It is suggested that the extent to which labour

¹ W. Arthur LEWIS, «Economic Development with Unlimited Supplies of Labour,» *The Manchester School of Economic Studies*, May 1954, pp. 139-191,

² See for example Everett KASSALOW, «Labor in Development: A Critique of some Current Concepts,» *Industrial Relations Research Association, Annual Proceedings*, 1969 and Paul FISHER «The Economic Role of Unions in less Developed Areas,» *Industrial Relations Research Association Spring Meeting*, 1961.

legislation is restrictive depends upon the relationship between the unions goals and government policy. As a result of a conflict in these goals and policies, trade unions in many countries have either been brought directly under government controls or have been forced to operate within very restrictive legislation. Even in those countries where there is a close relationship between the government and the union (such as when the Labour Party was in power in Britain) the governments have used this close relationship to either remove some of the union's independent bargaining rights or to impose some form of wage freeze and other bargaining limitations.

Thus unions in the developing countries must clearly decide what function they are going to fulfill in relation to the policies of the government. Paul Fisher suggests that such unions are only left with one of three alternatives — either become instruments of the state ; join the opposition and fight against government policies ; or accept a policy of wage restraint and function as best as possible within the established restrictive legislation.³ In addition, Fisher cautions that the patriotic approach of accepting a policy of wage restraint is difficult for a union to maintain over long periods of time and will likely lead to the collapse of the union or to its takeover by a more militant group.⁴ To this Sturmthal cautions that unions derive their power from the defence of the short run economic interests of their members and therefore they cannot exist for long periods of time as social welfare agencies and even less as instruments of wage restraint.⁵ Thus the dilemma of the trade unions in the developing countries is quite clear. It is sort of a damned-if-you-do-and-damned-if-you-do-not situation.

A number of writers have presented « solutions » to this dilemma. As often happens, most of these suggestions are conflicting. For example Asoka Mehta has prescribed the transformation of the Indian labour unions into harmless, or at least economically inexpensive, productionist mechanisms.⁶ Professors John Dunlop, Walter Galenson and Adolf Sturmthal are unanimous in objecting to this suggestion. Dunlop has even suggested that it would be better not to have any union for at least

³ FISHER, *Op. cit.*

⁴ *Ibid.*

⁵ Adolf STURMTHAL, « Unions and Economic Development, » *Economic Development and Cultural Change*, January 1960.

⁶ Asoka MEHTA, « The Mediating Role of the Trade Union in Underdeveloped Countries » *Economic Development and Cultural Change*, October, 1957, pp. 16-23.

a time or to have a union operating under restrictive legislation.⁷ Sturmtal has left us with a « choice between permitting some measure of effective unionism and delaying economic growth, or supressing democracy altogether for the sake of maximum development ». ⁸ This, he suggests is another way of expressing the alternative as between « permissive and totalitarian methods of dealing with labour unions ». ⁹ Walter Galenson is perhaps the most realistic when he suggests that a balance must be struck which both satisfies the requirements of the economic planner and the minimum demands of the industrial worker. ¹⁰ Sturmtal suggests that the nature of such a compromise must come in the form of the union delaying their push for a wage increase or accepting postponement of its effective date so as to give the economy time for its « initial investment push ». The other side of this compromise consists of the government accepting a slight delay in its capital formation drive as «the price to be paid to divert a further deterioration of the prospects for economic growth that might otherwise be caused by political or social upheavals ». ¹¹

The Role of the Trade Unions: A Viewpoint

While the above arguments set out the alternatives they do neglect to consider the processes by which a country might arrive at any particular alternative. The arguments are often presented in the context of an idealized country that has neither industry, nor trade unions. In many cases this is not true. Most developing countries were colonies, and at the time of Independence the new Governments inherited an industrial base, sometimes beyond the take-off stage, and a number of already established institutions. Often one of these institutions was an established union movement. To wipe it out and proceed as if it never existed is a policy fraught with danger. How to deal with it will depend upon such things as the cultural context and the historical background that produced the union movement.

Also it has been pointed out that all too often the negative aspects of unionism have been considered to the neglect of potential benefits. The result is an excess emphasis on legislation to restrict unions. However,

⁷ John T. DUNLOP, *American Labour's Role in less Developed Countries*, Ithaca, Cornell University, 1959, p. 18.

⁸ STURMTAL, *op. cit.*, p. 199.

⁹ *Ibid.*

¹⁰ Walter GALENSON, *Labour and Economic Development*, New York, John Willey, 1969, p. 14

¹¹ STURMTAL, *op. cit.*, p. 204.

if it is granted that unions may benefit the process of development, attention can also be paid to the use of legislation to strengthen unions. As Fisher has pointed out these measures are often minor and not intended to develop strong unions, but merely to provide economic relief.¹² Still, the potential for legislation to assist unions as well as restrict them remains.

Finally, the question must be raised, is a Government's opposition to the development of trade unions really based on economic or political grounds? The answer to this question is important because there is no use in developing an argument on economic grounds if the real reason for opposition is political.

In broad terms the unions and the Government in Kenya have been following a policy similar to Fisher's third alternative of working within government restrictions. However, in doing so it might be argued that the respective parties have been aware of the need for some form of compromise, as Galenson has suggested. That is in agreeing to work within these restrictions the unions have sometimes been able to achieve benefits that have assisted in their organization. Our objective in the remainder of this paper is to examine how the present situation in Kenya developed, and discuss the consequences for the trade union movement.

BACKGROUND OF THE KENYAN LABOUR MOVEMENT

An understanding of the current role, function and power of the trade unions in Kenya is somewhat dependent upon an appreciation of the unions' development problems. As such, the following section of this paper is designed to provide some brief background information concerning the Kenyan trade union movement. It is, in no way intended to be a definitive historical discussion.

The Colonial Period

Both prior to, and during the Second World War, the Kenya Colonial Government was openly opposed to the development of a trade union movement. In fact, despite a 1930 directive from the British Colonial Office to do so, it was not until 1943 that a statute was passed which recognized trade unions in Kenya. All legislation prior to this time was of a repressive nature and designed to provide the Government with

¹² FISHER, *op. cit.*

powers to control unionism. This is not to suggest that unions did not exist prior to this time. One can trace a series of workers protests and strikes starting from the first strike on the construction of the railway in 1900. During this period a number of trade unions were formed but their effective life was generally quite short.

After World War II the British Labour Government, the British TUC, the American AFL and CIO, the ICFTU all took an active interest in problems of the workers in Africa. As such the fledgelling trade union movement in Kenya received considerable external help in the form of finance, education, training and advice. In addition, the official government policy in Kenya after the war shifted toward the fostering of trade unions. The primary concern of the Government during this post-war period was to restrict union activities to economic and industrial problems and to keep them out of political areas. It was at this time that Jomo Kenyatta and others were starting their call for independence, and often it was difficult to really differentiate between trade union economic activities and African independence activities. In many cases the leaders were the same and the techniques employed were similar. The mixture of goals is shown by the East African Trade Union Congress 1950 May Day pledge that « our unions and the EATUC would do their utmost for the achievement of workers' demands, complete freedom and independence of the East African territories and lasting peace ». ¹³

In an attempt to deter the development of trade unions during the early 1950s the Government : (a) sponsored the establishment of staff associations and works' committees to try to eliminate the need for unions at the shop level, (b) established statutory wage determination machinery by forming wages council for various industries and thereby try to eliminate the need for unions, (c) provided close control over the internal activities of the unions through the Registrar of Trade Unions with powers to de-register the unions, and (d) extended compulsory arbitration and other restrictions to almost all major industries through a liberal application of the Essential Services Ordinance. Thus, although the Government was overtly following a policy of union recognition it was also actively deterring the development of the unions.

The Kenyan independence drive entered the revolutionary Mau Mau stage and a state of emergency was declared in 1952. There was a fear

¹³ Makham SINGH, *History of Kenya's Trade Union Movement to 1952*, Nairobi, East African Publishing House, 1969, p. 202.

that the unions either were, or soon would be, under Mau Mau influence. As such the Emergency regulations reduced the unions to mere shells. It was only the financial support by the ICFTU that maintained the Kenya Federation of Registered Trade Unions. (renamed Kenya Federation of Labour in 1955) and it was only the political pressure from the ICFTU, the British TUC and the British Colonial Office which prevented the Government from banning the KFL. Thus the trade union movement was significantly weakened during the 1952-58 period and its activities were generally restricted to non-political affairs. Although towards the end of this period Tom Mboya (the General Secretary of KFL) again began leading the union activities more and more back into the political area.

An important point in trade union development occurred in 1958 when the Federation of Kenya Employers and the Kenya Federation of Labour entered into a recognition agreement. The FKE agreed to recognize and bargain with the unions and the KFL agreed to an industrial basis of organization. This agreement did much to foster the development of the unions as they now exist and resulted in the unions having to rely less upon the Government. Despite the 1958 agreement the unions faced severe problems in organizing the many small enterprises in the country. The unions lacked the organizational ability and finances to overcome the small employers opposition. As such, industrial unrest continued until it reached its all time height of 285 strikes in 1962. A number of these strikes can be related to the imminence of Independence which came in December 1963.

The Independence Period

Prior to the actual granting of independence, an African coalition government was established in April 1962. Tom Mboya became the Minister of Labour. In an attempt to promote industrial peace Mboya convened a tripartite committee which drew up an Industrial Charter. According to this charter management reaffirmed that it would recognize and bargain with the unions and the unions committed themselves to reducing the number of industrial disputes by following the established machinery. This Charter considerably assisted the spread of unionism in Kenya and the continuation of the system of industrial relations which had already been established.

Another important development occurred in 1962. Without going into the details, a confrontation developed in the political elections which preceded independence. Much of this confrontation involved the question

of trade union sponsorship of its own candidates. The end result was a decision that the unions would not enter candidates or behave as political parties. This decision avoided much government opposition and is a policy which has been followed to date.

Much of the immediate post-independence labour unrest was attributed to the rivalries which developed between the two federations of labour that existed. In order to restore unity in the labour movement and to negate international unions influence, President Kenyatta (by Presidential decree in 1965) deregistered both the KFL and the KAWC and established a single organization — the Central Organization of Trade Unions (COTU). In addition he cancelled all affiliations by unions with bodies outside Kenya. COTU's constitution was drawn up by the Attorney-General's Department and entrenched government supervision of COTU's internal affairs. At this time COTU and its leaders pledged loyalty to the Government and support of the governing party.¹⁴ This pledge has since been reaffirmed.

Since 1966 there have been two sets of elections within COTU — 1969 and 1972-73. Both these elections have been fraught with severe internal difficulties resulting from clashes of personality, ideology, tribalism etc. The result has been that the single « house » of labour has not really been in good order since its establishment. Thus while the individual trade unions have been growing in size, strength and maturity the same cannot really be said for COTU itself. As a result the individual unions have really been operating on their own without much assistance or support from COTU.

STRUCTURE OF THE KENYAN UNION MOVEMENT

The trade unions in Kenya are represented to the government and to outside bodies by the Central Organization of Trade Unions (COTU). By 1972 COTU was an association of 28 of Kenya's 30 major and distinct national unions.¹⁵ As with most national trade union centres, the basic

¹⁴ COTU, *A Statement of Policy*, Nairobi, COTU, Nov. 8, 1966.

¹⁵ Depending upon the definition of « trade union » used, there may be 35 or more « unions ». However, these others are either professional bodies difficult to differentiate from management or are staff associations. It should be noted that the two largest unions (Kenya Civil Servants' Union and the Kenya National Union of Teachers) representing 37% of the union movement were removed from COTU by Government order in 1968.

functions of COTU are (a) to assist, service and co-ordinate the activities of its affiliates, and (b) to represent the affiliates' interests before government and other outside bodies. Frankly, COTU has not been very effective over the past two years as a result of tribal rivalries and other internal problems. Most of the trade unions do not consider COTU an effective source of assistance, particularly in the areas of collective bargaining and dispute settlement.

Each of the 30 national unions is organized on an industrial basis. As a result, there are very few jurisdictional or other problems between the national unions. The basic function and activities of all unions is to organize workers, bargain collectively and to handle workers' disputes and grievances. To accomplish these activities all of the unions rely upon Shop Stewards and Branch Secretaries to organize and recruit members as well as to, initially at least, handle workers' grievances. Generally speaking, the power of most of these unions is highly centralized in the hands of the General Secretaries. In all cases the General Secretary is the chief executive officer of the unions and, such, the union's highest administrative and executive official. In a number of the unions he is also the only full time employed official. He generally handles all the collective bargaining and major grievance responsibilities for the union; represents the union to its members and to the public; effectively controls all union expenditures and dominates policy formulation. It should be noted that most of these General Secretaries are capable men with qualities and qualifications significantly superior to most others in their union. In addition, they are reasonably secure in their office, with two-thirds of them having a tenure in office in excess of 5 years. These personal attributes plus the importance of his responsibilities lead to the concentration of power within the unions.

In Kenya trade union membership size can be obtained since all unions are required to file a return each year with the Registrar of Trade Unions. There is, however, the problem of differentiating between « dues paying » members and « book » members. Some unions have a very large book membership but in fact may have a relatively small dues paying membership.¹⁶ For our purposes we have used dues paying membership. Table 1 reports both the actual trade union membership size as well as

¹⁶ The guides and porters in the Game and Hunting Workers union only pay dues when they work and therefore only a small portion of the book membership actually pays dues at any one time. The situation is similar in the Plantation Workers Union and some of the other unions.

membership size as a percentage of the total paid work force for the period since Independence. This data leads us to conclude that, on the basis of membership size, the trade unions are relatively strong in Kenya. As an institution, they are well established throughout the modern sector of the economy. As such, neither the government nor the employers can ignore a trade union movement which has organized more than forty per cent of the total paid work force.

TABLE 1
Trade Union Membership 1963-1972

<i>Year</i>	<i>Total Membership</i>	<i>Total Membership as a Percentage of Total Paid Work Force</i>
1963	118,788	22
1964	172,763	30
1965	204,211	35
1966	214,576	36
1967	234,701	39
1969	233,618	37
1970	233,168	36
1971	258,721	38
1972 *	307,550	43

Source : Registrar of Trade Unions, Annual Returns from Each Union.

* Provisional

Obviously size alone is not an adequate measure of the strength of the trade union movement. To provide an indication of the financial strength of the Kenyan trade union movement, we have examined the audited financial statement required from each union by the Registrar of Trade Unions over the period 1963-1972. The current expenditure and gross assets per union member are reported in Table 2.

Under the check-off system¹⁷ the employer remits 85% of the dues collected to the union's national headquarters and 15% direct to COTU (K). Thus the unions have no control over the funds going to COTU and, with very few exceptions, all union funds are closely controlled by

¹⁷ It should be noted that, in almost all the unions, the monthly dues are three shillings. In addition, the unions are no longer bothered with the difficult task of collecting dues from each member individually. Since 1965 every establishment with 5 or more union members must check off and remit the dues to the union. However any form of membership security, such as a union shop, is illegal.

TABLE 2

Current Expenditures and Assets per Trade Union Member — 1963-1972

<i>Year</i>	<i>Current Expenditures Per Member (\$ CAN.)</i>	<i>Current Assets Per Member (\$ CAN.)</i>
1963	2.19	.58
1964	2.03	.39
1965	2.18	.44
1966	2.60	.55
1967	3.35	.68
1968	3.45	1.06
1969	3.44	1.14
1970	4.43	1.32
1971	4.50	1.79
1972 *	3.95	2.87

Source : Registrar of Trade Unions, Annual Returns 1963-1972.

* Provisional

the General Secretary. Only the necessary funds for branch salaries and office overhead find their way to the branch or regional offices. Thus the financial power or strength in the unions rests at the national union level and is controlled by the National General Secretaries.

Most of the General Secretaries complain of the fact that their union is financially weak. Table 2 testifies to this fact. While the relative financial position of the Kenyan unions has significantly improved over the ten year period, their total current expenditure per member was only equivalent to \$3.95 for the year 1972 while their total assets were only equivalent to \$2.87 per member. It can therefore be concluded that union financing, or the lack thereof, is a major weakness of the unions in Kenya. Speaking generally it means (a) unions do not provide any form of financial assistance to their strikers, (b) except for a few unions, the enrolling of new members is the responsibility of the Organizing Secretaries and the part-time (generally non-paid) branch chairmen and shop stewards (c) relatively few unions offer any services other than bargaining and grievance handling to the members, (d) no union employs trained economic advisors and only a couple of unions have either a full or part-time research department, and e) the majority of the unions are really « one man shows » with the General Secretary doing all the bargaining, handling all major grievances, resolving the many branch problems that occur as well as administering the union.

THE COLLECTIVE BARGAINING PROCESS

The Legislative Framework

In 1965 the Government passed the Trade Disputes Act to regulate collective bargaining relationships in both the private and public sectors. To the disappointment of some unionists, this Act did little to change the restrictive legislative framework which existed prior to Independence.

Tom Mboya who was the Minister for Labour at the time felt that the trade unions had to take a positive role in development during the post-independence period. As he stated

« The new Government is not prepared to allow any obstruction in the economic development either from trade unions or any other groups of persons. »¹⁸

Thus it is not surprising to find that the Trade Disputes Act served to place a number of restrictions upon the trade unions' collective bargaining activities. This Act was later amended in 1971 to give both the Minister of Labour and the Industrial Court wider powers over the collective bargaining process.

In return for the limitations placed upon their right to strike, the Trade Disputes Act also contained provisions for a compulsory check-off system. According to the Act employers with more than four union members are responsible for remitting monthly union dues directly to the union's headoffice. This provision has been extremely important for the growth and stability of the union movement in Kenya. For the first time they could rely on a minimum level of financial security.

The provisions of the statute do not come into effect unless a dispute has been declared between the parties, and the issue referred to the Minister of Labour. The statute is silent concerning procedures to be followed up to this point. As such, union and management enter into a « recognition agreement » which, in addition to specifically recognizing the union as the bargaining representative, outlines the procedure the parties agree to follow during negotiations. Only if there is a breakdown in these negotiations is the issue referred to the Minister of Labour.

¹⁸ Tom MBOYA, *The Challenge of Nationhood*, London, Heinemann, 1970, p. 66.

Once a dispute is referred to the Minister a Tripartite Committee is consulted and, on their recommendation, the Minister may (a) appoint a conciliator, (b) appoint an investigator, (c) refer the issue back to the parties, (d) reject the dispute, or (e) refer the dispute directly to the Industrial Court. Normally in all cases of « interest » disputes the Minister appoints a conciliator and in all « rights » disputes he appoints an investigator. Only if the conciliators fail, or if the parties reject the investigator's recommendation, will the Minister normally refer the matter to the Industrial Court.

The Act clearly states that the Industrial Court's reinstatement awards are enforced and it also states that the Minister may order the enforcement of an award, but it does not suggest that the Court's award are final and binding. This uncertainty of the « final and binding » nature of Industrial Court's awards has created some problems for unions and management but so far in only a very few cases.²⁰

Thus the negotiation procedure is quite clear in that it provides for voluntary negotiation, conciliation, and if necessary, referral to the Industrial Court. The only time limit in this entire procedure is a 21 day period within which the Minister must act after a dispute has been referred to him. The lack of time limits in the procedure is another problem with the current legislation.

The statute explicitly recognises the employees' right to strike in that it does outline the conditions under which a strike shall be unlawful. There are really only two instances whereby a strike is clearly lawful. The first is if a dispute has been referred to the Minister and the Minister fails to refer it to conciliation, investigation, etc. within 21 days. The second instance is where the Industrial Court has made its award but the employer refuses to implement it and as such the union has exhausted all available procedures. Notwithstanding the foregoing, however the Minister has the power to declare any actual or threatened strike to be unlawful or to require the parties to comply with an award.

¹⁹ *Ibid.* p. 63.

²⁰ H. WAMALWA, « The System of Settling Disputes in Kenya » *Conciliation and Arbitration of Industrial Disputes in English Speaking Countries of Africa*, Geneva, ILO, Labour Management Series 37, 1970, p. 110.

The Structure For Negotiations

Management in Kenya is quite well organized for collective bargaining purposes. In addition to the major employer's association — the Federation of Kenya Employers (F.K.E.) — there are also numerous regional, trade and industry employer's associations. The primary function of all these associations is to unite employers for collective bargaining purposes. Most of the bargaining is conducted between an individual union and one of the associations. The fact that there are fewer than two hundred registered collective agreements in Kenya testifies to the effectiveness of these associations. Thus the majority of the collective agreements are negotiated on behalf of management for a group of employers, generally by a negotiator who is employed full time by either the FKE or one of the other associations.

Unlike management, the unions have not been able to organize a united front for collective bargaining. Most unions do not consider COTU to be an effective source of assistance in the areas of collective bargaining and dispute settlement. The consequence is that each union chooses to bargain without any outside help and therefore is unable to come to the bargaining table with the same backing and resources as management.

Negotiations for the union are handled by the General Secretary, who is accompanied by a coterie of union executive. However, it is clear that the General Secretary is the spokesman and makes the final decisions. In most cases this means he has the final say on contract terms without the need for ratification by the membership.

The Kenyan Strike Record

One of the effects of the collective bargaining process can be seen in the strike record for the years 1963 to 1972 as reported in Table 3.²¹ As indicated in the first column, there has been a sharp reduction in the number of strikes in Kenya since the passage of the Trade Disputes Act in 1965. From 1963 to 1965 there was an average of 233 strikes per year, while the average for the last seven years is 100 per year.

²¹ The data presented in tables will differ from that published by the Kenya Government. Certain errors were found in published data which required corrections. The figures have been agreed upon as correct by the Government officials and the authors. It should be noted that in Kenya all labour disputes regardless of duration or numbers involved are classified as strikes and included in the tables.

TABLE 3
Industrial Disputes — 1963-1972

<i>Year</i>	<i>Number of Strikes</i>	<i>Workers Involved</i>	<i>Man-Days Lost</i>
1963	282	54,881	191,023
1964	231	67,038	158,060
1965	186	82,250	286,071
1966	130	42,554	130,574
1967	129	30,160	110,903
1968	93	20,428	50,003
1969	110	33,718	109,092
1970	79	18,739	58,720
1971	69	13,553	32,778
1972	94	27,510	42,006

Source : Ministry of Labour Records and Files, 1963-1972.

Similarly, other measures indicates an identical pattern. The average number of man-days lost as a result of strikes declined from an annual average of 211,718 for the 1963-1965 period to 76,296 for the period from 1966 onward. And the number of workers involved in strikes declined from an average of 68,056 for the years 1963-1965 to an average 26,666 for the years 1966-1972.

Table 4 shows one of the most important characteristics of strikes in Kenya — strikes only last for short periods. While strikes in Kenya have always been of short duration, this has been more the case since 1965. The absolute number of strikes of 48 hours or more has fallen from an average of 26 prior to passage of the legislation to an average of four since 1965. Thus after 1965 the yearly average number of strikes longer than 48 hours was only five per cent of all strikes. We feel that this situation may be attributed to the following four factors. First most of these strikes are illegal and therefore can only be short before there is police or government intervention.²² A second factor is the unions inability to pay strikers and most workers have no savings to fall back upon. This problem is further aggravated by high unemployment making it difficult for strikers to find another job. Thirdly, many strikes are « wildcat » and are called without the support of the national union and are often resolved by the General Secretary sending the strikers back to work. Finally by far the majority of the strikes are over grievances

²² The Government takes a fairly liberal attitude toward these illegal strikes and as long as they are of short duration it does not prosecute the unions.

or « rights » issues rather than bargaining or « interest » issues and such rights disputes can often be resolved fairly quickly.

TABLE 4
Duration of Industrial Disputes in Hours — 1963-1972

Year	0 — 8		9 — 48		over 48	
	n	%	n	%	n	%
1963	119	42.2	130	46.1	33	11.7
1964	101	43.7	108	46.7	22	9.5
1965	91	48.9	73	39.2	22	11.8
1966	74	56.9	52	40.0	4	3.1
1967	53	41.1	65	50.2	11	8.5
1968	41	44.1	49	52.7	3	3.2
1969	50	45.5	57	51.8	3	2.7
1970	42	53.2	31	39.2	6	7.6
1971	28	40.6	35	50.7	6	8.7
1972	58	61.7	34	36.2	2	2.1

Source : Ministry of Labour Records and Files, 1963-1972.

In Table 5 strikes are classified as « rights » or grievance disputes and « interest » or bargaining disputes. By far the majority of strikes in Kenya have always been over rights issues. The limited nature of the issues involved in such cases means they can be resolved more rapidly than interest disputes, which have a broader scope and wider ramifications. Since the passage of the Trade Disputes Act there has been a noticeable decrease in the proportion of strikes over interest issues. Thus one can observe that the collective bargaining procedure and the Industrial Court have been quite effective in dealing with those disputes which cause the greatest disruption to the economy.

DISCUSSION

As pointed out in the introduction Fisher, a decade ago, argued that unions in developing countries are faced with three alternatives : (a) to become instruments of the state, (b) to oppose government policies, or (c) to accept a policy of wage and other restraints. The first alternative means a decline of politically and economically independent unions and the second requires a power base that most unions in developing countries do not have. By following the third alternative, a union movement may be able to survive and develop its power base until economic and

TABLE 5
Classification of Strikes as to « Rights » or
« Interest » Disputes, 1963-1972

Year	« Rights » or Grievance Strikes		« Interest » or Bargaining Strikes	
	n	%	n	%
1963	190	67	92	33
1964	181	78	50	22
1965	129	69	57	31
1966	108	83	22	17
1967	102	79	27	21
1968	85	91	8	9
1969	88	80	22	20
1970	71	90	8	10
1971	56	81	13	19
1972	84	89	10	11

Source : Ministry of Labour Records and Files, 1963-1972.

political conditions allow it to more actively follow an independent policy. In doing so it may also be able to follow an active policy that improves its position and not just accept the crumbs thrown to it by the government. The trade union movement in Kenya has followed Fisher's third alternative and we have used the Kenya example to show the implications of such policy. In so doing we believe that the controls placed upon unions are intended to stabilize the economy, attract foreign investment, maximize the development goals of the government and minimize the political involvement of the unions. In the following discussion we will consider the ramifications of these controls.

To eliminate conflict in the union movement, which spilled over into the political arena, the Central Organization of Trade Unions was established by Presidential decree in 1965. This decree forced the amalgamation of the Kenya African Workers Union and the Kenya Federation of Labour. However the old rivalries are still carried on but, now within the confines of COTU. The consequence has been to weaken COTU such that it is not able to provide much assistance to the struggling national unions.

In establishing COTU the government ensured they would be able to have a continuing influence on the internal affairs of COTU. The Government's influence over the internal affairs of the unions is main-

tained through the following three requirements. First the President of the Republic appoints the COTU Chairman, General Secretary and Deputy General Secretary. While the national unions vote to elect the officials and the President has always appointed the winners, it is not mandatory for him to do so. At the time of writing (almost 1½ years later) the men elected in 1972 still await appointment by the President. Therefore, this requirement could be used to ensure that union leaders with views in opposition to the government could be refused appointment to their elected positions.

A second requirement is that the Minister of Labour has a representative on both the Governing Council and the Executive Board of COTU — which are its major policy making bodies. Therefore, not only are the opinions of the government given before union policy is formulated, but also the Minister is kept well informed on the union movement's position on crucial economic or political issues.

The third requirement is that, while unions in Kenya are free to organize, to gain official status they must be registered with the Registrar of Trade Unions. Part of this requirement is approval of the union's constitution. An examination of the union constitutions in Kenya reveals that they are virtually identical. The reason for this is that the Attorney-Generals department has drafted a model constitution and, to be registered, unions must follow this model fairly closely. Such a procedure does have the advantage of ensuring that there are provisions in the constitution to adequately protect members' interest. But it also provides a mechanism whereby the government can influence both the structure and the internal affairs of the trade unions. This has been especially the case in recent months with COTU. In 1971 and 1972 many problems were encountered in disputes over the COTU elections. These problems arose over the system of representation and the method of elections specified in the COTU constitution. To rectify the situation the Industrial Court recommended changes be made in the constitution. However, the revised constitution is being prepared by the office of the Attorney-General and the only position COTU has is to make comments on the draft version.

In addition to controls over the internal affairs of the unions, the Government has also restricted collective bargaining relationships in Kenya. According to the present legislation unions may only declare a legal strike if the Minister of Labour fails to take action (i.e. refer the

dispute to conciliation) within twenty-one days or if the employer fails or refuses to implement an Industrial Court award. Even in these rather rare instances the Minister may still declare any strike illegal. It may therefore be impossible for the trade unions to exert pressure through a legal strike. The same basic procedure is used for both interest and rights disputes. So far the procedure seems to be effective in the case of interest disputes which have declined as a proportion of total strikes since the passage of the Act. However the procedure does not appear adequate for rights disputes. This type of conflict requires a more immediate solution which the procedures do not provide. As a result unions must either accept the employer's offer or risk an illegal strike. So far the government has not prosecuted such illegal strikes because of their limited scope and short duration. Thus the overall result has been a reduction of strikes in Kenya and most of those that do occur are illegal and over rights issues. It should also be noted that the other sources of union power such as sympathy strikes or secondary boycotts are specifically precluded by legislation, and implicitly so is picketing.

While unions in Kenya face a number of constraints, imposed by the Government, they have obtained some benefits as well. One of the most serious problems unions in a developing country face is adequate financing. This makes it impossible for them to obtain staff of the same quantity or quality as does management, or to develop a strike fund. The unions have received a large measure of relief in this area from the check-off system introduced as one of the major trade-offs received by the unions for the restriction contained in the 1965 Trade Disputes Act. The financial position of the unions is still far from strong, but one wonders what it would be without the check-off system.

In our view the establishment of the Industrial Court has had beneficial consequences for the unions. A view that is also supported by the unions General Secretaries. The majority of contracts are settled outside the Court, but the Court awards offer a reference for other awards. Also the Court provides a deterrent to an employer who seeks to force a low wage settlement since the union can simply process the issue to the Court. By acting as an independent arbitrator, the Court has operated to offset the power imbalance between management and unions which is perhaps why the union leaders interviewed strongly support the system.

By choosing a policy along the lines of Fisher's third alternative, unions in Kenya have been severely restricted but at the same time have

been able to achieve a sustained and stable growth. By choosing this alternative they have been able to continue building a power base and more experienced leadership so that as the economy becomes wealthier the unions will be in a position to adopt a more independent policy. To have done otherwise could well have led to their demise.

Some of the background factors which seem of importance to the shaping of the Kenya situation are as follows. At the time of Independence a viable union movement existed which had its power base developed in the fight for Independence. To eliminate such a group would have been too disruptive to an economy seeking stability internally and in the eyes of foreign investors. Also a number of major political leaders had a power base in the union movement and did not want to see it wiped out, even though they no longer wanted the unions to take an active political role. However, the unions were not sufficiently strong to engage in a confrontation with the government. The result has been a compromise with the unions facing restrictions but also receiving some benefits. This compromise leading to the reconciliation of the Government's development goals and the union's economic goals seems to be working for now because management does not like strikes, the workers cannot afford them and so long as they are short the government is not getting too concerned. If the union's financial strength were to improve or if the parties' confidence in the Industrial Court was to change, this compromise may not continue to be successful.

We fear that current actions by the Government may alter the existing situation. Kenya is currently feeling the worldwide problem of inflation. It is attempting to remedy the situation through traditional application of price and income policies. As such, in September, 1973, the Government invoked clauses 8(c), 8(d) and 10 of the 1971 amendment to the Trades Disputes Act. Thus the Industrial Court is now bound by any guidelines or other directives' relating to wage levels or other terms and conditions of work that may be issued by the Minister of Finance. In addition, in the future *all* agreements must be registered by the Court and only those which comply with the incomes policy are to be registered. No collective agreement is to take effect until it is registered by the Industrial Court. Thus the Court is to become an executive arm for implementing a Government incomes policy. It is likely that this action will destroy the confidence and independent reputation of the Court. But what can the trade unions do about it — absolutely nothing ! They do not have either the political or economic power to force the

Government into changing its position. Even if they strike and exercise force on a company, the agreement still must be registered with the Industrial Court and conform to the Government's income policy.

In conclusion we reiterate that the Kenyan experience suggests that the trade unions in the developing countries have no choice. They must accept a policy of wage restraint. The economic development and political goals of the Government are going to take priority. Governments can not and will not allow the trade unions to exercise « power » which will hinder or limit the development goals of the Government. As in Kenya, the Government's potential degree of control over the trade union movement is great. The degree to which this potential is exercised is dependent upon the actions and militancy of the trade unions themselves. The choice left to the unions may be to accept a policy of wage restraint or be taken over and become an arm of the government.

La puissance syndicale et le processus du développement économique: l'exemple du Kenya

Tous les gouvernements imposent des restrictions à l'activité des syndicats, mais le degré et la forme en varient d'un pays à l'autre. Un facteur qu'on considère de première importance dans la détermination de ces restrictions repose sur l'étendue du développement économique du pays en cause. Certains soutiennent qu'un mouvement syndical fort est de nature à retarder le progrès des nations en voie de développement ; d'autres estiment que les syndicats peuvent contribuer à la formation d'une main-d'œuvre stable et efficace. Toutefois, même les tenants de ce dernier point de vue ne rejettent pas toute restriction.

Le but du présent article est d'analyser les différentes attitudes que peuvent adopter les gouvernements et les centrales syndicales en regard de cette question et les auteurs, pour y arriver, se sont penchés sur les rapports qui existent entre l'État et le syndicalisme dans un pays africain, le Kenya. Ils ont voulu voir comment le gouvernement de ce pays a cherché à réconcilier ses objectifs de développement économique avec la concession aux syndicats du droit de grève, du droit de négociation collective et du droit d'association. Le Kenya se prêtait d'autant mieux à cette étude que le mouvement syndical y est bien implanté et qu'on y fait de grands efforts pour développer aussi rapidement que possible un secteur industriel moderne. Longtemps colonie britannique, indépendant depuis au-delà de dix ans, le Kenya est aussi politiquement stable.

Dans tout État, il s'établit des rapports étroits entre le gouvernement et le mouvement syndical et, dans une large mesure, la nature de ces relations dépend

de l'intensité de l'opposition aux politiques gouvernementales. Dans les pays en voie de développement, les syndicats, face à l'État, peuvent adopter trois attitudes : devenir simplement les instruments du gouvernement, s'unir à l'opposition pour combattre le parti au pouvoir, accepter la voie du compromis qui se traduit en pratique par le contrôle des salaires et une législation plus ou moins contraignante. En réalité, la situation oscille entre deux pôles : pour l'État, permettre un certain degré de syndicalisme efficace et sacrifier la croissance économique ou supprimer toute vie démocratique et pousser au maximum le développement de l'industrie ; pour le mouvement syndical : en venir à disparaître à plus ou moins long terme ou tomber entre les mains de groupes *radicalisés*.

Comme la plupart des pays en voie de développement étaient autrefois des colonies, au moment de l'indépendance nationale les gouvernements ont hérité d'une assise industrielle et d'un certain nombre d'institutions déjà établies. On ne peut pas balayer tout cela sans danger. Comment agir alors ? Au Kenya, syndicats et gouvernements ont choisi de s'engager dans la voie du compromis. En acceptant de travailler selon cette formule, les syndicats ont réussi parfois à obtenir certains avantages qui ont favorisé le recrutement des membres.

Au Kenya, les syndicats n'ont été reconnus qu'à partir de 1943. Auparavant, la législation était de caractère essentiellement restrictif de telle sorte qu'il n'existait aucun mouvement syndical. Après la guerre, le gouvernement britannique a manifesté un peu d'intérêt pour les problèmes de travailleurs africains tout en s'efforçant de limiter l'activité des syndicats aux questions sociales et économiques. C'était l'époque où le mouvement de l'idée d'indépendance commençait à se répandre et, au cours de cette période, il est devenu difficile de différencier l'activité économique des syndicats de leur combat en faveur de la libération. Dans bien des cas, les chefs du mouvement syndical et du mouvement d'indépendance se concentraient dans les mêmes personnes. Pour contrecarrer l'action des syndicats, le gouvernement colonial favorisa l'établissement de comités de travailleurs, institua un mécanisme de fixation des salaires, s'efforça de contrôler l'activité interne des syndicats et généralisa l'arbitrage obligatoire des conflits.

Peu avant l'accession à l'indépendance, un gouvernement de coalition fut formé au sein duquel le Secrétaire général de la Fédération du travail du Kenya devint ministre du travail. Celui-ci institua un comité tripartite qui mit au point une charte industrielle par laquelle les employeurs s'engageaient à reconnaître les syndicats et à négocier collectivement et les syndicats, à diminuer le nombre des conflits du travail.

À l'indépendance, comme les conflits étaient surtout attribuables à la rivalité entre les deux centrales syndicales existantes, le gouvernement fusionna les deux organisations et défendit aux syndicats de s'affilier aux mouvements syndicaux étrangers. Les statuts de la nouvelle centrale furent rédigés par le Procureur général du pays et imposèrent la surveillance du gouvernement sur ses affaires internes. À cette époque, la centrale et ses dirigeants prêtèrent allégeance au gouvernement et accordèrent leur appui au parti au pouvoir. Depuis lors, les syndicats se sont développés, mais on ne peut pas en dire autant de la centrale elle-même. Les syndicats,

qui sont au nombre de trente, conduisent leurs propres affaires. Ils remplissent la triple fonction de recruter des membres, de négocier collectivement et de régler les griefs. D'une façon générale, le pouvoir au sein de chaque syndicat est centralisé entre les mains du secrétaire général, qui est habituellement élu pour cinq ans. Les syndicats comptent beaucoup de membres inscrits mais beaucoup moins de membres cotisants de telle sorte que la plupart des secrétaires généraux se plaignent que leur situation financière est faible.

Les auteurs, après avoir analysé la législation du travail actuelle et examiné le dossier des grèves, font porter leurs observations sur les trois choix cités au début : devenir les instruments du gouvernement, combattre les politiques gouvernementales ou accepter une politique des salaires et d'autres contraintes.

Le premier choix entraîne un déclin de l'indépendance politique et économique des syndicats et le deuxième exige une force dont ils ne disposent pas encore dans les pays en voie de développement. En se portant sur le troisième choix, un mouvement syndical peut survivre et accroître graduellement sa puissance jusqu'à ce que les conditions politiques et économiques lui permettent de montrer plus d'indépendance. Au Kenya, le mouvement syndical s'est engagé dans cette troisième voie et, de l'expérience qui s'en dégage, on peut déduire que les restrictions imposées aux syndicats visaient à stabiliser l'économie, à attirer les capitaux étrangers, à maximiser les objectifs de développement recherchés par l'État et à minimiser l'engagement politique des syndicats. Ce sont les raisons fondamentales pour lesquelles le gouvernement a voulu exercer une influence constante sur les affaires internes du mouvement syndical, notamment en se donnant le pouvoir de désigner lui-même ses principaux dirigeants et d'imposer la présence d'un représentant du gouvernement au conseil exécutif.

Les auteurs concluent enfin de l'expérience kényenne que les syndicats n'ont qu'un seul choix dans les pays en voie de développement : accepter une politique de restriction en matière de salaires. Les gouvernements ne peuvent pas permettre et ne permettent pas aux syndicats d'exercer un « pouvoir » qui entraverait la poursuite de leurs objectifs économiques. Le contrôle de l'État sur le syndicalisme est considérable et celui-ci est forcé d'accepter certaines restrictions sous peine de disparaître ou de devenir un simple appareil du gouvernement.