



“TOWARDS HARMONIOUS AND FAIR INDUSTRIAL RELATIONS IN KENYA!”

An Economic Paper for Decision Making in Trade Unions in Kenya

By

OWIDHI GEORGE OTIENO

ECONOMIST

CENTRAL ORGANIZATION OF TRADE UNIONS –COTU (K)

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1.0 INTRODUCTION

One of the greatest landmark achievements Kenya has made since independence in 1963 was the enactment of the Constitution in 2010. A cursory look at the Constitution reveals that Article 41 grants workers basic fundamental rights that cushion them from violations. For example, Article 41(1) grants the worker the right to fair labour practices; Article 41(2a), the right to fair remuneration; Article 41(2b), reasonable working conditions; while Article 41(2c) confers the workers the right to form, join or participate in the programmes and activities of a trade union of choice. Similarly, Article 41(5) grants trade unions the right to engage in collective bargaining while Article 43 confers workers with social and economic rights, which include the right to social security (Republic of Kenya, 2010).

There are at least 50 registered trade unions in Kenya most of which are affiliated to the Central Organization of Trade Unions-Kenya (COTU-K) while a few such as the Kenya National Union of Teachers (KNUT), Union of Kenya Civil Servants (UKCS), Universities Academic Staff Union (UASU) and the Kenya Universities Staff Union (KUSU) affiliated to the newly formed Trade Union Congress of Kenya (TUC-Ke).

The trade unions draw their membership from various sectors of the economy. However, the informal sector has had little involvement of the trade unions. Currently, it can be estimated that approximately 4 million workers in Kenya belong to trade unions.

The current lags and labour market decent work deficits places trade unions at the center stage of a policy struggle in Kenya. Kenya has just witnessed the longest ever doctors strike (about 100 days). This strike saw the officials of the Kenya Medical Practitioners and Dentists Union (KMPDU) imprisoned during their struggle to liberate the workers. Also worth noting is the two month strike of the University Academic Staff Union (UASU) that was called off on the 13th March 2017. These strikes notwithstanding, there are several other industrial unrests that have been witnessed in

Kenya implying increasing levels of poor industrial and labour relations in Kenya's history. This paper is informed by the escalating decline in the quality of industrial and labour relations. The paper looks at the challenges facing trade unions currently and provides possible recommendations to enhance trade unionization in Kenya. A brief analysis of the Consumer Price Indices (CPIs) and inflation rates is also done for the period.

The next section gives the institutional and legal frameworks of the industrial relations in Kenya while section 3 presents the current challenges faced by trade unions in Kenya. Section 4 provides some of the possible ways of addressing the industrial relations challenges with a focus on growing trade unions and improving industrial relations in Kenya. Section 5 presents the changes in Consumer Price Indices and Inflation rates over the past 14 months to shade some light on how the workers continue to lose their purchasing power due to increasing costs of living. The conclusion is presented in section 6 of the paper.

2.0 INSTITUTIONAL AND LEGAL FRAMEWORK FOR INDUSTRIAL RELATIONS

Kenya's industrial relation is based on a fairly elaborate institutional and legal framework anchored on a tripartite set up. The set up brings together the government, workers and employers.

The legal framework is founded on relevant ILO Conventions ratified by the country, the country's Constitution, and domestic labour legislation. On the other hand, the boundaries for trade union organization and recruitment, including guidelines on the categories of workers, who by nature of their work, qualify to join a trade union are defined by the Industrial Relations Charter of 1957 (revised in 1984).

Kenya has five sets of labour laws that govern industrial relations in Kenya. These are the Employment Act (2007); the Labour Relations Act (2007); the Labour Institutions Act (2007); the Work Injury Benefits Act (2007); and the Occupational Safety and Health Act (2007). The basic fundamental rights of workers are defined in the Employment Act. In a nutshell, the Employment Act (2007) provides the general principles that guide labour management; the intended employment relationship in the industry; the guidelines protecting wages and salaries of workers. The Act also provides guidelines on procedural termination of employment as well as the protection of the children against labour abuse and the safety management and upkeep of employment records. Moreover, the Employment Act (2007) clearly lays down the legal dispute handling procedures and defines the role of the trade union, the employer and the in creating, maintaining and promoting industrial harmony.

The Labour Relations Act (2007) defines the right to Freedom of Association; Establishment and Registration of Trade Unions and Employer organisations; Membership and Leadership of Trade Unions and Employer Organisations as well as the Financial Management systems of the Trade Unions and Employer Organisations. The Labour Relations Act (2007) also defines Trade Union dues, Agency fees and Employer Organisation fees as well as Recognition of Trade Unions and Collective Bargaining Agreements. Also important to note is that the Labour Relations Act (2007) lays out elaborate dispute resolution mechanisms as well as the basis for industrial strikes and lock outs.

The Labour Institutions Act (2007) governs the administration of labour while defining the institutional framework that exists to enhance effective and fair labour relations. The Act defines the establishment of the National Labour Board, the Industrial and Labour Relations Court and the Committee of Inquiry into an industrial outcome. The Labour Institutions Act (2007) also defines institutions that have express administration and Inspection of labour as well as the establishment and functions of the Wage Councils. Moreover, the Act also defines the operations of Employment Agencies.

The Occupational Safety and Health Act (2007) lays out safety and health measures that should be undertaken at work places to secure the safety, health and welfare of the workers as well as other persons who are at risk of the activities the workers engage in. The Act stipulates that every work place should undergo a safety and health audit annually. It also defines the duties of the workers and the employer in ensuring that safety and health is maintained at the work places. Moreover, the OSH Act (2007) provides as well the role of Occupational Safety and Health Officers in ensuring and promoting occupational safety and health at the work places. Finally, the Act gives the Director of Occupational Safety and Health the overall responsibility of administering occupational safety and health by establishing and promoting OSH standards and codes of practice in any given work place.

In order to address work place injuries, the labour laws stipulates the Work Injury Benefits (WIBA) Act (2007). WIBA provides the guidelines for the compensation of workers in case of injuries in their work places.

Other laws that support the functional relationship in industrial relations include the National Social Security Fund (NSSF) Act No. 45 of 2013 and the National Hospital Insurance Fund (NHIF) Act No. 9 of 1998 (Revised Edition 2012). These two Acts enhances workers' social protection.

3.0 CURRENT CHALLENGES IN THE INDUSTRIAL RELATIONS IN KENYA

The industrial relations outcomes have not been promising in Kenya following the recent jailing of trade union officials of the Kenya Medical Practitioners and Doctors Union. Kenya hit the headlines following the sentencing of the officials to one month's imprisonment though the Court of Appeal finally released them. This challenge has also been manifested in the number of industrial actions that have hit the labour market currently, a clear indication that dispute resolution mechanisms are either dysfunctional or ineffective. This section lists some of the current challenges that have manifested in the industrial and labour relations.

3.1 Increasing number of industrial strikes

The labour market has been hit by increasing trends of industrial strikes over the past one year. The latest and the longest strike ever witnessed in Kenya's history in the health sector was that of the Doctors' union. The doctors were on strike for an average of 100 days. This strike led to the imprisonment of the Doctors' union officials. The second latest strike was that of the lecturers under the University of Academic Staff Union (UASU).

These strikes are an indication that conflict resolution mechanisms are either weakening or ineffective in solving industrial problems. The time taken to resolve these industrial disputes show non commitment by the parties involved. These include the Government, the employers (or employer organization) and the trade union. Just to mention, the recent delays in solving these industrial have majorly been affected by the governments' non committance to the resolution mechanisms.

3.2 Delays in Negotiations, Registration and Implementation of Collective Bargaining Agreements

It doesn't meet logic that the overall process of CBA negotiations, registration and implementation is increasingly not taken seriously by the parties concerned especially

the employers. This can be drawn from the recent strikes of doctors and lectures who were pursuing their 2013 CBAs. Surely, justice delayed is justice denied! Parties to CBA negotiations from the unions have expressed dissatisfaction with the employers' ever dragging the CBA processes. In fact, some negotiations take up to one year before conclusion on the basis of delayed tactics. This delay has constantly reduced the number of registered CBAs annually. For example, in 2015, the number of registered CBAs dropped to 230 from 328 in 2014.

3.3 Withholding of Union Dues and Failure to Collect Agency Fees

The culture of withholding union dues and failure to deduct Agency Fees from the workers benefiting from CBAs but are not union members is on the rise. This is in total disregard of Section 50 of the Labour Relations Act that requires such deductions to be submitted to the union in question. Sections 48 and 49 clearly mandate the employer to make such deductions as may be requested by a trade union. Thus non deduction is both illegal and a labour malpractice that is intolerable.

3.4 High Rates of Retrenchment and Outsourcing

As several companies close down, trade unions are met by high levels of retrenchment eating into their membership. On the other hand, increasing levels of outsourcing have made trade unions to lose so many members. In fact, retrenchment has greatly affected the trade union density as well as industrial harmony as workers exit into the informal sector that has unfavorable working conditions. Moreover, the outsourced workers have hardly been unionized, further weakening industrial relations as well as the union strength.

3.5 Institutional Underperformance

In order to realize an effective, harmonious and just labour relations, the performance of labour institutions is very fundamental. However, it is without doubt that the institutions that deal with labour relations have underperformed. A few illustrations show that:

- The National Labour Board as instituted by Section 5 and 6 the Labour Institutions Act 2007 has not been consistently carrying out its duties defined in Section 7 of the same Act. This has led to deterioration of the quality of labour relations thereby resulting to industrial injustices.
- The Industrial and Labour relations Court has a bulk of labour relation cases to handle, making some cases to delay for over one year. Given the sensitivity of labour relation issues as they directly touch on the welfare of the workers directly, delays in the execution of such cases hold hostage the welfare of such workers. Such justice delayed is justice denied.
- The Committee of Inquiry as instituted by Section 28 and 29 of the Labour Institutions Act has as well not been formed as and when there is a dysfunction or malfunction in labour relations. Such limited response has as well reduced the peace expected in industrial relations in Kenya.
- It is as well evident that labour administration and inspection has poorly performed. Kenya has very few Labour Officers; Employment Officers and Medical Officers that are responsible for the day to day administration and inspection of labour matters. This deficiency in man power coupled has seriously negatively impacted on the quality of labour relation outcomes thereby derailing possible harmonious labour relations.
- While focusing on the Wage Councils as established by Section 43 of the Labour Institutions Act, the unfair remunerations and poor employment conditions that characterize the labour market becomes evident. The Wage Councils rarely meet. And worse often, whenever they meet such as the General Wages Council and the Agricultural Council, their recommendations are highly unlikely to be considered as benchmarks for decision makers.
- The other institutional failure that has worsened labour relations is the Directorate of Occupational Safety and Health. In most cases, work places are not subjected to safety and health audits thereby rendering many work places unworthy of any labour undertaking. An example was the case of a factory in the Coastal Region that manufactured Lead. The family members of the affected workers and their

children developed serious health complications that have completely destroyed the future of these workers.

- And even though Employment Agencies are currently recognized in Kenya, unionization of employees of these Agencies has become a night mare since many of such Agencies employ workers of different professions and working in different sectors. These agencies have greatly promoted the uptake of outsourcing in the labour market thereby further weakening labour relations.

4.0 RESTORING DIGNITY AND HARMONY IN KENYA'S INDUSTRIAL RELATIONS

As outlined in section 3 above, the poor labour relations in Kenya have resulted from a number of institutional and legal failures. There is therefore greater need and concern to provide solution to the stalemate that currently continues to negatively affect industrial outcomes. The following recommendations could help address this mess and bring back dignity and harmony in Kenya's Industrial and Labour Relations.

1. The National Labour Board should consistently take up its role in addressing labour market outcomes effectively and efficiently
2. The Industrial and Labour Relations Court should expeditiously restructure to reduce any backlog of industrial injustices to warrant workers who have been affected timely justice and restoration of decent life.
3. In the event of any unfair labour outcome, the Cabinet Secretary Labour, Social Protection and East Africa Affairs should appoint a Committee of Enquiry to expeditiously solve such malfunctions.
4. There should be employed more Labour Officers, Employment Officers and Health Officers to ensure effective and efficient management, inspection and enhancement of work places.
5. The Cabinet Secretary in charge of Labour, Social Protection and East Africa Affairs should institute all the relevant Wage Councils and ensure that they carry out their mandate in promoting fair wages and decent employment conditions.

These wage councils should as well link with the Salaries and Remuneration Commission to avoid any wage conflicts and restore industrial harmony.

6. Kenya should embrace automatic trade union membership. In this regard, a worker in a particular sector or profession becomes an automatic trade union member. This could help transform the anti-trade union policies in the private sector especially among multinationals that have so many employees but do not condone subscription to trade unions. Moreover, all employers should ensure that they deduct necessary trade union dues as well as Agency fees where necessary and remit such monies to the relevant trade unions without fail.
7. The spirit of Collective Bargaining should be embraced at all in all processes of CBA negotiations. This should begin at the initiation, negotiation, signing, registration and effective and efficient implementation of the CBAs in question.
8. In the case of a dispute in the industrial and labour relations, Alternative Dispute Resolution mechanisms (ADRs) have proved to be very effective. It is therefore necessary to pursue such avenues in case of a deadlock in labour relations.

5.0 ANALYSIS OF CONSUMER PRICE INDICES AND INFLATION RATES FOR FEBRUARY 2017

The Kenya National Bureau of Statistics reported an increase of 1.72 per cent in the Cost of living between January and February 2017. Consumer Price Indices increased from 176.93 points in January to 179.98 in February 2017. These increases were mainly attributed to increases in prices of basic food such as maize flour and vegetables and average rises in prices of petrol and diesel.

Over the last 12 months, the price of 2kg sifted maize flour has hit its highest, currently trading at an average of Kshs.145 while other basic commodities also follow suit. This shows that the purchasing power of the common worker has drastically deteriorated to the extent that some workers cannot afford to put food on the table given their low wage levels.

Drought has also worsened the prices of food substances, further weakening the purchasing power of the workers. Similarly, there been increases in prices of petrol and diesel thereby escalating transport costs that further have ripple effects on the general price levels.

The bureau stipulated the inflation for the month of February 2017 to be 9.04 per cent. This was an increase of about 29.33 per cent from the January 2017 inflation rate of 6.99 per cent. This as well implies that the purchasing power of the workers deteriorate day by day.

Since such increases in costs of living drastically weaken the purchasing power of workers, there should be compensation through wage increases to restore such lost purchasing powers. It is therefore the collective responsibility of trade unions and employers to negotiate and award higher wage increases to the workers to counter such increases in the cost of living.

5.1 Brief Analysis of the Consumer Price Indices for the period January 2016-February 2017.

The table that follows shows the Consumer Price Indices for the last 14 months are as shown in table 1 that follows (February 2009=100).

Table 1: CPIs for Kenya for the period January 2016 - February 2017

Month	Consumer Price Indices						
	Kenya	% change from previous month	Nairobi Lower Income Group	Nairobi Middle Income Group	Nairobi Upper Income Group	Nairobi Combined	Rest of Urban Areas
January 2016	165.37	0.39	167.60	144.24	144.30	161.09	165.37
February 2016	164.67	-0.42	167.38	143.39	144.19	160.72	167.44
March 2016	165.92	0.76	169.19	143.78	144.21	162.12	168.58
April 2016	167.07	0.69	170.86	143.97	145.61	163.42	169.62
May 2016	167.99	0.68	171.89	144.59	145.93	164.32	170.55
June 2016	169.76	0.01	174.08	145.59	146.21	166.15	172.29
July 2016	170.84	0.64	174.51	146.18	146.94	166.64	173.78
August 2016	170.97	0.08	174.40	146.76	148.33	166.75	173.92
September 2016	172.56	0.35	174.60	147.19	148.71	167.01	174.74
October 2016	172.62	0.03	176.05	147.22	148.68	168.06	175.82
November 2016	173.85	0.71	177.67	147.61	149.23	169.35	177.01
December 2016	175.18	0.77	178.79	148.37	149.68	169.85	178.91
January 2017	176.93	0.99	179.78	150.25	150.19	171.54	180.70
February 2017	179.98	1.72	182.88*	152.84*	152.78*	174.50*	183.81*

Source: KNBS

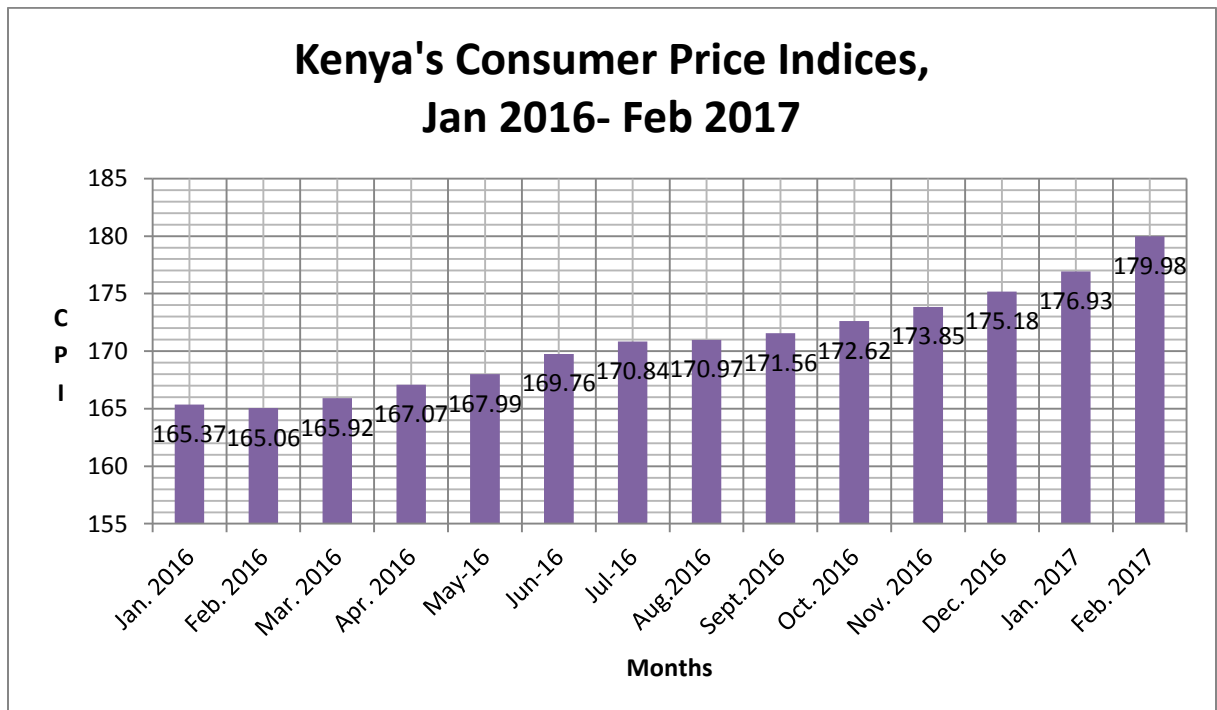
Notes: 1. * Author's estimates based on overall change in the CPI

2. Nairobi Lower Income Group are households that spent less than Kshs. 23,670 in October 2005; Nairobi Middle Income Group are households that spent between Kshs. 23,671 to Kshs. 119,999 in October 2005 while Nairobi Upper Income Group are

households that spent above Kshs. 120,000 in October 2005. The Rest of urban areas are Mombasa, Malindi, Machakos, Nyeri, Thika, Nakuru, Kisii, Kisumu, Eldoret, Nyahururu, Garissa and Bungoma.

The graphical representation of the CPI for the 14 months is shown in figure 2 that follows:

Figure 1: Graph of Kenya's CPIs for the period January 2016 - February 2017



Source: Author's construction based on KNBS data

As shown in table 1 and figure 1, consumer prices have been rising for the last 14 months, albeit at different rates. In fact, the CPIs increased from 165.37 points in January 2016 to 179.98 points in February 2017. This shows that the cost of living has been increasing over the period under review. There is therefore no doubt that the workers should be compensated so as to meet the higher costs of living.

The resultant effect is the erosion of the workers' purchasing powers month by month. And given that wages are rigid, workers become worse off as their access to basic goods and services diminish. Compensation is therefore necessary in line with the wage guidelines 2005 to enable the workers remain at the same levels of welfare before the rise in cost of living.

In this regard, trade unions should ensure that as they negotiate collective bargaining agreements, consumer price increases over the period under review are considered and workers are compensated appropriately.

5.2 Brief Analysis of the Inflation Rates for the period January 2016- February 2017

The table that follows shows the inflation rates for the last 14 months (February 2009=100)

Table 2: Kenya's Inflation rates for the period January 2016- February 2017

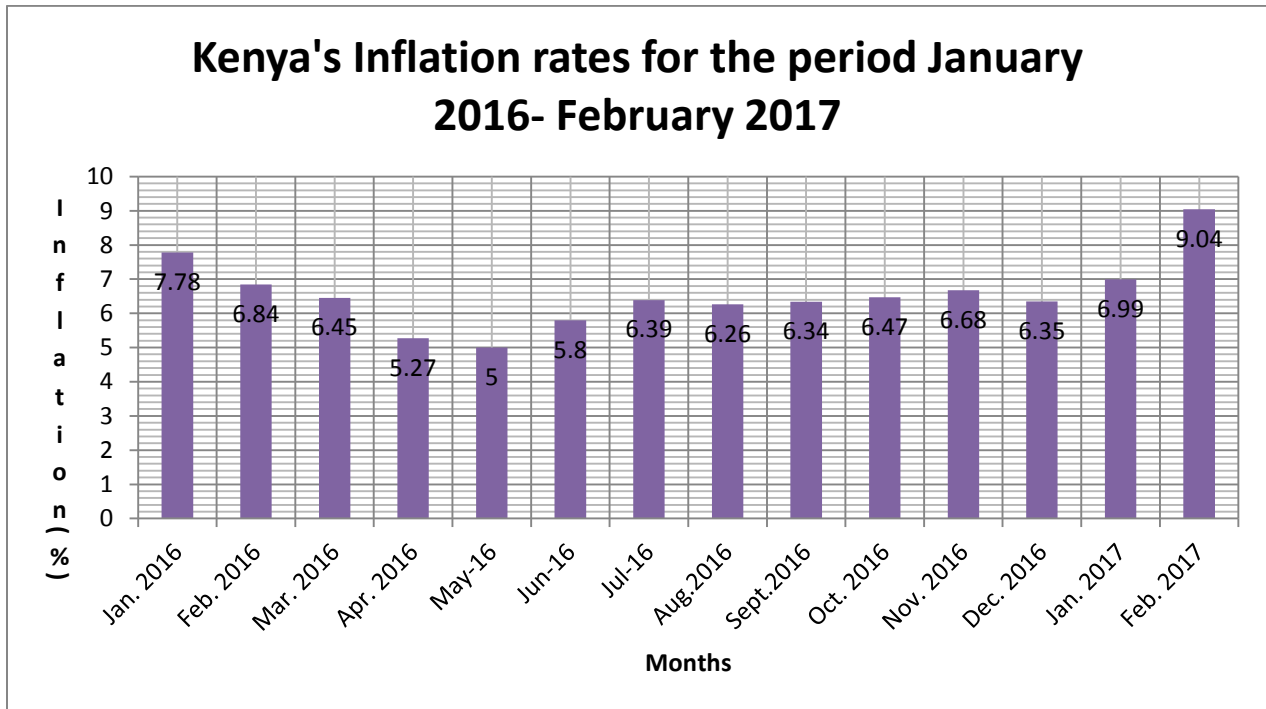
Month	Inflation Rates (%)						
	Kenya	% change from previous month	Nairobi Low Income Group	Nairobi Middle Income Group	Nairobi Upper Income Group	Nairobi Overall	Other Urban Areas
January 2016	7.78	-2.87	7.68	5.91	5.44	7.22	8.16
February 2016	6.84	-12.08	6.94	5.24	5.51	6.53	7.04
March 2016	6.45	-5.70	6.54	4.88	5.21	6.13	6.67
April 2016	5.27	-18.29	5.57	4.52	5.76	5.35	5.22
May 2016	5.00	-5.12	6.05	4.05	5.02	5.58	4.61
June 2016	5.80	16	7.15	3.48	5.00	6.28	5.48
July 2016	6.39	10.17	7.24	3.55	3.95	6.33	6.44
August 2016	6.26	-2.03	7.14	3.60	3.35	6.24	6.27
September 2016	6.34	1.28	7.03	3.62	3.74	6.17	6.45
October 2016	6.47	2.05	7.18	3.73	3.93	6.32	6.57
November 2016	6.68	3.25	7.02	4.13	4.58	6.32	6.92
December 2016	6.35	-4.94	6.34	2.16	4.42	5.37	7.01
January 2017	6.99	10.08	7.27	4.17	4.08	6.49	7.33
February 2017	9.04	29.33	9.40*	5.39*	5.28*	8.39*	9.48*

Source: KNBS

*Author's estimates based on overall change in inflation

The graphical representation for the Inflation rates for the 14 months is shown in figure 2 that follows.

Figure 2: Kenya's Inflation rates for the period August 2015 - September 2016



Source: Author's construction based on KNBS data.

The data presented on table 2 and figure 2 shows that inflation has been fluctuating over the last 14 months. The month with the lowest inflation was May 2016 while the highest inflation was registered in February 2017 at 9.04 per cent.

In the foregoing inflation analysis, the erosion of workers' purchasing power continues to worsen. An all-inclusive approach involving the tripartite parties would therefore be necessary to earn workers decent living standards

6.0 CONCLUSION

This paper has examined and analyzed the challenges facing industrial relations in Kenya currently, their implications and possible policy recommendations to realize a harmonious and fair labour relations

Putting into consideration the recommendations of this paper, it is necessary that the provisions of Section 45 of the Labour Institutions Act, 2007 be effected. In this regard, it is important that the Cabinet Secretary for Labour, Social Protection and East Africa Affairs champion the development of a National Wage Policy for a harmonious, just and fair labour relations in Kenya.

Such a wage policy should accord workers wage awards in the event of erosion of their purchasing powers by escalating costs of living so as to achieve sustainable decent lives.

Finally, the National Labour Board, the Wage Councils, the Salaries and Remuneration Commission and other relevant labour institutions should follow a transformation path to realize a harmonious and just labour relations

In fact, to realize economic growth and development as well as social transformation in Kenya, transformation of the labour institutions becomes a cornerstone.

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