NATIONAL PRODUCTIVITY AND PERFORMANCE CONFERENCE - 2026

17-19 JUNE 2026

KENYA SCHOOL OF GOVERNMENT - NAIROBI

Theme: Productivity for Fiscal Sustainability and Efficient Service Delivery

Strengthening Social Dialogue and Tripartism for Harmonious Labour Relations and Sustainable Productivity in Kenya

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Break-Away Session · 17 June 2026

https://productivityconference.src.go.ke

CONTEXT

Productivity is the binding constraint — and it is slipping

Kenya Vision 2030 and the Bottom-Up Economic Transformation Agenda depend on productivity growth. The macro signals point the wrong way.

4.6%

Real GDP growth in 2025 (5.7% in 2023, 4.7% in 2024)

83.8%

of workers — 18.1m — in the informal economy (2025)

87.2%

of new jobs in 2025 were informal (90% in 2024)

2.5m

man-days lost to strikes in 2024 (21,906 in 2022)

Industrial harmony is a productivity input — this paper diagnoses why Kenya's 64-year-old tripartite system under-delivers, and sets out a three-year reform programme.

WHERE WE ARE

Six decades of tripartism: strong on paper

A long heritage

- **1962** Industrial Relations Charter signed — Government, FKE, KFL (now COTU-K)
- **1976 / 1984** IRC revised; the 1984 text remains the operative version today
- **2007** Five labour statutes; National Labour Board; Wages Councils + other Institutions of Social Dialogue
- **2010** Constitution: Art. 41 labour rights; SRC (Art. 230); ELRC established
- **2023** Mombasa tripartite review of the IRC — not yet adopted

The architecture exists...

- **Apex:** National Labour Board (tripartite-plus)
- **Sectoral:** Wages Councils; CBAs at national, sectoral & enterprise levels
- **Judicial:** Employment & Labour Relations Court
- **Public pay:** Salaries & Remuneration Commission

Kenya meets the ILO's structural test (Convention 144) — but fails the operational one.

THE DIAGNOSIS

Six practical problems hold the system back

1 Strikes

Fewer, but far more protracted and concentrated in essential public services

2 Dispute resolution

Courts now clear cases fast; ministry conciliation closes only ~30% of disputes

3 Collective bargaining

Coverage of 9.7%, locked to union enclaves; unions fragmented by craft

4 Dormant institutions

NLB meets rarely, no secretariat or budget; NJCC, TCC and DC never operationalized

5 Legal incoherence

Non-binding 1984 Charter collides with the Constitution, labour laws and ELRC rulings

6 Policy vacuum

No national labour relations policy to coordinate laws, institutions and conduct

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PROBLEM 1 · STRIKES

Strike intensity has risen — led by the public sector

93.4%

of man-days lost in 2024 were in the public sector (100% in 2023)

2.5m days ≈ 223 days

lost **per striking worker in 2024** — strikes are fewer but more protracted

KSh 33.5bn

cumulative strike cost 2010–2016; the 2013 wave cut GDP growth ~0.5 pp

- **Public-sector dominance & fragmentation.** Transport, education, health and civil service are balkanized into many craft unions — staggered CBAs trigger wage leapfrogging and inter-union rivalry.
- **Essential services are not spared.** Despite the s.81(3) ban, health, water, civil aviation, telecoms and ferry services have repeatedly struck.
- **Strikes have become a substitute for dialogue.** Triggers — CBA delays, SRC involvement, unremitted deductions — are not addressed by tripartite mechanisms.

PROBLEM 1 · STRIKES (CONT'D)

The social cost: strikes in the health sector

75%

increase in mortality among children aged 12–59 months during the 2010–16 health-worker strikes (Kilifi)

2×

rise in maternal deaths — to 857 from 413 — in just six months during the 2017 health workers' strikes

500,000+

newborns missed vaccination during the 2017 nurses' strike (UNICEF / Kenya Red Cross)

- **Indirect effects reach far beyond forgone output.** A health-sector strike's costs fall on patients, their families and the country's health outcomes — not only on the striking workers' wages and benefits.
- **Maternal, newborn and HIV care were hit hardest.** DHIS data show 28–56% fewer fourth antenatal visits, 17–45% fewer women starting ART, and an 11–33% rise in mother-to-child HIV transmission during the health workers' strikes.
- **Prevention services collapsed.** Short- and long-acting family-planning uptake fell by 37% and 55%; viral-load testing fell by 33–54%; and facility deliveries fell by 22%.

PROBLEM 1 · STRIKES (CONT'D)

Hospital admissions collapsed during the 2016–17 doctors' and nurses' strikes

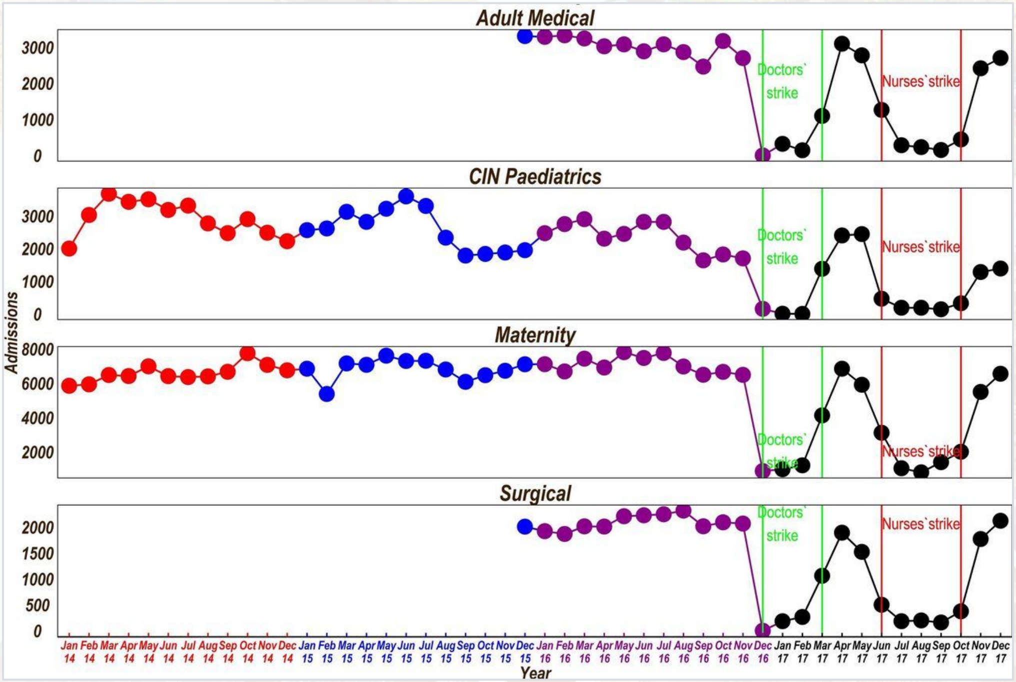

Figure 1: Trends in hospital admissions, 2014–17. *Source: Irimu et al. (2018); 13 public hospitals, Clinical Information Network.*

- **Doctors' strike, 2016–17: the worst outcomes.** Admissions for CIN paediatric and maternity services fell the most.
- **Nurses' strike, 2017.** All four disciplines were affected — adult medical, paediatrics, maternity and surgical — though less sharply.
- **A near-total stoppage.** At the onset of each strike, admissions fell close to zero across every discipline.

An estimated 183,170 people received no admission care during the strike period — in just the 13 hospitals studied.

When the right to strike meets the right to care

“

I did not mean health workers are not humane. What I said — and the Hansard bears me correct — is that if you issue a strike notice to somebody who is sick in hospital, who is on palliative care and who may not have a health professional to care for him the next day, it is far more serious for the sick person than for the aggrieved health worker. Palliative care stands between you and life. The health profession is not like a mine workers’ union: mine workers can strike, and the gold and diamonds will stay in the ground without changing colour or value for years. But if health workers go on strike, you know what the consequences are.

— Prof. Anyang’ Nyong’o, then Minister for Medical Services

responding to a strike notice from the Kenya Health Professionals Society

PROBLEM 2 · DISPUTE RESOLUTION

Courts clear the backlog; conciliation lags behind

ELRC: a judicial turnaround

- **190% case clearance rate** by June 2024 under the Social Transformation through Access to Justice (STAJ, 2023-2033) blueprint
- **Backlog cut 30%** to 6,973 pending cases in 2023/2024 (13,723 in 2017)
- **Disposals 7,985/yr** outpaced new filings 3,537/yr (2017/18–2023/24)
- **Court-annexed mediation & ADR** championed since 2023

Upstream, the funnel still leaks

- **1,368 disputes/yr** reported to the Labour Ministry; ~9 in 10 are rights disputes
- **Conciliation closes only ~30%** (413/yr) — disputes leak into litigation and strikes
- **Weak shop-floor grievance handling** funnels minor disputes straight to court

Courts are buying the system space; tripartite institutions must now fill it.

PROBLEM 3 · COLLECTIVE BARGAINING

Thin coverage, fragmented unions

Coverage = density = 9.7% in 2019

Bargaining never extends beyond unionised enclaves. Far below Sweden (90%, 2019), Denmark (80%, 2018), Ghana (38%,2020) and South Africa (30%, 2018).

Across the total labour force — 83.8% informal — effective union density is just **1.6–2%.**

Craft fragmentation drives leapfrogging

Transport: 10 unions · Education: 9 · Health: 8 · Civil service: 3

Staggered CBA cycles spark wage leapfrogging and inter-union rivalry.

The health sector's unionisation-intensity score (3.03) signals strikes that freeze the sector.

PROBLEM 4 · INSTITUTIONS

The machinery of dialogue is dormant

Status check

- **National Labour Board:** 26th meeting 2022, 27th Aug 2023 — no dedicated secretariat, no independent budget
- **NJCC and TCC** (1984 Charter bodies): never operationalized
- **Demarcation Committee:** exists but not operational
- **Wages Councils:** low technical capacity, infrequent meetings
- **Result:** "consultation fatigue" among the social partners

Major labour-relevant laws passed without tripartite consultation:

2018 Statute Law (Misc. Amendments) Bill; Finance Act (Housing Levy); Health Act

2023 Social Health Insurance Act

2024 Affordable Housing Act

Each was a missed opportunity for social dialogue — and a seed of future disputes.

PROBLEMS 5 & 6 · RULES OF THE GAME

A non-binding Charter, binding fiscal rulings, no policy compass

Legal-institutional incoherence

- The 1984 Charter is moral suasion only — unregistered and unenforceable
- Charter exclusions & industrial-union preference collide with the Constitution (Arts. 36, 41) and the Labour Relations Act
- Court of Appeal rulings make SRC fiscal advice legally binding — subordinating tripartite bargaining to fiscal limits
- 2007 labour laws criminalize labour relations, against the Charter's ethos of voluntary compliance

No national labour relations policy

- Laws, the Charter, the Constitution and ad-hoc cabinet decisions interact without a coordinating framework
- Unusual among peers: South Africa, Singapore, Vietnam and Indonesia all anchor tripartism in policy
- Gap acknowledged in the State Department for Labour's 2023–27 Strategic Plan — still unaddressed

With no compass, strikes have become a substitute for — not a complement to — social dialogue.

THE SYNTHESIS

The problem is institutional design — not culture, not capability

Four interacting deficits, each amenable to deliberate policy action:

1

Legal status

The Charter binds no one

2

Dormancy

Dialogue institutions don’t meet or deliver

3

Capacity gap

The state out-analyses FKE and COTU-K

4

Policy vacuum

No coordinating framework or scorecard

EVIDENCE FROM ELSEWHERE

Where tripartism is anchored in statute, it delivers

South Africa
NEDLAC is statutory, with its own secretariat and budget — consultation is built into law-making

Singapore
National Wages Council issues annual, evidence-based wage guidelines accepted by all partners

Germany
Codetermination is mandatory above firm-size thresholds; works councils raise productivity 4–6%

Ghana · Vietnam · Indonesia
Lower-middle-income peers run national tripartite frameworks under explicit policy documents

Common thread: statutory grounding, permanent secretariats, shared evidence, scheduled dialogue.

REFORM PROGRAMME · HORIZON 1

Year 1 (2026–27): six foundational actions

1 **Adopt the revised Industrial Relations Charter**
Finalise the 2023 Mombasa review; align with the Constitution, 2007 laws and ILO C.87/98/144

2 **Table a Sessional Paper on a National Labour Relations Policy**
Objectives, principles, architecture, conduct standards, indicators, review mechanism

3 **Operationalise the National Labour Board**
Dedicated secretariat, independent budget (~KSh 800m ≈ 0.04% of budget), quarterly meetings

4 **Launch a tripartite statistics & evidence programme**
KNBS–Ministry–FKE–COTU-K with NPCC: shared annual labour-market indicators

5 **Convene a Tripartite Working Group on the Future of Work**
Platform work, informality, migrant workers — reporting within nine months

6 **Accelerate ELRC backlog clearance via court-annexed mediation**
Target: 70% of cases older than five years cleared within 18 months

Years 2–3: structural change, then consolidation

Years 2–3 · Structural

- Enact an Industrial Relations Charter Act — statutory grounding; NLB consultation mandatory for any new labour law or policy
- National tripartite capacity programme (50:50 cost-share) for negotiators, works councils, conciliators, mediators
- Strengthen SRC as both regulatory and an evidence-providing body, — resolving a major share of public-sector disputes

Years 2-3 · Consolidation

- Incentivise voluntary union consolidation — exclusive bargaining rights for the most representative union per sector
- Extend dialogue to the informal economy: sector compacts for transport, agriculture, construction, domestic services
- Standing tripartite M&E framework with an annual public scorecard

DECISIONS SOUGHT

What this Conference can set in motion

01

Endorse the reform sequence

Tripartite endorsement of the phased five-year programme — starting with adoption of the revised Charter from the 2023 Mombasa review

02

Anchor wages to productivity

Mandate the NPCC to issue annual, tripartite-set wage guidelines calibrated to GDP, inflation and sectoral productivity — complementing the SRC’s mandate

03

Fund the machinery

Commit to the NLB secretariat and budget line, and to the joint tripartite statistics and evidence programme

Productivity is the binding constraint on BETA and Vision 2030; industrial harmony is how we relieve it.

From rhetorical commitment to operational practice

The deficits are of institutional design — and design can be fixed. A revised Charter, an enabling statute, a working National Labour Board, shared evidence, and phased capacity investment will convert social dialogue into industrial harmony and sustained productivity gains.

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Thank You

Public Service Commission Kenya — Honour, Commitment, Trust

SCAC — State Corporations Advisory Committee — Diligent in Serving

Republic of Kenya

SRC — Salaries & Remuneration Commission — Rewarding productivity

Council of Governors — 48 Governments 1 Nation

IGRTC — Intergovernmental Relations Technical Committee — Consultation, Cooperation & Coordination in Devolution